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Department of Defense
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National Aeronautics and Space Administration

48 CFR Chapter 1 et al.
Federal Acquisition Regulations et al; Final Rules

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

Federal Acquisition Circular 2005–01; Introduction

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

ACTION: Summary presentation of final and interim rules, and technical amendments and corrections.

SUMMARY: This document summarizes the Federal Acquisition Regulation (FAR) rules agreed to by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council in this Federal Acquisition Circular (FAC) 2005–01. A companion document, the Small Entity Compliance Guide (SECG), follows this FAC. The FAC, including the SECG, is available via the Internet at *http://www.acqnet.gov/far.*

DATES: For effective dates and comment dates, see separate documents which follow.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, at (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact the analyst whose name appears in the table below in relation to each FAR case or subject area. Please cite FAC 2005–01 and specific FAR case numbers. Interested parties may also visit our Web site at *http://www.acqnet.gov/far.*

Item	Subject	FAR case	Analyst
I	Improvements in Contracting for Architect-EngineerServices (Interim)	2004–001	Jackson.
II	Increased Justification and Approval Threshold for DoD, NASA, and Coast Guard (Interim)	2004–037	Jackson.
III	Extension of Authority for Use of Simplified Acquisition Procedures for Certain Commercial Items, Test Program.	2004–034	Jackson.
IV	Addition of Landscaping and Pest Control Services to the Small Business Competitiveness Demonstration Program (Interim).	2004–036	Marshall.
V	Nonavailable Articles—Policy	2003–021	Davis.
VI	Cost Accounting Standards Administration	1999–025	R. C. Loeb.
VII	Elimination of Certain Subcontract Notification Requirements (Interim)	2003–024	Cundiff.
VIII	Use of FAR Clause 52.244-6, Subcontracts for Commercial Items	2002–021	Jackson.
IX	Technical Amendments.		

SUPPLEMENTARY INFORMATION:

Summaries for each FAR rule follow. For the actual revisions and/or amendments to these FAR cases, refer to the specific item number and subject set forth in the documents following these item summaries.

FAC 2005–01 amends the FAR as specified below:

Item I—Improvements in Contracting for Architect-Engineer Services (FAR Case 2004–001) (Interim)

This interim rule is of particular interest to contracting officers who acquire architect-engineer services. It clarifies to contracting officers that architect-engineer services offered under multiple award schedule contracts or under Federal governmentwide task and delivery order contracts must—

- Be performed under the supervision of a licensed professional architect or engineer; and
- Be awarded in accordance with the quality-based selection procedures in FAR Subpart 36.6.

In addition, the rule clarifies to contracting officers that task orders issued under an indefinite delivery contract must be issued using the procedures in FAR Subpart 36.6 if the services being acquired specify, substantially or to a dominant extent, the performance of architect-engineer services. This rule implements section 1427 of the Services Acquisition Reform Act of 2003 (Pub. L. 108–136).

Item II—Increased Justification and Approval Threshold for DoD, NASA, and Coast Guard (FAR Case 2004–037) (Interim)

This interim rule amends the FAR by increasing the justification and approval thresholds for DoD, NASA, and the U.S. Coast Guard from $50,000,000 to $75,000,000. This change implements Section 815 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005, which amends 10 U.S.C. 2304(f)(1)(B) (Public Law 108–375). This reduces the administrative burden of approving a justification for other than full and open competition by allowing the head of the procuring activity in DoD, NASA, or the Coast Guard to approve justifications up to $75 million. In addition to this change, FAR 6.304(a)(3)(ii) is corrected to replace the outdated GS–16 reference with ''a grade above GS–15.''

Item III—Extension of Authority for Use of Simplified Acquisition Procedures for Certain Commercial Items, Test Program (FAR Case 2004–034)

This final rule amends the Federal Acquisition Regulation (FAR) by extending until January 1, 2008, the timeframe in which an agency may use simplified procedures to purchase commercial items in amounts greater than the simplified acquisition threshold, but not exceeding $5,000,000 ($10,000,000 for acquisitions in support of a contingency operation or to facilitate the defense against or recovery from nuclear, biological, chemical, or radiological attack). This change implements section 817 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005, which amended section 4202(e) of the Clinger-Cohen Act of 1996 (Public Law 104–106). The statute allows continued reduction of the burden on contracting officers and industry when acquiring commercial items or items treated as commercial items in accordance with 12.102(f)(1).

Item IV—Addition of Landscaping and Pest Control Services to the Small Business Competitiveness Demonstration Program (FAR Case 2004–036) (Interim)

This interim rule amends Federal Acquisition Regulation (FAR) Subpart 19.10, Small Business Competitiveness Demonstration Program, to add two North American Industry Classification System (NAICS) codes, landscaping (561730) and pest control services (561710) to this program. This amendment implements Section 821 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005, Public Law 108–375, which amends

Section 717 of the Small Business Competitiveness Demonstration Program Act of 1988 (15 U.S.C. 644 note). This rule provides unrestricted competition in acquisitions of landscaping and pest control services.

Item V—Nonavailable Articles—Policy (FAR Case 2003–021)

This final rule addresses Congressional concerns regarding appropriate use of the list of domestically nonavailable items at FAR 25.104(a). This final rule primarily impacts contracting officers who purchase items that are on the list, or items that contain an item on the list as a significant component. The final rule clarifies that being on the list does not mean that an item is completely nonavailable from U.S. sources, but that the item is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality. Therefore, the final rule emphasizes the need to conduct market research, appropriate to the circumstances, for potential domestic sources, when acquiring an article on the list.

Item VI—Cost Accounting Standards Administration (FAR Case 1999–025)

This final rule amends the FAR by revising Part 30, Cost Accounting Standards Administration, and the related contract clause at FAR 52.230–6, Administration of Cost Accounting Standards. In addition, a new contract clause is added at FAR 52.230–7, Proposal Disclosure—Cost Accounting Practice Changes. The rule describes the process for determining and resolving the cost impact on contract and subcontracts when a contractor makes a compliant change to a cost accounting practice or follows a noncompliant practice. The case was initiated by OUSD(AT&L)DPAP to address the CAS cost-impact process. The rule is of particular importance to contracting officers and contractors who negotiate and administer CAS-covered contracts and subcontracts in accordance with FAR Part 30.

Item VII—Elimination of Certain Subcontract Notification Requirements (FAR Case 2003–024) (Interim)

This interim rule affects contractors that have cost-reimbursement contracts with the Department of Defense, Coast Guard, or NASA. It amends FAR 44.201–2, Advance Notification Requirements, under cost-reimbursement contracts so that contractors that maintain a purchasing system approved by the contracting officer for the contract do not have to notify the agency before the award of any—

- Cost-plus-fixed-fee subcontract; or
- Fixed-price subcontract that exceeds the greater of the simplified acquisition threshold or 5 percent of the total estimated cost of the contract.

This rule implements section 842 of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108–136).

Item VIII—Use of FAR Clause 52.244–6, Subcontracts for Commercial Items (FAR Case 2002–021)

This final rule revises FAR 44.403 by requiring the use of the clause at 52.244–6, Subcontracts for Commercial Items, in solicitations and contracts other than those for commercial items. The revised clause prescription clarifies to contracting officers who acquire construction that the clause is required in all solicitations and contracts other than those for commercial items, thereby clearly including construction contracts that are not for the acquisition of commercial items. This rule does not make any changes to existing OFPP guidance addressing the applicability of FAR Part 12 to construction acquisitions.

Item IX—Technical Amendments

Editorial changes are made at FAR 28.203–3(d), 31.101, 42.203, and 52.225–13(b) in order to update references.

Dated: February 24, 2005.

Rodney P. Lantier,

Director, Contract Policy Division.

Federal Acquisition Circular

Federal Acquisition Circular (FAC) 2005-01 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 2005-01 is effective March 9, 2005, except for Items III, V, and VI, which are effective April 8, 2005.

Dated: February 24, 2005.

Deidre A. Lee,

Director, Defense Procurement and Acquisition Policy.

Dated: February 22, 2005.

Pat Brooks,

Acting Senior Procurement Executive, Office of the Chief Acquisition Officer, General Services Administration.

Dated: February 17, 2005.

Tom Luedtke,

Deputy Chief Acquisition Officer, National Aeronautics and Space Administration.

[FR Doc. 05–4083 Filed 3–8–05; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 8, 16, and 36

[FAC 2005–01; FAR Case 2004–001; Item I]

RIN 9000–AK15

Federal Acquisition Regulation; Improvements in Contracting for Architect-Engineer Services

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

ACTION: Interim rule with request for comments.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on an interim rule amending the Federal Acquisition Regulation (FAR) to implement Section 1427(b) of the Services Acquisition Reform Act of 2003 (Title XIV of Pub. L. 108–136).

DATES: *Effective Date*: March 9, 2005.

Comment Date: Interested parties should submit comments to the FAR Secretariat at the address shown below on or before May 9, 2005 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FAC 2005–01, FAR case 2004–001 by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Agency Web Site: *http://www.acqnet.gov/far/ProposedRules/proposed.htm*. Click on the FAR case number to submit comments.

• E-mail: *farcase.2004–001@gsa.gov*. Include FAC 2005–01, FAR case 2004–001 in the subject line of the message.

• Fax: 202–501–4067.

• Mail: General Services Administration, Regulatory Secretariat (VIR), 1800 F Street, NW, Room 4035, ATTN: Laurie Duarte, Washington, DC 20405.

Instructions: Please submit comments only and cite FAC 2005–01, FAR case 2004–001, in all correspondence related to this case. All comments received will be posted without change to *http://www.acqnet.gov/far/ProposedRules/proposed.htm*, including any personal information provided.

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. Michael O. Jackson, Procurement Analyst, at (202) 208–4949. Please cite FAC 2005–01, FAR case 2004–001.

SUPPLEMENTARY INFORMATION:

A. Background

Section 1427 of the Services Acquisition Reform Act of 2003 prohibits architect-engineer services from being offered under multiple award Federal Supply Schedules or under Governmentwide task and delivery order contracts unless the services are performed under the direct supervision of a professional architect or engineer licensed, registered, or certified in the State, Federal District, or outlying area, in which the services are to be performed and are awarded using the procedures of the Brooks Architect-Engineer Act.

FAR Subpart 2.1, Definitions, is revised to correct the statutory citation for architect-engineer contracts.

FAR 8.403(c) is added to clarify that agencies whose requirements substantially, or to a dominant extent, specify performance of architect-engineer services (as defined in 2.101) must use the procedures at FAR Subpart 36.6.

A new paragraph 16.505(a)(8) is added to stipulate that orders that substantially, or to a dominant extent, specify the performance of architect-engineer services (as defined in 2.101), must be issued using the procedures at FAR Subpart 36.6 and such services require the direct supervision of a professional architect or engineer who is licensed, registered, or certified in the State, Federal District or outlying area where the services are to be performed.

FAR 36.600 is revised to make the policies and procedures in FAR Subpart 36.6 applicable to orders for architect-engineer services issued under FAR 16.505.

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 interim rule 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 the interim rule clarifies an already existing requirement that architecture and engineering services be procured using the procedures at FAR Subpart 36.6.

Therefore, an Initial Regulatory Flexibility Analysis has not been performed. The Councils will consider comments from small entities concerning the affected FAR Parts 2, 8, 16, and 36 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C 601, *et seq.* (FAC 2005–01, FAR case 2004–001, in correspondence.

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.*

D. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary because Federal agencies require clear guidance to avoid inadvertently violating the requirements of the Brooks Architect-Engineers Act and section 1427(b) of the Services Acquisition Reform Act of 2003 (Title XIV of Pub. L. 108–136.) Section 1427(b) went into effect November 24, 2003.

However, pursuant to Public Law 98–577 and FAR 1.501, the Councils will consider public comments received in response to this interim rule in the formation of the final rule.

List of Subjects in 48 CFR Parts 2, 8, 16, and 36

Government procurement.

Dated: February 24, 2005

Rodney P. Lantier,

Director,Contract Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 2, 8, 16, and 36 as set forth below:

■ 1. The authority citation for 48 CFR parts 2, 8, 16, and 36 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).

PART 2—DEFINITIONS OF WORDS AND TERMS

2.101 [Amended]

■ 2. Amend section 2.101 in paragraph (b) in the definition ''Architect-engineer services'' by removing ''40 U.S.C. 541'' and adding ''40 U.S.C. 1102'' in its place.

PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

■ 3. Amend section 8.403 by adding paragraph (c) to read as follows:

8.403 Applicability.

* * * * *

(c) In accordance with section 1427(b) of Public Law 108–136, for requirements that substantially or to a dominant extent specify performance of architect-engineer services (as defined in 2.101), agencies—

(1) Shall use the procedures at Subpart 36.6; and

(2) Shall not place orders for such requirements under a Federal Supply Schedule.

PART 16—TYPES OF CONTRACTS

■ 4. Amend section 16.505 by redesignating paragraph (a)(8) as (a)(9) and adding a new paragraph (a)(8) to read as follows:

16.505 Ordering.

(a) * * *

(8) In accordance with section 1427(b) of Public Law 108–136, orders placed under multi-agency contracts for services that substantially or to a dominant extent specify performance of architect-engineer services, as defined in 2.101, shall—

(i) Be awarded using the procedures at Subpart 36.6; and

(ii) Require the direct supervision of a professional architect or engineer licensed, registered or certified in the State, Federal District, or outlying area, in which the services are to be performed.

* * * * *

PART 36—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

■ 5. Revise section 36.600 to read as follows:

36.600 Scope of Subpart.

This subpart prescribes policies and procedures applicable to the acquisition of architect-engineer services, including orders for architect-engineer services under multi-agency contracts (see 16.505(a)(8)).

[FR Doc. 05–4084 Filed 3–8–05; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 6

[FAC 2005–01; FAR Case 2004–037; Item II]

RIN 9000–AK12

Federal Acquisition Regulation; Increased Justification and Approval Threshold for DoD, NASA, and Coast Guard

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

ACTION: Interim rule with request for comments.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on an interim rule amending the Federal Acquisition Regulation (FAR) to increase the justification and approval thresholds for DoD, NASA, and the U.S. Coast Guard, as a result of Section 815 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005, Public Law 108–375, which amends 10 U.S.C. 2304(f)(1)(B) by striking $50,000,000 both places it appears and inserting $75,000,000 in its place. In addition, the FAR is amended by replacing the outdated reference to ''grade GS–16'' with ''a grade above GS–15.''

DATES: *Effective Date:* March 9, 2005.

Comment Date: Interested parties should submit comments to the FAR Secretariat at the address shown below on or before May 9, 2005 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FAC 2005–01, FAR case 2004–037, by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- Agency Web Site: *http://www.acqnet.gov/far/ProposedRules/proposed.htm.* Click on the FAR case number to submit comments.
- E-mail: *farcase.2004–037@gsa.gov.* Include FAC 2005–01, FAR case 2004–037, in the subject line of the message.
- Fax: 202–501–4067.
- Mail: General Services Administration, Regulatory Secretariat (VIR), 1800 F Street, NW, Room 4035, ATTN: Laurieann Duarte, Washington, DC 20405.

Instructions: Please submit comments only and cite FAC 2005–01, FAR case 2004–037, in all correspondence related to this case. All comments received will be posted without change to *http://www.acqnet.gov/far/ProposedRules/proposed.htm*, including any personal information provided.

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. Michael Jackson, Procurement Analyst, at (202) 208–4949. Please cite FAC 2005–01, FAR case 2004–037.

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule implements Section 815 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005, Public Law 108–375,which amends 10 U.S.C. 2304(f)(1)(B) by striking $50,000,000 both places it appears and inserting $75,000,000.

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 interim rule 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 the rule does not impose any costs on either small or large businesses. Therefore, an Initial Regulatory Flexibility Analysis has not been performed. The Councils will consider comments from small entities concerning the affected FAR Part 6 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C 601, *et seq.* (FAC 2005–01, FAR case 2004–037), in correspondence.

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.*

D. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary because this rule implements Section 815 of Public Law 108–375, which was effective upon enactment (October 28, 2004). However, pursuant to Public Law 98–577 and FAR 1.501, the Councils will consider public comments received in response to this interim rule in the formation of the final rule.

List of Subjects in 48 CFR Part 6

Government procurement.

Dated: February 24, 2005

Rodney P. Lantier,

Director,Contract Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR part 6 as set forth below:

PART 6—COMPETITION REQUIREMENTS

■ 1. The authority citation for 48 CFR part 6 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and42 U.S.C. 2473(c).

■ 2. Amend section 6.304 by revising the introductory text of paragraph (a)(3), paragraph (a)(3)(ii), and the first sentence of paragraph (a)(4) to read as follows:

6.304 Approval of the justification.

(a) * * *

(3) For a proposed contract over $10,000,000, but not exceeding $50,000,000, or, for DoD, NASA, and the Coast Guard, not exceeding $75,000,000, by the head of the procuring activity, or a designee who—

* * * * *

(ii) If a civilian, is serving in a position in a grade above GS–15 under the General Schedule (or in a comparable or higher position under another schedule).

(4) For a proposed contract over $50,000,000 or, for DoD, NASA, and the Coast Guard, over $75,000,000, by the senior procurement executive of the agency designatedpursuant to the OFPP Act (41 U.S.C. 414(3)) in accordance with agency procedures. * * *

* * * * *

[FR Doc. 05–4085 Filed 3–8–05; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 13

[FAC 2005–01; FAR Case 2004–034; Item III]

RIN 9000–AK11

Federal Acquisition Regulation; Extension of Authority for Use of Simplified Acquisition Procedures for Certain Commercial Items, Test Program

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 extend the timeframe to use the test program for commercial items.

DATES: *Effective Date*: April 8, 2005.

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. Michael O. Jackson, Procurement Analyst, at (202) 208–4949. Please cite FAC 2005–01, FAR case 2004–034.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends the Federal Acquisition Regulation to implement Section 817 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005. Section 817 amended section 4202(e) of the Clinger-Cohen Act of 1996 (Public Law 104–106) by extending until January 1, 2008, the timeframe in which an agency may use simplified procedures to purchase commercial items in amounts greater than the simplified acquisition threshold, but not exceeding $5,000,000 ($10,000,000 for acquisitions as described in 13.500(e)).

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 Regulatory Flexibility Act does not apply to this rule. This final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law98–577, and publication for public comments is not required. This rule continues current FAR policy. However, the Councils will consider comments from small entities concerning the affected FAR Part 13 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 2004–034), in correspondence.

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 13

Government procurement.

Dated: February 24, 2005

Rodney P. Lantier,

Director,Contract Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR part 13 as set forth below:

PART 13—SIMPLIFIED ACQUISITION PROCEDURES

■ 1. The authority citation for 48 CFR part 13 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).

13.500 [Amended]

■ 2. Amend Section 13.500 in paragraph (d) by removing ''January 1, 2006'' and by adding ''January 1, 2008'' in its place.

[FR Doc. 05–4086 Filed 3–8–05; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 19 and 52

[FAC 2005–01; FAR Case 2004–036; Item IV]

RIN 9000–AK14

Federal Acquisition Regulation; Addition of Landscaping and Pest Control Services to the Small Business Competitiveness Demonstration Program

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

ACTION: Interim rule with request for comments.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on an interim rule amending the Federal Acquisition Regulation (FAR) regarding the addition of landscaping and pest control services to the Small Business Competitiveness Demonstration Program. This FAR revision implements Section 821 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005, Public Law 108–375, which amends Section 717 of the Small Business Competitiveness Demonstration Program Act of 1988 (15 U.S.C. 644 note) to include landscaping and pest control services.

DATES: *Effective Date*: March 9, 2005.

Comment Date: Interested parties should submit comments to the FAR Secretariat at the address shown below on or before May 9, 2005 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FAC 2005–01, FAR case 2004–036 by any of the following methods:

• Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.

• Agency Web Site: *http://www.acqnet.gov/far/ProposedRules/proposed.htm*. Click on the FAR case number to submit comments.

• E-mail: *farcase.2004–036@gsa.gov*. Include FAC 2005–01, FAR case 2004–036 in the subject line of the message.

• Fax: 202–501–4067.

• Mail: General Services Administration, Regulatory Secretariat

(VIR), 1800 F Street, NW, Room 4035, ATTN: Laurieann Duarte, Washington, DC 20405.

Instructions: Please submit comments only and cite FAC 2005–01, FAR case 2004–036, in all correspondence related to this case. All comments received will be posted without change to *http://www.acqnet.gov/far/ProposedRules/proposed.htm*, including any personal information provided.

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. Kimberly Marshall, Procurement Analyst, at (202) 219–0986. Please cite FAC 2005–01, FAR case 2004–036.

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule amends the FAR to implement Section 821 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005, Public Law 108–375, which amends Section 717 of the Small Business Competitiveness Demonstration Program Act of 1988 (15 U.S.C. 644 note). The law amends the Small Business Competitiveness Demonstration Program to include landscaping and pest control services. The emerging small business reserve amount for these new services is set at $25,000.

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 under5 U.S.C. 804.

B. Regulatory Flexibility Act

The changes may 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 there will be additional categories added to the designated industry groups listed in FAR 19.1005. This rule adds landscaping (561730) and pest control (561710) services to the list of National American Industry Classification System (NAICS) codes included as designated industry groups of the Small Business Competitiveness Demonstration Program. The Initial Regulatory Flexibility Act is summarized as follows:

The objective of the interim rule is to further assess the ability of small business concerns to compete successfully in certain industry categories without competition being restricted by the use of small business set-asides. The implementation of Section 821 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005, Public Law 108–375 will change the FAR as follows: (1) revises the designated industry groups to include Exterminating and Pest Control Services and Landscaping Services in the definition of ''Emerging small business reserve amount'' at FAR 19.1002(1) and in 19.1005(a); (2) deletes the word ''four'' before designated industry groups in the FAR.

The interim rule will apply to all small business concerns that compete on Federal acquisitions falling under NAICS codes 561730 and 561710. Based on Governmentwide data retrieved from the Federal Procurement Data System (FPDS) for the specified NAICS codes, approximately 141 small business concerns were awarded contracts of $25,000 or more on an unrestricted basis in Fiscal Year 2002 for NAICS code 561730. This represents about 88 percent of all contracts awarded with unrestricted competition for that NAICS code. In Fiscal Year 2003, there were 116 contracts awarded to small business concerns on an unrestricted basis, which represents approximately 81 percent of all contracts awarded with unrestricted competition for that NAICS codes. FPDS data also show that 25 small business concerns were awarded contracts of $25,000 or more on an unrestricted basis in Fiscal Year 2002 for NAICS code 561710. This represents about 56 percent of all contracts awarded with unrestricted competition for that NAICS code. In Fiscal Year 2003, there were 17 contracts awarded to small business concerns on an unrestricted basis, which represents approximately 77 percent of all contracts awarded with unrestricted competition for that NAICS codes. It is estimated that small business concerns will continue to be successful in winning at least one-half to three-fourths of awards on an unrestricted basis when these designated industry groups are added to the Small Business Competitiveness Demonstration Programs given the history of their success in recent unrestricted competitive government acquisitions falling under NAICS codes 561730 and 561710. Additional data retrieved from FPDS show that the number of small business set-asides for NAICS code 561730 in Fiscal Years 2002 and 2003 combined was approximately 952 and the number of small business set-asides for NAICS code 561710 in Fiscal Years 2002 and 2003 combined was approximately 96.

The changes may 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 previously set-aside acquisitions for services falling within NAICS codes 561730 and 561710 will now be included in the designated industry groups of the Small Business Competitiveness Demonstration Program. FAR 19.1007(b) states that—

> ''Solicitations for acquisitions in any of the designated industry groups that have an anticipated dollar value greater than the emerging small business reserve amount must not be considered for small business set-asides under Subpart 19.5. However, agencies may reinstate the use of small business set-asides as necessary to meet their assigned goals, but only within organizational units that failed to meet the small business participation goal. Acquisitions in the designated industry groups must continue to be considered for placement under the 8(a) Program (see Subpart 19.8), the HUBZone Program (see Subpart 19.13), and the Service-Disabled Veteran-Owned Small Business Procurement Program (see Subpart 19.14).''

Given the large number of awards made under these NAICS codes, it is anticipated that the addition of the 2 NAICS codes to the Small Business Competitiveness Demonstration Program will promote an increased number of opportunities for small business concerns to develop teaming arrangements and joint ventures.

The purpose of the Competitiveness Demonstration Program is to assess the ability of small businesses to compete successfully in certain industry categories without competition being restricted by the use of small business set-asides. This portion of the program is limited to the four designated industry groups listed in FAR 19.1005(a) and will include the addition of landscaping and pest control services to the designated industry groups. The interim rule imposes no reporting, recordkeeping, or other compliance requirements. The interim rule does not duplicate, overlap, or conflict with any other Federal rules. There are no practical alternatives that will accomplish the objectives of this interim rule.

The FAR Secretariat has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. Interested parties may obtain a copy from the FAR Secretariat. The Councils will consider comments from small entities concerning the affected FAR Parts 19 and 52 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C 601, *et seq.* (FAC 2005–01, FAR case 2004–036), in correspondence.

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.*

D. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary because the interim rule includes FAR text revisions

required to implement the recently enacted Public Law 108–375, Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 (October 28, 2004), Section 821, which amends Section 717 of the Small Business Competitiveness Demonstration Program Act of 1988 (15 U.S.C. 644 note). However, pursuant to Public Law 98–577 and FAR 1.501, the Councils will consider public comments received in response to this interim rule in the formation of the final rule.

List of Subjects in 48 CFR Parts 19 and 52

Government procurement.

Dated: February 24, 2005

Rodney P. Lantier,

Director,Contract Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 19 and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 19 and 52 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).

PART 19—SMALL BUSINESS PROGRAMS

19.502–2 [Amended]

■ 2. Amend section 19.502–2 in paragraph (d) by removing the word ''four''.

■ 3. In section 19.1002 revise paragraph (1) of the definition ''Emerging small business reserve amount'' to read as follows:

19.1002 Definitions.

* * * * *

Emerging small business reserve amount * * *

(1) $25,000 for construction, refuse systems and related services, non-nuclear ship repair, landscaping and pest control services; and

* * * * *

■ 4. Amend section 19.1005 in paragraph (a) by adding an Item 5 to the ''NAICS Description'' to read as follows:

19.1005 Applicability.

(a) * * *

NAICS CODE	NAICS DESCRIPTION
* * * * *	
5. Landscaping and Pest Control Services	
561710	Exterminating and Pest Control Services
561730	Landscaping Services
* * * * *	

19.1001, 19.1003, 19.1007, and19.1008 [Amended]

■ 5. In addition to the amendments set forth above, remove the word ''four'' in the following places:(a) Section 19.1001(a);(b) Section 19.1003(a) and (c);(c) Section 19.1007(b) and (c); and(d) Section 19.1008(a).

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 6. Amend section 52.212–3 by revising the date of the clause to read ''(MAR 2005)'' and by removing from paragraphs (c)(8)(i) and (c)(8)(ii) the word ''four'' wherever it appears.

[FR Doc. 05–4087 Filed 3–8–05; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 25

[FAC 2005–01; FAR Case 2003–021; Item V]

RIN 9000–AJ95

Federal Acquisition Regulation; Nonavailable Articles-Policy

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 clarify the intent of the list of items determined to be nonavailable for purposes of the Buy American Act, and to emphasize the need to conduct market research, appropriate to the circumstances, for potential domestic sources.

DATES: *Effective Date*: April 8, 2005.

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 2005–01, FAR case 2003–021.

SUPPLEMENTARY INFORMATION:

A. Background

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 69 FR 29632, May 24, 2004. The rule proposed to amend FAR Subpart 25.1 in order to clarify that being on the list does not mean that an item is completely nonavailable from U.S. sources, but that the item is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality. Therefore, the proposed rule also emphasized the need to conduct market research, appropriate to the circumstances, for potential domestic sources, when acquiring an article on the list. The Councils received no comments on the proposed rule and have agreed to convert the proposed rule to a final rule without change.

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 it is a clarification of existing policies, except for requiring a more proactive approach to market research by the Government.

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: February 24, 2005.

Rodney P. Lantier,

Director, Contract 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 25.103 by revising paragraph (b) to read as follows:

25.103 Exceptions.

* * * * *

(b) *Nonavailability*. The Buy American Act does not apply with respect to articles, materials, or supplies

if articles, materials, or supplies of the class or kind to be acquired, either as end items or components, are not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality.

(1) *Class determinations.* (i) A nonavailability determination has been made for the articles listed in 25.104. This determination does not necessarily mean that there is no domestic source for the listed items, but that domestic sources can only meet 50 percent or less of total U.S. Government and nongovernment demand.

(ii) Before acquisition of an article on the list, the procuring agency is responsible to conduct market research appropriate to the circumstances, including seeking of domestic sources. This applies to acquisition of an article as—

(A) An end product; or

(B) A significant component (valued at more than 50 percent of the value of all the components).

(iii) The determination in paragraph (b)(1)(i) of this section does not apply if the contracting officer learns at any time before the time designated for receipt of bids in sealed bidding or final offers in negotiation that an article on the list is available domestically in sufficient and reasonably available commercial quantities of a satisfactory quality to meet the requirements of the solicitation. The contracting officer must—

(A) Ensure that the appropriate Buy American Act provision and clause are included in the solicitation (see 25.1101(a), 25.1101(b), or 25.1102);

(B) Specify in the solicitation that the article is available domestically and that offerors and contractors may not treat foreign components of the same class or kind as domestic components; and

(C) Submit a copy of supporting documentation to the appropriate council identified in 1.201–1, in accordance with agency procedures, for possible removal of the article from the list.

(2) *Individual determinations.* (i) The head of the contracting activity may make a determination that an article, material, or supply is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality.

(ii) If the contracting officer considers that the nonavailability of an article is likely to affect future acquisitions, the contracting officer may submit a copy of the determination and supporting documentation to the appropriate council identified in 1.201–1, in accordance with agency procedures, for possible addition to the list in 25.104.

(3) A written determination is not required if all of the following conditions are present:

(i) The acquisition was conducted through use of full and open competition.

(ii) The acquisition was synopsized in accordance with 5.201.

(iii) No offer for a domestic end product was received.

* * * * *

■ 3. Amend section 25.104 in paragraph (a) by removing ''25.103(b)'' and adding ''25.103(b)(1)(i)'' in its place; and revising paragraph (b) to read as follows:

25.104 Nonavailable articles.

* * * * *

(b) This list will be published in the **Federal Register** for public comment no less frequently than once every five years. Unsolicited recommendations for deletions from this list may be submitted at any time and should provide sufficient data and rationale to permit evaluation (see 1.502).

25.202 [Amended]

■ 4. Amend section 25.202 in the last sentence of paragraph (a)(2) by removing ''25.104(b)'' and adding ''25.103(b)(1)'' in its place.

[FR Doc. 05–4088 Filed 3–8–05; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 30 and 52

[FAC 2005–01; FAR Case 1999–025; Item VI]

RIN 9000–AI70

Federal Acquisition Regulation; Cost Accounting Standards Administration

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 revising language pertaining to the Cost Accounting Standards Administration, and the related FAR contract clause, Administration of Cost Accounting Standards. In addition, a new contract clause is added, Proposal Disclosure—Cost Accounting Practice Changes. The rule describes the process for determining and resolving the cost-impact on contracts and subcontracts when a contractor makes a compliant change to a cost accounting practice or follows a noncompliant practice. To assist in understanding the changes between the current FAR rule and this final FAR rule, a matrix that summarizes the major changes is provided in Section C, Supplementary Information, below.

DATES: *Effective Date:* April 8, 2005.

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. Richard C. Loeb, Acting Director, Office of Acquisition Policy, at (202) 208–3810. Please cite FAC 2005–01, FAR case 1999–025.

SUPPLEMENTARY INFORMATION:

A. Background

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 65 FR 20854, April 18, 2000, with a request for comments by June 19, 2000. Nine respondents submitted public comments. Additional comments were also provided by the public at a series of public meetings held on August 2, September 26, and October 17, 2000. As a result of the comments received, the Councils made significant changes to the proposed FAR rule and published a second proposed FAR rule in the **Federal Register** at 68 FR 40104, July 3, 2003, with a request for comments by September 2, 2003. An additional public meeting was held on August 5, 2003.

Nine respondents submitted comments in response to the second proposed FAR rule. A discussion of these public comments are provided below. The Councils considered all comments and concluded that the proposed rule should be converted to a final rule, with changes to the proposed rule. Differences between the second proposed rule and final rule are discussed in Section B, Comments 8, 9, 12, 21, 26, 27, 28, 29, 35 and Other Changes, below.

B. Public Comments

Public Meeting

1. *Comment:* Four respondents recommended holding a public working group session to address the concerns and recommendations contained in the public comments submitted in response to the proposed rule.

Councils' response: Nonconcur. With the removal of the calculation of increased cost in the aggregate from the final rule (*see* comment 26), the Councils do not believe there are any issues that warrant holding another public meeting.

Complex and Prescriptive

2. *Comment:* Five respondents asserted that the proposed rule is overly prescriptive. One respondent stated that the proposed rule is unnecessarily complicated and does not address the major reasons that the current process does not work. Two respondents asserted the proposed rule is so detailed and prescriptive that CFAOs will be unable to exercise good business judgment and consider the unique aspects of each contractor's business environment in settling issues. Another respondent stated that the highly prescriptive nature of this regulation will impede the expeditious and fair resolution of CAS issues. The respondent stated that CFAOs will interpret the proposed rule as significantly decreasing the flexibility regularly exercised under the current regulation. Yet another respondent asserted that the detailed requirements for a GDM are too prescriptive. This respondent stated that, in many cases, very high-level GDM's are all that is needed to determine if an impact is going to be immaterial, while in other cases, a GDM with more detail may be necessary. They stated that the GDM's require more flexibility than is provided for in the proposed amendment.

Councils' response: Nonconcur. The Councils do not believe that the general content of the rule is overly prescriptive. The Councils believe that the CFAO and the contractor have significant flexibility in the proposed process, including the ability to determine materiality at any time during the process, the ability to submit a GDM in whatever format that is acceptable to the CFAO, and the ability to negotiate the cost-impact by adjusting a single contract, multiple contracts, or some other suitable method. However, the Councils concur with some of the specific recommendations made in the public comments regarding revisions to the proposed language. To the extent the respondents have provided specific comments regarding the prescriptive nature of the rule, the Councils have addressed those comments and made recommended revisions as deemed appropriate.

Define ''Cost Accumulation''

3. *Comment:* One respondent recommended defining the term ''cost accumulation'' in FAR Part 31.001, Definitions, and clarifying the expression ''noncompliances that involve accumulating costs.''

Councils' response: Nonconcur. The Councils do not agree that there is confusion as to the intent of the term. The Councils believe the term ''cost accumulation'' is self-evident and clearly understood. In addition, since the CAS Board defines ''accumulating costs'' in 48 CFR 9904.401–30(a)(1), there is no need to add clarifying language regarding the expression ''noncompliances that involve accumulating costs.''

Adequacy Determination—Cost-Impact System

4. *Comment:* One respondent recommended that the proposed rule be revised to ''require the CFAO to make a determination, in conjunction with DCAA, regarding a contractor's cost-impact system and their ability to submit cost-impact proposals. If a contractor has the ability to identify increased or decreased cost accumulations for each affected CAS-covered contract and subcontract and can properly summarize the increased or decreased cost by contract type and Government agency, the CFAO should be required to utilize that contractors system.''

Councils' response: Nonconcur. The Councils are unaware of any criteria that have been established as the basis for a CFAO's determination of adequacy of a contractor's cost-impact system, unlike other systems upon which the Government makes determinations of adequacy, such as accounting or billing systems. The Councils also believe that such criteria are unnecessary. The effort necessary to establish and continuously review cost-impact systems would not be cost beneficial to the Government or the contractor. The proposed rule provides the contractor with the flexibility to submit a GDM and/or DCI proposal in any format that is acceptable to the CFAO. To the extent a contractor has a process that produces GDM and/or DCI proposals that are acceptable to the CFAO, the contractor will continue to be able to use that process under the proposed rule.

CFAO Acting for Non-DoD Agencies

5. *Comment:* One respondent stated that the CFAO responsibilities set forth in the proposed rule will not work at contractors who have CAS-covered contracts and subcontracts with many Government agencies. The respondent further stated that agencies outside of DoD have refused to accept final incurred expense rates that have been audited by DCAA and approved by its ACO and, therefore, it is inconceivable that agencies such as DOE or USAID will allow a CFAO to execute a bilateral modification to one of its contracts.

Councils' response: Nonconcur. The Councils have not changed the requirements under FAR 30.601, Responsibilities. CAS administration for all contracts and subcontracts in a business unit must be performed by a single agency. The proposed rule merely uses the term ''Cognizant Federal Agency Official (CFAO)'' instead of ''cognizant ACO.'' This does not change the responsibilities of the cognizant Federal agency.

Under FAR 42.202(d), delegation of functions pertaining to cost accounting standards cannot be rescinded by any contracting agency. Furthermore, FAR 42.703 sets forth that a single agency shall be responsible for establishing final indirect cost rates for each business unit. These rates shall be binding on all agencies and their contracting offices, unless otherwise specifically prohibited by statute. An agency shall not perform an audit of indirect cost rates when the contracting officer determines that the objectives of the audit can reasonably be met by accepting the results of an audit that was conducted by any other department or agency of the Federal Government.

Materiality Determination—Guidelines

6. *Comment:* One respondent recommended that the FAR Council provide guidelines for what constitutes adequate documentation in making a determination of materiality.

Councils' response: Nonconcur. The Councils believe that any attempt to add guidelines for what constitutes adequate documentation would be overly prescriptive, could result in submittal of unnecessary documentation, would reduce the flexibility needed to resolve cost-impacts in a timely manner, and could potentially lead to disputes. The Councils' position is consistent with the requirements at FAR 1.704, Determination and Findings (D&F). As noted at 30.601, Responsibilities, the CFAO is required to make all CAS-related required D&Fs for all CAS-covered contracts and subcontracts. FAR 1.704 requires that each D&F include necessary supporting documentation to clearly and convincingly justify the specific determination made. However, since each case must be evaluated based on its particular facts and circumstances, FAR 1.704 does not provide guidelines for what constitutes necessary supporting documentation. Similarly, since each cost-impact must be evaluated based on

the particular facts and circumstances, the Councils do not believe it is necessary to provide guidelines for what constitutes adequate documentation.

Immateriality Determination—Prior to GDM

7. *Comment:* One respondent expressed concern with the wording of the proposed rule which allows for a determination of materiality before submittal of the GDM. The respondent asked how the CFAO can make such a determination and what data would have to be provided to the CFAO for this determination.

Councils' response: The Councils believe there will be instances in which a determination of materiality can be made (based on the criteria at 48 CFR 9903.305) without submittal of a GDM. The data required to make such a determination would be identified by the CFAO on a case-by-case basis, depending on the particular facts and circumstances involved. The Councils note that language at 30.602(b)(1) provides the CFAO with such flexibility, something that other respondents have emphasized is needed in the cost-impact process. The Councils also note that this language was endorsed by another respondent who stated that they ''* * * support the Council's efforts to clarify the process for determining and resolving cost-impacts and believes there are favorable aspects of the proposed amendment. For example, the proposed cost-impact process begins without having to prepare a general dollar magnitude (GDM) proposal. In addition, the Cognizant Federal Agency Official (CFAO) has the ability to make materiality determinations at any time during the process.''

Immateriality Determination—Documentation

8. *Comment:* One respondent recommended that whenever the CFAO determines the cost-impact is immaterial, the CFAO should be required to document the criteria used in making that determination.

Councils' response: Concur. The Councils believe a requirement for the CFAO to document the immateriality determination is appropriate and has included the requirement at FAR 30.602(c)(2).

Clarify ''Assertion''

9. *Comment:* One respondent recommended modifying or removing the term ''assertion'' in the statement at contract clause FAR 52.230–6(b) that reads ''a description of any cost accounting practice change to the Disclosure Statement and any assertion that the cost-impact of the change is immaterial.'' In addition, the respondent recommended that any statement by the contractor regarding whether the cost-impact of the change is immaterial should be in writing.

Councils' response: Concur. To avoid potential confusion, the Councils agree that paragraph (b) of the contract clause at FAR 52.230–6 be revised to require submission of a written statement that the cost-impact is immaterial. In addition, the term ''written statement'' replaces the term ''assertion'' at FAR 30.603–1(c)(2)(ii), 30.603–2(c)(1)(ii), and 30.605(b)(2)(ii)(B).

Time Restrictions for Contractor

10. *Comment:* One respondent recommended that the Council reinstate existing specific time limits for the contractor to provide information regarding accounting changes and noncompliances in all paragraphs where the phrase ''by a specified date'' is used.

Councils' response: Nonconcur. The respondent's references to the CFAO affixing ''a specified time limit'' for contractors to submit a GDM (FAR 30.604(b)(1)(i)), revised GDM (FAR 30.604(f)(1)), or DCI (FAR 30.604(f)(2)) does not provide flexibility to the CFAO to specify a date that is commensurate with the complexity of the issue(s). Ultimately, the total time allotted a contractor is addressed by FAR 30.604(i), Remedies, which may be disputed by the contractor.

Time Restrictions for Government

11. *Comment:* Two respondents stated that the proposed rule does not address one of the major problems associated with the resolution of cost-impact proposals related to noncompliances and accounting changes. One respondent stated that the problem is the fact that the Government has no time restrictions for performing its responsibilities. The respondent recommended that the proposed rule require all actions related to these issues be performed within specific time frames. In addition, the respondent recommended that reasonable response times be established for Government personnel.

Councils' response: Nonconcur. The Councils believe a specific time requirement for CFAO action could increase disputes concerning the adequacy of contractor submissions since the time periods cannot reasonably start until an adequate submission is received. The Councils are not aware of, and the respondents did not provide, a remedy for Government failure to comply with a recommended time requirement.

DCI in Lieu of GDM

12. *Comment:* Two respondents stated that the submittal of a GDM requires extra analysis and is less precise than a detailed cost proposal. The respondents asserted that the databases and cost-impact calculation systems used by CAS-covered contractors can provide a DCI that is much more precise than the calculations required by a GDM.

Councils' response: Partially concur. The GDM proposal does not require extra analysis. Proposed FAR 30.604(d) and 30.605(d) allow the CFAO and contractor flexibility in the submittal of a GDM. For some contractors, the databases and cost-impact calculation systems they use allow for the computation of DCIs with relative ease. In such cases, it is anticipated that a contractor would submit the cost-impact calculation generated by its system as the GDM. However, the final rule has been revised at FAR 30.604(d)(3) and 30.605(d)(3) to clarify that the contractor may submit a DCI in lieu of a GDM proposal. The Councils believe that allowing, but not requiring, the submittal of a GDM gives contractors flexibility to submit proposals as complex and precise as they choose, up to and including the submittal of a full DCI.

Cost-Impact Approximations

13. *Comment:* Two respondents stated that the use of approximations of prices and cost accumulations are not necessary. Both respondents stated that it is easy and more cost effective to calculate DCI proposals. One respondent also stated that it does not see why a contractor should be required to calculate the increased cost in the aggregate one way for a GDM proposal and another way for the cost-impact calculation.

Councils' response: Nonconcur. For some contractors, the databases and cost-impact calculation systems they use allow for the computation of detailed cost-impacts with relative ease. For other contractors, this is not necessarily the case. The Councils believe that allowing the submittal of a GDM that provides a reasonable approximation of the total increase in cost accumulations, gives contractors flexibility to submit proposals as complex and precise as they choose, up to and including the submittal of a full DCI. However, since some contractors may choose to go directly to the DCI, the final rule has been revised to specifically state that the contractor may

submit a DCI in lieu of a GDM proposal (see comment 12).

Representative Sample and Projections

14. *Comment:* Two respondents stated that the use of a representative sample and the projection of that sample to determine the total increase or decrease in cost accumulations are problematic. Both respondents stated that they have had difficulties over the years in reaching agreement with the Government on what constitutes a representative sample.

Councils' response: Nonconcur. The Councils believe that for some contractors, the projection of representative samples is a feasible method for computing increases and decreases in cost accumulations for the purposes of the submittal of a GDM (*see* FAR 30.604(e)(2)(i) and 30.605(d)(2)(i)). For contractors that find it problematic to come to an agreement with the Government on what constitutes a representative sample, there are alternative methods for computing increases and decreases in cost accumulations in preparing for the submittal of a GDM. In addition, the final rule has been revised to permit contractors to submit a DCI in lieu of a GDM proposal (see comment 12).

Firm-Fixed-Price Contracts

15. *Comment:* Six respondents commented that firm-fixed-price (FFP) contracts should not be included in cost-impacts for changes in cost accounting practices. One respondent asserted that ''increased costs to the Government only result from a change in contractor's cost accounting practices when the actual costs paid by the Government are more than they would have been had the contractor's practices not changed.'' The respondent further asserted that FFP contracts are not included in the cost-impact because the amount of costs a contractor assigns to FFP contracts due to a change in cost accounting practices has no effect on the amount ultimately paid by the Government.

Councils' response: Nonconcur. FFP contracts are properly included in cost-impacts for changes in cost accounting practice in the subject rule. 48 CFR 9903.306(a) does not differentiate among contract types in its definition of increased costs to the Government. Further, 48 CFR 9903.306(b) measures increased costs for FFP contracts by ''the difference between the contract price agreed to and the contract price that would have been agreed to had the contractor proposed in accordance with the cost accounting practices used during contract performance.'' The final rule at FAR 30.604 is consistent with the requirements at 48 CFR 9903.306(a) and (b).

Required Information

16. *Comment:* One respondent questioned whether the benefits to be derived from the requirement at FAR 30.604(e)(3) to provide certain information when a unilateral change is involved are worth the costs to comply. The respondent's concern was based on its belief that FAR 30.606(c)(3) neither justifies why the information is needed nor discusses how the information will be used.

Councils' response: Nonconcur. The information required by FAR 30.604(e)(3) (the increased or decreased costs by agency, and the increased or decreased costs for fixed-price contracts and subcontracts and flexibly-priced contracts and subcontracts) is required to determine how any adjustments will be handled. Specifically, the increase or decrease by agency is needed to assure that the contracts to be adjusted and the amounts of those adjustments are fairly allocated among the executive agencies. The breakout by firm-fixed price and flexibly-priced contracts is needed since the terms ''increased costs'' and ''decreased costs'' mean different things when applied to fixed-price versus flexibly-priced contracts.

GDM Versus DCI

17. *Comment:* One respondent commented that over the last decade, ''technology has advanced to the stage where a very accurate cost-impact proposal covering all affected pricing actions, (by contract, task, agency, contract type, etc.) is now practical. The speed and power of personal computers, combined with advances in database technology, now make it much easier to calculate precise cost-impacts in a very short time.'' Thus, ''the debate over GDM versus DCI cost-impacts may well become moot.''

Councils' response: Nonconcur. The Councils believe that retention of the GDM as an option available to the CFAO promotes the streamlining of the cost-impact process in many cases, such as those where the contractor does not have a sophisticated cost-impact system as envisioned by the respondent. The final rule at FAR 30.604(f)(1) provides that the CFAO may use the GDM to resolve cost-impacts without requiring the preparation of a DCI. The Councils believe that this option will result in a significant savings of resources for both the contractor and the Government.

Contradictory Rules

18. *Comment:* One respondent stated that proposed FAR 30.604(h) seems to apply only to Detailed Cost-impact proposals (DCIs), but the proposed language in the FAR clause at FAR 52.230–6(f) applies the principle to both General Dollar Magnitude Proposals (GDMs) and DCIs. The respondent's conclusion is that these two paragraphs of the proposed rule are contradictory.

Councils' response: Nonconcur. FAR 30.604(e)(1), General dollar magnitude proposal content, and FAR 30.604(g)(1), Detailed cost-impact proposal, both require computation of the cost-impact in accordance with 30.604(h), Calculating cost-impacts. Thus, the proposed rule is not contradictory.

Cost-Impact Computations

19. *Comment:* One respondent stated that the required cost-impact computations set forth in FAR 30.604(h) and 30.605(h) cause additional administrative burden. These requirements preclude the respondent from utilizing its Government approved cost-impact system.

Councils' response: Nonconcur. The proposed rule does not preclude the respondent from using its cost-impact system, provided that the system computes the cost-impact in accordance with FAR 30.604(h) and 30.605(h). It is noted that the Government does not ''approve'' cost-impact systems.

Closed Contracts and Closed Years

20. *Comment:* Four respondents commented that the cost-impact calculation should not include closed contracts or years with final negotiated overhead rates.

Councils' response: Nonconcur. The Councils believe that it is appropriate to include closed contracts and closed fiscal years in the cost-impact calculation. Under the CAS clause at 48 CFR 9903.201–4(a)(5), the contractor in connection with this contract shall ''agree to an adjustment of the contract price or cost allowance, as appropriate, if the contractor or a subcontractor fails to comply with an applicable cost accounting standard, or to follow any cost accounting practice consistently and such failure results in any increased costs paid by the United States. Such adjustment shall provide for recovery of the increased costs to the United States, together with interest thereon computed at the annual rate established under Section 6621(a)(2) of the Internal Revenue Code of 1986 (26 U.S.C. 6621(a)(2)) for such period, from the time the payment by the United States was made to the time the adjustment is effected.''

The provision at 48 CFR 9903.201–4(a)(5) does not provide for the exclusion of closed contracts or closed fiscal years from the cost-impact calculation. Since the CAS Board has not excluded such contracts, the Councils believe they must be included in the cost-impact calculation. The Councils further note that this position is consistent with the treatment of closed contracts and final negotiated overhead rates for price adjustments under the Truth in Negotiations Act. Defective pricing claims are often brought after the contract is closed and closure is no barrier to Government relief. The Councils also believe this is consistent with the position historically taken by the Government on CAS.

Cost-Impacts in Prior Years

21. *Comment:* One respondent stated that the proposed language at FAR 30.604(h)(1) infers that all cost-impacts occur in prior periods. The cost-impact calculation for all affected contracts generally involves the ''estimated cost to complete'' that will be incurred in future periods, after the change is implemented. To clarify that the cost-impact can involve existing contracts that will be performed in the future, insert the words ''or will be'' between ''were'' and ''incurred.''

Councils' response: Concur. The Councils agree that the respondent's recommendation will clarify the intent of the language at FAR 30.604(h)(1). However, the Councils believe the language at FAR 30.604(h)(1), as well as 30.605(h)(1), would be better clarified by inserting the word ''are'' in place of the word ''were.''

Change in Cost Accumulation

22. *Comment:* Two respondents expressed concern that the proposed rule requires that a GDM and/or DCI is required for a change in cost accumulation without regard to whether costs were billed. The respondents stated that the Government cannot be harmed until an actual billing has been submitted and paid. One respondent questioned how there can be any increased or decreased costs paid by the Government related to a unilateral change if contractors are complying with the current regulations.

Councils' response: Nonconcur. The rule assumes that the contractor's system used to accumulate costs is also used to bill those costs. While the Government cannot be harmed until the costs are actually billed, the CFAO is required to take action to preclude the Government from paying increased costs. Thus, if action is not taken to correct the noncompliance in cost accumulation, the increased costs could ultimately be billed to the Government. Note that one of the actions that can be taken is the correction of the accumulated costs to correct the noncompliance.

Estimated Cost To Complete—Same Level of Work

23. *Comment:* One respondent recommended that the language regarding the two estimates to complete at FAR 30.604(h)(3) be revised to state that they should be based on contractor performance at the same level of contract work. The respondent recommended adding the words ''in cost accumulation'' and the phrase ''required to perform the same level of contract work.''

Councils' response: Nonconcur. The language at issue concerns the items to be included in a GDM and DCI proposal. Based on past experience, the Councils believe adding the recommended language is more likely to cause confusion and disputes rather than add clarity. In the CAS Board Announced Notice of Proposed Rulemaking on changes in cost accounting practice and in the first proposed rule on FAR Part 30, the language required that the estimates be based on a ''consistent baseline.'' In both instances, public comments were submitted that clearly showed confusion as to the intent of the proposed language and requested clarification as to what was meant by a ''consistent baseline.'' The Councils believe the revised final language at FAR 30.604(h)(3) is sufficient for the parties to understand that the purpose of using an estimate to complete is to determine the difference in cost accumulations solely as a result of the changed practice, *i.e.*, the two estimates to complete cannot use different work scopes, different anticipated wage increases, different anticipated material price increases, or any other differences that do not result from the use of a different accounting practice.

Estimated Cost To Complete

24. *Comment:* Four respondents stated that the proposed rule requires the contractors to use current estimates-to-complete to calculate the cost-impact of changes to cost accounting practices. Two of the respondents asserted that such estimates may be so impacted by other events occurring subsequent to the award of a contract that they do not provide a reasonable basis for measuring increased costs to the Government.

Councils' response: Nonconcur. Although not specifically stated, it appears that the respondents are addressing the use of current estimates to complete for determining the cost-impact on fixed-price contracts (see FAR 30.604(h)(3)). For flexibly-priced contracts, since the current estimates to complete represent the actual amount that will be reimbursed, there should be no issue regarding the use of such estimates.

The Councils do not believe it is practical to use the original cost estimates for determining the cost-impact on fixed-price contracts. The Councils believe using current estimates to complete is the only feasible method for computing the cost-impact of changes in cost accounting practice. As noted in CAS Working Group Paper 76–9, there are several serious impediments to using original cost estimates for adjusting fixed-price contracts. While the parties to a fixed-price contract have agreed to a total price, there is often no agreement as to how much of the price represents cost and how much of the price represents profit, and seldom a meeting of the minds on the amount of any individual element of cost. Further, many fixed-price contracts will have undergone numerous price changes due to engineering modifications and other changes. In such cases, tracking an individual cost element may prove virtually impossible. There is also the danger that the confusion resulting from the attempt to reconstruct the original data will provide an opportunity to re-price loss portions of contract performance that have elapsed prior to the point of the change.

Define ''In the Aggregate''

25. *Comment:* One respondent commented that the CAS Board should define ''in the aggregate.''

Councils' response: The Councils recommend the respondent address its suggestion to the CAS Board, which can then decide if any action is necessary.

Increased Costs in the Aggregate

26. *Comment:* Eight respondents stated that the proposed rule on increased costs in the aggregate was a violation of CAS and the statutory provision.

Councils' response: The comment is no longer applicable—the final rule does not include the calculation of increased cost in the aggregate. The calculations at the following proposed coverage were removed from the final rule: 30.604(h)(3), and (4)(iv)(A) through (C); and 30.605(h)(5), (6), (8)(i) and (ii), and (9).

In addition, revisions were made at the following proposed coverage as a result of the removal of the calculations: 30.604(h)(4)(i), (ii), and (iv)—now 30.604(h)(3)(i), (ii), and (iv); and

30.605(h)(3), (4), and (8)—now 30.605(h)(3), (4), and (6).

Offsets Between Contract Types

27. *Comment:* Two respondents stated that the proposed rule incorrectly disallows offsets between contract types. In addition, one respondent asserted that the Government could be provided with a ''windfall profit'' if offsets are not allowed between contract types in the case of any noncompliance or unilateral change that causes costs to shift between fixed-price contracts and subcontracts and flexibly-priced contracts and subcontracts.

Councils' response: The comment is no longer applicable—the final rule does not include the calculation of increased cost in the aggregate. The calculations were removed from the final rule (*see* comment 26).

Interest Computation—Calculation

28. *Comment:* One respondent stated that it does not understand how interest can be calculated by multiplying the difference in indirect costs by an applicable base, and that the methodology used to compute interest at FAR 30.605(d)(2)(ii)(B) makes no sense.

Councils' response: Concur. The Councils recognize that potential confusion could result from the language, and that the language may be overly prescriptive. The Councils have therefore revised the final rule to eliminate the discussion of interest by deleting proposed FAR 30.605(d)(2)(ii)(B) to reduce the prescriptive nature of the language.

Interest Computation—Over and Underpayments

29. *Comment:* One respondent stated that the proposed requirements for calculating quarterly interest payments associated with overpayments or underpayments for noncompliances are overly prescriptive.

Councils' response: Concur. The Councils believe it is imperative for the contractor to provide information on when any increased costs were paid, so that the CFAO can compute interest in accordance with the statutory requirements. However, the Councils recognize that more flexibility can be inserted in the process. Therefore, the Councils revised the requirements for a GDM and DCI proposal at proposed FAR 30.605(d)(3)(iii) (now 30.605(d)(4)(iii)) by adding ''for fixed-price and flexibly-priced contracts'' after the word ''underpayments'' in the first sentence, and deleting the second sentence that required total over and underpayments be broken down by quarter.

Quarterly Data

30. *Comment:* One respondent asserted that the ''proposed rule mandates a schedule of increased or decreased costs paid by quarter (or an analysis to demonstrate why such a schedule is necessary) by Executive agency as a required part of a general dollar magnitude cost-impact for an alleged noncompliance.'' The respondent stated that this administrative burden should be evaluated.

Councils' response: Nonconcur. The proposed rule at FAR 30.605(d)(3) does not require a schedule of increased or decreased costs paid by quarter by Executive agency as part of a general dollar magnitude cost-impact. The proposed rule requires that the GDM include the total overpayments and underpayments broken down by quarter, unless each of the quarterly amounts billed during the period of noncompliance were approximately equal. It does not require that such amounts also be broken down by Executive agency. It is noted that the Councils removed the requirement at proposed FAR 30.605(d)(3)(iii) that the overpayments and underpayments be broken down by quarter in the GDM proposal (*see* comment 29), as well as the requirement at proposed FAR 30.605(g)(2)(i) and (ii) concerning the computation of interest on the quarterly amounts billed.

Task Order Contracts

31. *Comment:* One respondent stated that one of the many situations that greatly affect the cost accumulation calculation that is not addressed in the proposal is the trend toward task order contracts that may have both fixed fee and incentive fee tasks, as well as CAS covered and non-CAS covered tasks.

Councils' response: Nonconcur. The Councils believe that this situation is adequately covered by the language at FAR 30.605(h)(5), and the definition of ''Affected CAS-covered contracts'' at FAR 30.001.

FAR 30.605(h)(5) requires that the computation of the cost-impact include a calculation of the total increase or decrease in contract and subcontract incentives, fees, and profits associated with the increased or decreased costs to the Government in accordance with 48 CFR 9903.306(c). Thus, if the task involves a fixed fee, the contractor would need to compute the increase or decrease in that fixed fee as a result of the change or noncompliance. Conversely, if the task involved an incentive fee, the contractor would need to compute the increase or decrease in the incentive fee as a result of the change or noncompliance.

As for the issue of CAS-covered versus non-CAS-covered tasks, a contract cannot contain both CAS-covered and non-CAS-covered tasks. In order for CAS-coverage to differ between tasks, each task would have to be a separate contract. In such cases, the definition of affected CAS-covered contracts would exclude the non-CAS covered tasks from the computation of the cost-impact.

Cost-Impact on Incentives, Fee, and Profit

32. *Comment:* One respondent stated that FAR 30.605(h)(5) excludes flexibly-priced contract cost ceilings or target costs for determining increased costs in the aggregate for noncompliances involving estimating costs. The respondent stated that the proposed requirement is only applied to fixed price contracts, and asserted that ''the proposed coverage ignores the cost-impact on negotiated flexibly priced contract cost ceilings or target costs that were understated or overstated due to a contractor's proposal that contained estimated costs which were based on the use of a noncompliant practice.'' The respondent recommended that FAR 30.605(h)(5) be revised to include flexibly-priced contracts in the computation of increased costs in the aggregate for estimating noncompliances. The respondent also stated that under FAR 30.606(c)(4)(ii), as proposed, fixed price contracts would only be subject to downward price adjustment if there are ''net'' increased cost to the Government and opined that flexibly-priced contracts should not be excluded from the adjustment process. The respondent believes that the proposed approach to only recover the aggregate increased cost to the Government for fixed price contracts can result in inequities.

Councils' response: Nonconcur. The Councils believe that flexibly-priced contracts are properly included in the computation of increased costs in the aggregate. For a noncompliance in estimating costs, the Councils do not believe the impact on negotiated flexibly-priced contract cost ceilings or target costs should be included in the computation of increased costs in the aggregate. Under a flexibly-priced contract, the Government reimburses the actual costs incurred. As a result, a noncompliance in estimating the costs does not affect the total costs the Government will ultimately reimburse on flexibly-priced contracts. However, an estimating noncompliance may have a significant impact on the amount of

incentives, fees or profits for flexibly-priced contracts. Thus, the final rule requires inclusion of the impact on incentives, fees, and profits in computing the increased costs in the aggregate for estimating noncompliances.

Records Retention

33. *Comment:* One respondent stated that problems with the current process for handling cost-impacts could be addressed by adding a requirement for contractors to retain cost proposals that were the basis for negotiating the value of the CAS-covered pricing actions.

Councils' response: Nonconcur. The Councils disagree that adding a specific requirement to FAR Part 30 is appropriate. FAR 4.703, Policy-Contractor Records Retention, already describes the record retention requirements for contract negotiations, administration, and audit requirements of the contracting agencies. The Councils believe these record retention requirements are adequate for purposes of CAS administration.

Adjust Each Individual Contract

34. *Comment:* One respondent recommended that FAR 30.606(a)(2) include an analysis of the total payments that would be made if all affected contracts were individually adjusted so that the CFAO can determine whether one or more contracts are to be adjusted, or if an alternative method can be used to resolve the impact. The respondent asked how, without such data, the CFAO can determine that the Government will not pay more, in the aggregate, than would be paid if the CFAO had adjusted all affected contracts?

Councils' response: Nonconcur. In an ideal world, the contractor would provide a detailed analysis of the total payments for each and every affected contract. However, the Councils recognize that this is often not feasible and, in fact, would impose a significant administrative burden on contractors, extending the cost-impact process by years. The Councils do not believe that individual contract data is necessary in every circumstance in order for the CFAO to determine increased costs in the aggregate. The final rule, therefore, provides the CFAO the flexibility to obtain data at a more macro level, if appropriate.

Combining Certain Types of Impacts

35. *Comment:* Two respondents stated that they believe the proposed language at FAR 30.606(a)(3) is counter productive as it contains language that will further limit the Government and the contractor from resolving some of the more complex cost-impacts. The section precludes the Government from combining cost-impacts that include: (a) Changes implemented in different fiscal years, (b) changes and noncompliances, (c) two or more noncompliances, and (d) different categories of changes.

Councils' response: Partially concur. The Councils believe that some language at FAR 30.606(a)(3) is necessary to protect the interests of the Government. However, the Councils also recognize that the proposed language should be revised to provide some additional flexibility to the CFAO in resolving cost-impacts. The Councils, therefore, revised the language at FAR 30.606(a)(3) to reflect the following:

(a) *Changes implemented in different fiscal years.* The Councils agree with the respondent that implementing changes in different fiscal years should not be the basis for precluding the combination of such changes. The Councils have, therefore, deleted proposed 30.606(a)(3)(i) from the final rule.

(b) *Required/desirable changes combined with unilateral changes/noncompliances.* The actions taken to resolve a required or desirable change (negotiate an equitable adjustment) are different from the actions taken to resolve a unilateral change or a noncompliance (recover increased costs to the Government). Therefore, the Councils believe that combining cost-impacts of required/desirable changes with the cost-impacts of unilateral changes/noncompliances should be prohibited, as indicated at FAR 30.606(a)(3)(i).

(c) *Combining unilateral changes and/or noncompliances.* When the individual cost-impact of each unilateral change and each noncompliance is increased costs in the aggregate, the Councils agree that the change and noncompliance may be combined for administrative ease in resolving cost-impacts, as indicated at FAR 30.606(a)(3)(ii). Such combinations can only be made by mutual agreement of both parties.

The Councils further believe that combining the cost-impacts of unilateral changes and/or noncompliances must be precluded if any of the individual changes or noncompliances involved results in decreased costs in the aggregate. When there are two or more unilateral changes/noncompliances, some with increased costs and others with decreased costs, combining the cost-impact of those changes does not comply with the statutory requirement that the Government recover the increased costs in the aggregate for each unilateral change/noncompliance. There is no statutory provision that permits offsetting the cost-impact of one unilateral change/noncompliance with the cost-impact of any other unilateral change/noncompliance.

(d) *Cost-impacts of a unilateral change affecting two or more segments.* The Councils recognize that, in some circumstances, a unilateral change may affect more than one segment. When such a change affects the flow of costs between segments or implements a common cost accounting practice for two or more segments, the CFAO may treat this as a single change for cost-impact purposes, as indicated at FAR 30.606(a)(3)(iii).

Mandatory Adjustments and Disallowance of Costs

36. *Comment:* Regarding FAR 30.606, one respondent stated that ''The proposed mandatory provisions in (c)(3)(i) and (ii) appear incompatible with the CASB provision at 48 CFR 9903.201–6(b) and the proposed permissive provision at (c)(3)(iii).'' The respondent further stated that ''The proposed provision at (c)(3)(iii) provides the CFAO 'may' adjust contract prices, including cost ceilings or target costs, provided contract prices are not increased in the aggregate.'' The respondent also stated that ''This appears predicated on the CASB regulatory provision at 48 CFR 9903.201–6(b), but the FAR proposal makes it subservient to the mandatory provisions at (c)(3)(i) and (ii) which do not sanction such adjustments.'' The respondent then stated that ''the proposed rule appears to conflict with the CAS rules, as amended on June 14, 2000,'' and cited similar inconsistencies with FAR 30.606(c)(4). The respondent recommended that FAR 30.606(c)(3)(i) and (ii), and FAR 30.606(c)(4)(i) and (ii) be deleted and make the proposed provisions at (c)(3)(iii) and (c)(4)(iii) mandatory, for consistency with CAS rules. The respondent further recommended that the parenthetical at FAR 30.605(h)(3) be deleted because it does not require the adjustment of contract cost ceilings and target prices. Finally, the respondent recommended that, after adjusting the contract ceilings and target prices, FAR 30.606(c)(3) and (c)(4) include a ''mandatory provision requiring the CFAO to disallow accumulated costs under flexibly-priced contracts, but only for the portion of estimated increased cost accumulations that remains in a cost overrun condition after contract cost ceiling adjustments, if any, are made.''

Councils' response: Nonconcur. In an ideal world, the CFAO would adjust all

contracts so each and every dollar of the cost-impact is perfectly re-allocated to each and every affected contract. This would include all contract ceilings and target prices. However, the Councils recognize that this is often not feasible and, in fact, would impose a significant administrative burden on contractors, extending the cost-impact process by years. The CAS rules recognize the need for flexibility at 48 CFR 9903.306(f), which states:

''Whether cost-impact is recognized by modifying a single contract, several but not all contracts, or any other suitable technique, is a contract administration matter. The Cost Accounting Standards do not in any way restrict the capacity of the parties to select the method by which the cost-impact attributable to a change in cost accounting practice is recognized.''

The Councils believe the final rule provides the CFAO the flexibility to adjust the contract cost ceilings and target prices when the CFAO deems appropriate, as provided for by the CAS rules.

Cost Accumulation Noncompliances

37. *Comment:* One respondent commented that the FAR Council should rethink its requirement for cost accumulation noncompliances. The respondent asserted that the only harm to the Government in such noncompliances is the application of interest to the difference between a compliant and noncompliant billing.

Councils' response: Nonconcur. The Councils do not agree with the respondent's assessment of the harm to the Government in the case of a noncompliance in accumulating costs. The respondent assumes that the contractor agrees to correct the noncompliance and immediately reflects the correction in subsequent billings to the Government. This may not always be the case since the Government and contractor may not agree on the nature and extent of the noncompliance and the contractor may decline to make appropriate adjustments to billed costs. In addition, the noncompliance may affect closed contracts for which there can be no corrections to billings. The calculation of the cost-impact of the accumulation noncompliance is necessary to ensure that the Government recovers the full extent of any increased costs as well as any statutorily required interest (*see* FAR 30.606(c)(5)).

Adjustment of Final Indirect Rates

38. *Comment:* Two respondents stated that the adjustment of final indirect rates by the CFAO is inappropriate. They stated that since ''final incurred cost rates are applicable to all Government contracts, not just CAS-covered Government contracts. Therefore, CAS issues are being forced on non CAS-covered contracts through the application of adjusted final incurred cost rates.'' One respondent also argued that the proposed rule does not reflect the position taken by the CAS Board in its second supplemental notice of proposed rulemaking, 64 FR 45700, August 20, 1999, in response to a respondent suggesting the use of the final indirect expense rate settlement process rather than contract price adjustments as a method to resolve a cost-impact. In response to that comment, the CAS Board stated ''Adjustments of indirect expense rates to settle a cost-impact action can result in the adjustment of the wrong contracts for the impact of the change in accounting practice. This method also results in the establishment of final indirect expense rates that are not consistent with a contractor's established and disclosed accounting practices for allocating indirect costs to final cost objectives.''

Councils' response: Nonconcur. CAS issues are not being forced on non CAS-covered contracts because the contractor must agree to any adjustment of final indirect rates. FAR 30.606(d)(1) states that the CFAO may use an alternate method to resolve the cost-impact provided the contracting parties agree on the use of that alternate method. Thus, the impact of the change or noncompliance will not affect non CAS-covered contracts unless the contractor agrees. The CAS Board recognizes the use of an alternate method such as adjusting indirect rates at 48 CFR 9903.306(f), which states ''Whether cost-impact is recognized by modifying a single contract, several but not all contracts, or any other suitable technique, is a contract administration matter. The Cost Accounting Standards rules do not in any way restrict the method by which the cost-impact attributable to a change in cost accounting practice is recognized.''

Other Changes

The Councils revised the clause language at FAR 52.230–6, Administration of Cost Accounting Standards, to be in accord with the changes made to the final rule as described in the Councils' responses to the public comments, above. In addition, the Councils made several editorial-type changes to the proposed language to enhance clarity and structure of the final rule.

The Councils also made a clarifying change at FAR 30.001 to the definition of ''Fixed-price contracts and subcontracts'' to exclude fixed-price contracts with economic price adjustments (EPA) based on actual costs of labor or material (described at 16.203–1(a)(2)), and included these EPA contracts in the definition of ''Flexibly-priced contracts and subcontracts.''

C. Summary of Changes

Issue	Current FAR rule	Final FAR rule
	Definitions	
1.	No definitions for ''Affected CAS-covered contract,'' ''Fixed-price contracts,'' and ''Flexibly-priced contracts.''.	Added new definitions for ''Affected CAS-covered contract,'' ''Fixed-price contracts,'' and ''Flexibly-priced contracts'' (30.001).
2.	Included old CAS definitions and terminology of ''Mandatory change,'' ''Voluntary change,'' and ''Desirable change.''.	Updated definitions to match CAS definitions and terminology for ''Required change,'' ''Unilateral change,'' and ''Desirable change'' (30.001).
	Responsibilities	
3.	ACO is used throughout FAR section	Changed Administrative Contracting Officer (ACO) to Cognizant Federal Agency Official (CFAO) to be consistent with current CAS.

Issue	Current FAR rule	Final FAR rule
	Determinations	
4.	Did not contain actions for what to do if Disclosure Statement is adequate, inadequate, compliant, or noncompliant.	Provides actions to be taken when the Disclosure Statement is adequate (30.202–7(a)(2)(i)), inadequate (30.202–7(a)(2)(ii)), compliant (30.202–7(b)(2)), or noncompliant (30.605(b)).
	Materiality	
5.	No discussion of materiality	Added new section on materiality (30.602). Permits determination of immateriality at any time in the process; references CAS section on materiality in determining whether a change/noncompliance is immaterial; and requires CFAO to document rationale for any determination that the cost impact is immaterial.
	Required Changes	
6.	Did not address early implementation of a required change	Requires CFAO to process early implementation of a required change as a unilateral change, unless determined to be desirable (30.603–1(d)(2)).
	Unilateral and Desirable Changes	
7.	Did not address how a unilateral change is treated if a decision on desirability has not been made.	States that until a change is determined to be desirable, it shall be treated as a unilateral change (30.603–2(b)(2)).
8.	Did not provide information on how to determine whether a change is desirable.	Provides specific factors to consider in determining whether a change is desirable (30.603–2(b)(3)).
9.	Did not address retroactive changes	Provides specific section on retroactive changes (30.603–2(d)). CFAO can make a change retroactive to the beginning of the fiscal year in which the change was made.
10.	Did not include exemption from contract price adjustments for changes related to external restructuring activities.	Includes current CAS exemption from contract price adjustments for changes related to external restructuring activities (30.603–2(e)).
	Processing Changes to Disclosed or Established Cost Accounting Practices, And Processing Noncompliances	
11.	No process for evaluating changes or noncompliances	Includes process for evaluating changes (30.604(c)) and noncompliances (30.605).
12.	No separation of cost impact computation and cost impact resolution.	Separate cost impact computation (30.604(h) and 30.605(h)) from cost impact resolution (30.606).
13.	Required submittal of a GDM in format specified by ACO for use in determining whether cost impact is material.	Requires submittal of GDM in format specified by CFAO, provided certain basic information is included (30.604(e)(3)). GDM can be used as basis to negotiate cost impact (30.604(f)(1) and 30.605(e)(1)). Permits contractor to submit DCI proposal in lieu of GDM proposal (30.604(d)(3) and 30.605(d)(3)).
14.	Required DCI showing cost impact for each contract. DCI required anytime cost impact is material.	Requires DCI in format specified by CFAO, provided certain basic information is included. DCI does not need to include every contract if CFAO and contractor can agree on sample and to project results to universe (30.604(e)(2)(i) and 30.605(d)(2)(i)). DCI only required when GDM is not adequate for resolving cost impact (30.604(f)(2) and 30.605(e)(2)).
15.	Provided no information on what constituted increased or decreased cost.	Provides specific information on what constitutes increased and decreased cost. Does not include how to compute increased cost in the aggregate (30.604(h)(3)(iv) and 30.605(h)(6)). Also see Comment 26.
16.	Did not discuss equitable adjustments for required or desirable changes.	States that cost impact computation is used as basis for determining amount of equitable adjustments resulting from required or desirable changes (30.604(h)(4)).
	Interest	
17.	Does not address use of simple versus compound interest in determining amounts due resulting from increased cost paid on a noncompliance.	Does not address use of simple versus compound interest in determining amounts due resulting from increased cost paid on a noncompliance (30.605(g)).
	Resolving Cost Impacts	
18.	Requires ACO to coordinate with all PCO's whose contracts will be affected by $10,000 or more.	Requires CFAO to coordinate with all PCO's whose contracts will be affected by $100,000 or more (30.606(a)).

Issue	Current FAR rule	Final FAR rule
19.	Did not discuss which cost impacts could and could not be combined.	Specifies which cost impacts cannot be combined. Never combine a required change and a unilateral change; a required change and a noncompliance; a desirable change and a unilateral change; a desirable change and a noncompliance (30.606(a)(3)(i)). Never combine, unless all have increased costs, one or more unilateral changes; one or more noncompliances; unilateral changes and noncompliances (30.606(a)(3)(ii)). May treat as a single change any change affecting costs flowing between multiple segments and implementation of a common accounting practice among segments (30.606(a)(3)(iii)).
20.	ACO notifies PCO's of settlement, PCO's issue modifications adjusting contracts. No option other than adjusting contracts.	CFAO settles cost impact by modifying single contract, more than one contract, all contracts, or some alternate method (*e.g.*, adjusting indirect rates) (30.606(a)(2)). In adjusting indirect rates, CFAO must provide for appropriate gross-up to reflect Government participation (30.606(d)(3)(ii)) and can only make adjustments to final indirect cost rates (30.606(d)(3)(i)).
Subcontract Administration		
21.	Does not provide for remedies if a subcontractor refuses to submit a required GDM or DCI proposal.	Specifies that remedies are at the prime contract level if a subcontractor refuses to submit a required GDM or DCI proposal (30.607).
Contract Clause—Administration of CAS		
22.	Contract clause did not reflect process	Contract clause incorporates process (52.230–6).
Contract Clause—Proposal Disclosure—Cost Accounting Practice Changes		
23.	No provision to address how to price proposal when contract award will result in a change in accounting practice.	Added a new provision to address how to price proposal when contract award will result in a change in accounting practice (52.230–7).

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.

D. 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 contracts and subcontracts with small businesses are exempt from all cost accounting standard requirements in accordance with 48 CFR 9903.201–1(b)(3).

E. Paperwork Reduction Act

The Paperwork Reduction Act does apply; however, these changes to the FAR do not impose additional information collection requirements to the paperwork burden previously approved under OMB Control Number 9000–0129.

List of Subjects in 48 CFR Parts 30 and 52

Government procurement.

Dated: February 24, 2005.

Rodney P. Lantier,

Director, Contract Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 30 and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 30 and 52 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).

PART 30—COST ACCOUNTING STANDARDS ADMINISTRATION

■ 2. Add section 30.001 to read as follows:

30.001 Definitions.

As used in this part—

Affected CAS-covered contract or subcontract means a contract or subcontract subject to Cost Accounting Standards (CAS) rules and regulations for which a contractor or subcontractor—

(1) Used one cost accounting practice to estimate costs and a changed cost accounting practice to accumulate and report costs under the contract or subcontract; or

(2) Used a noncompliant practice for purposes of estimating or accumulating and reporting costs under the contract or subcontract.

Cognizant Federal agency official (CFAO) means the contracting officer assigned by the cognizant Federal agency to administer CAS.

Desirable change means a unilateral change to a contractor's established or disclosed cost accounting practices that the CFAO finds is desirable and not detrimental to the Government and is, therefore, not subject to the no increased cost prohibition provisions of CAS-covered contracts and subcontracts affected by the change.

Fixed-price contracts and subcontracts means—

(1) Fixed-price contracts and subcontracts described at 16.202, 16.203 (except when price adjustments are based on actual costs of labor or material, described at 16.203–1(a)(2)), and 16.207;

(2) Fixed-price incentive contracts and subcontracts where the price is not adjusted based on actual costs incurred (Subpart 16.4);

(3) Orders issued under indefinite-delivery contracts and subcontracts where final payment is not based on actual costs incurred (Subpart 16.5); and

(4) The fixed-hourly rate portion of time-and-materials and labor-hours

contracts and subcontracts (Subpart 16.6).

Flexibly-priced contracts and subcontracts means—

(1) Fixed-price contracts and subcontracts described at 16.203–1(a)(2), 16.204, 16.205, and 16.206;

(2) Cost-reimbursement contracts and subcontracts (Subpart 16.3);

(3) Incentive contracts and subcontracts where the price may be adjusted based on actual costs incurred (Subpart 16.4);

(4) Orders issued under indefinite-delivery contracts and subcontracts where final payment is based on actual costs incurred (Subpart 16.5); and

(5) The materials portion of time-and-materials contracts and subcontracts (Subpart 16.6).

Noncompliance means a failure in estimating, accumulating, or reporting costs to—

(1) Comply with applicable CAS; or

(2) Consistently follow disclosed or established cost accounting practices.

Required change means—

(1) A change in cost accounting practice that a contractor is required to make in order to comply with a CAS, or a modification or interpretation thereof, that subsequently becomes applicable to an existing CAS-covered contract due to the receipt of another CAS-covered contract or subcontract; or

(2) A prospective change to a disclosed or established cost accounting practice when the CFAO determines that the former practice was in compliance with applicable CAS and the change is necessary for the contractor to remain in compliance.

Unilateral change means a change in cost accounting practice from one compliant practice to another compliant practice that a contractor with a CAS-covered contract(s) or subcontract(s) elects to make that has not been deemed a desirable change by the CFAO and for which the Government will pay no aggregate increased costs.

■ 3. Amend section 30.201–3 by adding paragraph (c) to read as follows:

30.201–3 Solicitation provisions.

* * * * *

(c) Insert the provision at FAR 52.230–7, Proposal Disclosure—Cost Accounting Practice Changes, in solicitations for contracts subject to CAS as specified in 48 CFR 9903.201 (FAR Appendix).

■ 4. Amend section 30.202–6 by revising paragraphs (b) and (d) to read as follows:

30.202–6 Responsibilities.

* * * * *

(b) The contracting officer shall not award a CAS-covered contract until the cognizant Federal agency official (CFAO) has made a written determination that a required Disclosure Statement is adequate unless, in order to protect the Government's interest, the agency head, on a nondelegable basis, authorizes award without obtaining submission of the required Disclosure Statement (see 48 CFR 9903.202–2). In this event, the contractor shall submit the required Disclosure Statement and the CFAO shall make a determination of adequacy as soon as possible after the award.

* * * * *

(d) The CFAO is responsible for issuing determinations of adequacy and compliance of the Disclosure Statement.

■ 5. Revise section 30.202–7 to read as follows:

30.202–7 Determinations.

(a) *Adequacy determination.* (1) As prescribed by 48 CFR 9903.202–6 (FAR Appendix), the auditor shall—

(i) Conduct a review of the Disclosure Statement to ascertain whether it is current, accurate, and complete; and

(ii) Report the results to the CFAO.

(2) The CFAO shall determine if the Disclosure Statement adequately describes the contractor's cost accounting practices. Also, the CFAO shall—

(i) If the Disclosure Statement is adequate, notify the contractor in writing, and provide a copy to the auditor with a copy to the contracting officer if the proposal triggers submission of a Disclosure Statement. The notice of adequacy shall state that—

(A) The disclosed practices are adequately described and the CFAO currently is not aware of any additional practices that should be disclosed;

(B) The notice is not a determination that all cost accounting practices were disclosed; and

(C) The contractor shall not consider a disclosed practice, by virtue of such disclosure, an approved practice for estimating proposals or accumulating and reporting contract and subcontract cost data; or

(ii) If the Disclosure Statement is inadequate, notify the contractor of the inadequacies and request a revised Disclosure Statement.

(3) Generally, the CFAO should furnish the contractor notification of adequacy or inadequacy within 30 days after the CFAO receives the Disclosure Statement.

(b) *Compliance determination.* (1) After the notification of adequacy, the auditor shall—

(i) Conduct a detailed compliance review to ascertain whether or not the disclosed practices comply with CAS and Part 31, as applicable; and

(ii) Advise the CFAO of the results.

(2) The CFAO shall make a determination of compliance or take action regarding a report of alleged noncompliance in accordance with 30.605(b). Such action should include requesting a revised Disclosure Statement that corrects the CAS noncompliance. Noncompliances with Part 31 shall be processed separately.

■ 6. Amend section 30.202–8 by revising paragraph (a) to read as follows:

30.202–8 Subcontractor disclosure statements.

(a) When the Government requires determinations of adequacy of subcontractor disclosure statements, the CFAO for the subcontractor shall provide this determination to the CFAO for the contractor or next higher-tier subcontractor. The higher-tier CFAO shall not change the determination of the lower-tier CFAO.

* * * * *

■ 7. Revise Subpart 30.6 to read as follows:

Subpart 30.6—CAS Administration

Sec.

30.601 Responsibility.

(a) The CFAO shall perform CAS administration for all contracts and subcontracts in a business unit, even when the contracting officer retains other administration functions. The CFAO shall make all CAS-related required determinations and findings (*see* Subpart 1.7) for all CAS-covered contracts and subcontracts, including—

(1) Whether a change in cost accounting practice or noncompliance has occurred; and

(2) If a change in cost accounting practice or noncompliance has occurred, how any resulting cost impacts are resolved.

(b) Within 30 days after the award of any new contract subject to CAS, the contracting officer making the award shall request the CFAO to perform administration for CAS matters (see Subpart 42.2). For subcontract awards, the contractor awarding the subcontract must follow the procedures at 52.230–6(b).

30.602 Materiality.

(a) In determining materiality, the CFAO shall use the criteria in 48 CFR 9903.305 (FAR Appendix).

(b) A CFAO determination of materiality—

(1) May be made before or after a general dollar magnitude proposal has been submitted, depending on the particular facts and circumstances; and

(2) Shall be based on adequate documentation.

(c) When the CFAO determines the cost impact is immaterial, the CFAO shall—

(1) Make no contract adjustments and conclude the cost impact process;

(2) Document the rationale for the determination; and

(3) In the case of noncompliance issues, inform the contractor that—

(i) The noncompliance should be corrected; and

(ii) If the noncompliance is not corrected, the Government reserves the right to make appropriate contract adjustments should the cost impact become material in the future.

(d) For required, unilateral, and desirable changes, and CAS noncompliances, when the amount involved is material, the CFAO shall adjust the contract or use another suitable method (*see* 30.606).

30.603 Changes to disclosed or established cost accounting practices.

30.603–1 Required changes.

(a) *General.* Offerors shall state whether or not the award of a contract would require a change to an established cost accounting practice affecting existing contracts and subcontracts (*see* 52.230–1). The contracting officer shall notify the CFAO if the offeror states that a change in cost accounting practice would be required.

(b) *CFAO responsibilities.* Prior to making an equitable adjustment under the applicable paragraph(s) that address a required change at 52.230–2, Cost Accounting Standards; 52.230–3, Disclosure and Consistency of Cost Accounting Practices; or 52.230–5, Cost Accounting Standards—yEducational Institution, the CFAO shall determine that—

(1) The cost accounting practice change is required to comply with a CAS, or a modification or interpretation thereof, that subsequently became applicable to one or more contracts or subcontracts; or

(2) The former cost accounting practice was in compliance with applicable CAS and the change is necessary to remain in compliance.

(c) *Notice and proposal preparation.* (1) When the award of a contract would require a change to an established cost accounting practice, the provision at 52.230–7, Proposal Disclosure—Cost Accounting Practice Changes, requires the offeror to—

(i) Prepare the contract pricing proposal in response to the solicitation using the changed cost accounting practice for the period of performance for which the practice will be used; and

(ii) Submit a description of the changed cost accounting practice to the contracting officer and the CFAO as pricing support for the proposal.

(2) When a change is required to remain in compliance (for reasons other than a contract award) or to comply with a new or modified standard, the clause at 52.230–6, Administration of Cost Accounting Standards, requires the contractor to—

(i) Submit a description of the change to the CFAO not less than 60 days (or other mutually agreeable date) before implementation of the change; and

(ii) Submit rationale to support any contractor written statement that the cost impact of the change is immaterial.

(d) *Equitable adjustments for new or modified standards.* (1) Required changes made to comply with new or modified standards may require equitable adjustments, but only to those contracts awarded before the effective date of the new or modified standard (*see* 52.230–2, 52.230–3, or 52.230–5).

(2) When a contractor elects to implement a required change to comply with a new or modified standard prior to the applicability date of the standard, the CFAO shall administer the change as a unilateral change (*see* 30.603–2). Contractors shall not receive an equitable adjustment that will result in increased costs in the aggregate to the Government prior to the applicability date unless the CFAO determines that the unilateral change is a desirable change.

30.603–2 Unilateral and desirable changes.

(a) *Unilateral changes.* (1) The contractor may unilaterally change its disclosed or established cost accounting practices, but the Government shall not pay any increased cost, in the aggregate, as a result of the unilateral change.

(2) Prior to making any contract price or cost adjustments under the applicable paragraph(s) addressing a unilateral change at 52.230–2, 52.230–3, or 52.230–5, the CFAO shall determine that—

(i) The contemplated contract price or cost adjustments will protect the Government from the payment of the estimated increased costs, in the aggregate; and

(ii) The net effect of the contemplated adjustments will not result in the recovery of more than the increased costs to the Government, in the aggregate.

(b) *Desirable changes.* (1) Prior to taking action under the applicable paragraph(s) addressing a desirable change at 52.230–2, 52.230–3, or 52.230–5, the CFAO shall determine the change is a desirable change and not detrimental to the interests of the Government.

(2) Until the CFAO has determined a change to a cost accounting practice is a desirable change, the change is a unilateral change.

(3) Some factors to consider in determining if a change is desirable include, but are not limited to, whether—

(i) The contractor must change the cost accounting practices it uses for Government contract and subcontract costing purposes to remain in compliance with the provisions of Part 31;

(ii) The contractor is initiating management actions directly associated with the change that will result in cost savings for segments with CAS-covered contracts and subcontracts over a period for which forward pricing rates are developed or 5 years, whichever is shorter, and the cost savings are reflected in the forward pricing rates; and

(iii) Funds are available if the determination would necessitate an upward adjustment of contract cost or price.

(c) *Notice and proposal preparation.* (1) When a contractor makes a unilateral change, the clause at 52.230–6, Administration of Cost Accounting Standards, requires the contractor to—

(i) Submit a description of the change to the CFAO not less than 60 days (or other mutually agreeable date) before implementation of the change; and

(ii) Submit rationale to support any contractor written statement that the cost impact of the change is immaterial.

(2) If a contractor implements the change in cost accounting practice without submitting the notice as required in paragraph (c)(1) of this subsection, the CFAO may determine the change a failure to follow a cost accounting practice consistently and process it as a noncompliance in accordance with 30.605.

(d) *Retroactive changes.* (1) If a contractor requests that a unilateral change be retroactive, the contractor shall submit supporting rationale.

(2) The CFAO shall promptly evaluate the contractor's request and shall, as soon as practical, notify the contractor in writing whether the request is or is not approved.

(3) The CFAO shall not approve a date for the retroactive change that is before the beginning of the contractor's fiscal year in which the request is made.

(e) *Contractor accounting changes due to external restructuring activities.* The requirements for contract price and cost adjustments do not apply to compliant cost accounting practice changes that are directly associated with external restructuring activities that are subject to and meet the requirements of 10 U.S.C. 2325. However, the disclosure requirements in 52.230–6(b) shall be followed.

30.604 Processing changes to disclosed or established cost accounting practices.

(a) *Scope.* This section applies to required, unilateral, and desirable changes in cost accounting practices.

(b) *Procedures.* Upon receipt of the contractor's notification and description of the change in cost accounting practice, the CFAO, with the assistance of the auditor, should review the proposed change concurrently for adequacy and compliance. The CFAO shall—

(1) If the description of the change is both adequate and compliant, notify the contractor in writing and—

(i) For required or unilateral changes (except those requested to be determined desirable changes), request the contractor submit a general dollar magnitude (GDM) proposal by a specified date, unless the CFAO determines the cost impact is immaterial; or

(ii) For unilateral changes that the contractor requests to be determined desirable changes, inform the contractor that the request shall include supporting rationale and—

(A) For any request based on the criteria in 30.603–2(b)(3)(ii), the data necessary to demonstrate the required cost savings; or

(B) For any request other than those based on the criteria in 30.603–2(b)(3)(ii), a GDM proposal and any other data necessary for the CFAO to determine if the change is a desirable change;

(2) If the description of the change is inadequate, request a revised description of the new cost accounting practice; and

(3) If the disclosed practice is noncompliant, notify the contractor in writing that, if implemented, the CFAO will determine the cost accounting practice to be noncompliant and process it accordingly.

(c) *Evaluating requests for desirable changes.* (1) When a contractor requests a unilateral change be determined a desirable change, the CFAO shall promptly evaluate the contractor's request and, as soon as practical, notify the contractor in writing whether the change is a desirable change or the request is denied.

(2) If the CFAO determines the change is a desirable change, the CFAO shall negotiate any cost or price adjustments that may be needed to resolve the cost impact (see 30.606).

(3) If the request is denied, the change is a unilateral change and shall be processed accordingly.

(d) *General dollar magnitude proposal.* The GDM proposal—

(1) Provides information to the CFAO on the estimated overall impact of a change in cost accounting practice on affected CAS-covered contracts and subcontracts that were awarded based on the previous cost accounting practice;

(2) Assists the CFAO in determining whether individual contract price or cost adjustments are required; and

(3) The contractor may submit a detailed cost-impact (DCI) proposal in lieu of a GDM proposal provided the DCI proposal is in accordance with paragraph (g) of this section.

(e) *General dollar magnitude proposal content.* The GDM proposal—

(1) Shall calculate the cost impact in accordance with paragraph (h) of this section;

(2) May use one or more of the following methods to determine the increase or decrease in cost accumulations:

(i) A representative sample of affected CAS-covered contracts and subcontracts.

(ii) The change in indirect rates multiplied by the total estimated base computed for each of the following groups:

(A) Fixed-price contracts and subcontracts.

(B) Flexibly-priced contracts and subcontracts.

(iii) Any other method that provides a reasonable approximation of the total increase or decrease in cost accumulations for all affected fixed-price and flexibly-priced contracts and subcontracts.

(3) May be in any format acceptable to the CFAO but, as a minimum, shall include the following data:

(i) A general dollar magnitude estimate of the total increase or decrease in cost accumulations by Executive agency, including any impact the change may have on contract and subcontract incentives, fees, and profits, for each of the following groups:

(A) Fixed-price contracts and subcontracts.

(B) Flexibly-priced contracts and subcontracts.

(ii) For unilateral changes, the increased or decreased costs to the Government for each of the following groups:

(A) Fixed-price contracts and subcontracts.

(B) Flexibly-priced contracts and subcontracts; and

(4) When requested by the CFAO, shall identify all affected CAS-covered contracts and subcontracts.

(f) *General dollar magnitude proposal evaluation.* The CFAO, with the assistance of the auditor, shall promptly evaluate the GDM proposal. If the cost impact is immaterial, the CFAO shall notify the contractor in writing and conclude the cost-impact process with no contract adjustments. Otherwise, the CFAO shall—

(1) Negotiate and resolve the cost impact (see 30.606). If necessary, the CFAO may request that the contractor submit a revised GDM proposal by a specified date with specific additional data needed to resolve the cost impact (*e.g.,* an expanded sample of affected CAS-covered contracts and subcontracts or a revised method of computing the increase or decrease in cost accumulations); or

(2) Request that the contractor submit a DCI proposal by a specified date if the CFAO determines that the GDM proposal is not sufficient to resolve the cost impact.

(g) *Detailed cost-impact proposal.* The DCI proposal—

(1) Shall calculate the cost impact in accordance with paragraph (h) of this section;

(2) Shall show the estimated increase or decrease in cost accumulations for each affected CAS-covered contract and subcontract unless the CFAO and contractor agree to—

(i) Include only those affected CAS-covered contracts and subcontracts exceeding a specified amount; and

(ii) Estimate the total increase or decrease in cost accumulations for all affected CAS-covered contracts and subcontracts, using the results in paragraph (g)(2)(i) of this section;

(3) May be in any format acceptable to the CFAO but, as a minimum, shall include the requirements at paragraphs (e)(3)(i) and (ii) of this section; and

(4) When requested by the CFAO, shall identify all affected contracts and subcontracts.

(h) *Calculating cost impacts.* The cost impact calculation shall—

(1) Include all affected CAS-covered contracts and subcontracts regardless of their status (*i.e.,* open or closed) or the fiscal year(s) in which the costs are incurred (*i.e.,* whether or not the final indirect rates have been established);

(2) Combine the cost impact for all affected CAS-covered contracts and subcontracts for all segments if the effect of a change results in costs flowing between those segments;

(3) For unilateral changes—

(i) Determine the increased or decreased cost to the Government for flexibly-priced contracts and subcontracts as follows:

(A) When the estimated cost to complete using the changed practice exceeds the estimated cost to complete using the current practice, the difference is increased cost to the Government.

(B) When the estimated costs to complete using the changed practice is less than the estimated cost to complete using the current practice, the difference is decreased cost to the Government.

(ii) Determine the increased or decreased cost to the Government for fixed-price contracts and subcontracts as follows:

(A) When the estimated cost to complete using the changed practice is less than the estimated cost to complete using the current practice, the difference is increased cost to the Government.

(B) When the estimated cost to complete using the changed practice exceeds the estimated cost to complete using the current practice, the difference is decreased cost to the Government.

(iii) Calculate the total increase or decrease in contract and subcontract incentives, fees, and profits associated with the increased or decreased cost to the Government in accordance with 48 CFR 9903.306(c). The associated increase or decrease is based on the difference between the negotiated incentives, fees and profits and the amounts that would have been negotiated had the cost impact been known at the time the contracts and subcontracts were negotiated.

(iv) Calculate the increased cost to the Government in the aggregate.

(4) For equitable adjustments for required or desirable changes—

(i) Estimated increased cost accumulations are the basis for increasing contract prices, target prices and cost ceilings; and

(ii) Estimated decreased cost accumulations are the basis for decreasing contract prices, target prices and cost ceilings.

(i) *Remedies.* If the contractor does not submit the accounting change description or the proposals required in paragraph (d) or (g) of this section within the specified time, or any extension granted by the CFAO, the CFAO shall—

(1) With the assistance of the auditor, estimate the general dollar magnitude of the cost impact on affected CAS-covered contracts and subcontracts; and

(2) Take one or both of the following actions:

(i) Withhold an amount not to exceed 10 percent of each subsequent payment related to the contractor's CAS-covered contracts (up to the estimated general dollar magnitude of the cost impact), until the contractor furnishes the required information.

(ii) Issue a final decision in accordance with 33.211 and unilaterally adjust the contract(s) by the estimated amount of the cost impact.

30.605 Processing noncompliances.

(a) *General.* Prior to making any contract price or cost adjustments under the applicable paragraph(s) addressing noncompliance at 52.230–2, 52.230–3, or 52.230–5, the CFAO shall determine that—

(1) The contemplated contract price or cost adjustments will protect the Government from the payment of increased costs, in the aggregate;

(2) The net effect of the contemplated contract price or cost adjustments will not result in the recovery of more than the increased costs to the Government, in the aggregate;

(3) The net effect of any invoice adjustments made to correct an estimating noncompliance will not result in the recovery of more than the increased costs paid by the Government, in the aggregate; and

(4) The net effect of any interim and final voucher billing adjustments made to correct a cost accumulation noncompliance will not result in the recovery of more than the increased cost paid by the Government, in the aggregate.

(b) *Notice and determination.* (1) Within 15 days of receiving a report of alleged noncompliance from the auditor, the CFAO shall—

(i) Notify the auditor that the CFAO disagrees with the alleged noncompliance; or

(ii) Issue a notice of potential noncompliance to the contractor and provide a copy to the auditor.

(2) The notice of potential noncompliance shall—

(i) Notify the contractor in writing of the exact nature of the noncompliance; and

(ii) Allow the contractor 60 days or other mutually agreeable date to—

(A) Agree or submit reasons why the contractor considers the existing practices to be in compliance; and

(B) Submit rationale to support any written statement that the cost impact of the noncompliance is immaterial.

(3) The CFAO shall—

(i) If applicable, review the reasons why the contractor considers the existing practices to be compliant or the cost impact to be immaterial;

(ii) Make a determination of compliance or noncompliance consistent with 1.704; and

(iii) Notify the contractor and the auditor in writing of the determination of compliance or noncompliance and the basis for the determination.

(4) If the CFAO makes a determination of noncompliance, the CFAO shall follow the procedures in paragraphs (c) through (h) of this section, as appropriate, unless the CFAO also determines the cost impact is immaterial. If immaterial, the CFAO shall—

(i) Inform the contractor in writing that—

(A) The noncompliance should be corrected; and

(B) If the noncompliance is not corrected, the Government reserves the right to make appropriate contract adjustments should the noncompliance become material in the future; and

(ii) Conclude the cost-impact process with no contract adjustments.

(c) *Correcting noncompliances.* (1) The clause at 52.230–6 requires the contractor to submit a description of any cost accounting practice change needed to correct a noncompliance within 60 days after the earlier of—

(i) Agreement with the CFAO that there is a noncompliance; or

(ii) Notification by the CFAO of a determination of noncompliance.

(2) The CFAO, with the assistance of the auditor, should review the proposed change to correct the noncompliance concurrently for adequacy and compliance (see 30.202–7). The CFAO shall—

(i) When the description of the change is both adequate and compliant—

(A) Notify the contractor in writing;

(B) Request that the contractor submit by a specified date a general dollar magnitude (GDM) proposal, unless the CFAO determines the cost impact is immaterial; and

(C) Follow the procedures at paragraph (b)(4) of this section if the CFAO determines the cost impact is immaterial.

(ii) If the description of the change is inadequate, request a revised description of the new cost accounting practice; or

(iii) If the disclosed practice is noncompliant, notify the contractor in writing that, if implemented, the CFAO

will determine the cost accounting practice to be noncompliant and process it accordingly.

(d) *General dollar magnitude proposal content.* The GDM proposal—

(1) Shall calculate the cost impact in accordance with paragraph (h) of this section;

(2) May use one or more of the following methods to determine the increase or decrease in contract and subcontract price or cost accumulations, as applicable:

(i) A representative sample of affected CAS-covered contracts and subcontracts affected by the noncompliance.

(ii) When the noncompliance involves cost accumulation, the change in indirect rates multiplied by the applicable base for flexibly-priced contracts and subcontracts.

(iii) Any other method that provides a reasonable approximation of the total increase or decrease in contract and subcontract prices and cost accumulations;

(3) The contractor may submit a DCI proposal in lieu of a GDM proposal provided the DCI proposal is in accordance with paragraph (f) of this section.

(4) May be in any format acceptable to the CFAO but, as a minimum, shall include the following data:

(i) The total increase or decrease in contract and subcontract prices and cost accumulations, as applicable, by Executive agency, including any impact the noncompliance may have on contract and subcontract incentives, fees, and profits, for each of the following groups:

(A) Fixed-price contracts and subcontracts.

(B) Flexibly-priced contracts and subcontracts.

(ii) The increased or decreased costs to the Government for each of the following groups:

(A) Fixed-price contracts and subcontracts.

(B) Flexibly-priced contracts and subcontracts.

(iii) The total overpayments and underpayments for fixed-price and flexibly-priced contracts made by the Government during the period of noncompliance; and

(5) When requested by the CFAO, shall identify all affected CAS-covered contracts and subcontracts.

(e) *General dollar magnitude proposal evaluation.* The CFAO shall promptly evaluate the GDM proposal. If the cost impact is immaterial, the CFAO shall follow the requirements in paragraph (b)(4) of this section. Otherwise, the CFAO shall—

(1) Negotiate and resolve the cost impact (see 30.606). If necessary, the CFAO may request the contractor submit a revised GDM proposal by a specified date, with specific additional data needed to resolve the cost impact (*e.g.*, an expanded sample of affected CAS-covered contracts and subcontracts or a revised method of computing the increase or decrease in contract and subcontract price and cost accumulations); or

(2) Request that the contractor submit a DCI proposal by a specified date if the CFAO determines that the GDM proposal is not sufficient to resolve the cost impact.

(f) *Detailed cost-impact proposal.* The DCI proposal—

(1) Shall calculate the cost impact in accordance with paragraph (h) of this section.

(2) Shall show the increase or decrease in price and cost accumulations, as applicable for each affected CAS-covered contract and subcontract unless the CFAO and contractor agree to—

(i) Include only those affected CAS-covered contracts and subcontracts having—

(A) Contract and subcontract values exceeding a specified amount when the noncompliance involves estimating costs; and

(B) Incurred costs exceeding a specified amount when the noncompliance involves accumulating costs; and

(ii) Estimate the total increase or decrease in price and cost accumulations for all affected CAS-covered contracts and subcontracts using the results in paragraph (f)(2)(i) of this section;

(3) May be in any format acceptable to the CFAO but, as a minimum, shall include the information in paragraph (d)(4) of this section; and

(4) When requested by the CFAO, shall identify all affected CAS-covered contracts and subcontracts.

(g) *Interest.* The CFAO shall—

(1) Separately identify interest on any increased cost paid, in the aggregate, as a result of the noncompliance;

(2) Compute interest from the date of overpayment to the date of repayment using the rate specified in 26 U.S.C. 6621(a)(2).

(h) *Calculating cost impacts.* The cost impact calculation shall—

(1) Include all affected CAS-covered contracts and subcontracts regardless of their status (*i.e.*, open or closed) or the fiscal year in which the costs are incurred (*i.e.*, whether or not the final indirect cost rates have been established);

(2) Combine the cost impact for all affected CAS-covered contracts and subcontracts for all segments if the effect of a change results in costs flowing between those segments;

(3) For noncompliances that involve estimating costs, determine the increased or decreased cost to the Government for fixed-price contracts and subcontracts as follows:

(i) When the negotiated contract or subcontract price exceeds what the negotiated price would have been had the contractor used a compliant practice, the difference is increased cost to the Government.

(ii) When the negotiated contract or subcontract price is less than what the negotiated price would have been had the contractor used a compliant practice, the difference is decreased cost to the Government;

(4) For noncompliances that involve accumulating costs, determine the increased or decreased cost to the Government for flexibly-priced contracts and subcontracts as follows:

(i) When the costs that were accumulated under the noncompliant practice exceed the costs that would have been accumulated using a compliant practice (from the time the noncompliant practice was first implemented until the date the noncompliant practice was replaced with a compliant practice), the difference is increased cost to the Government.

(ii) When the costs that were accumulated under the noncompliant practice are less than the costs that would have been accumulated using a compliant practice (from the time the noncompliant practice was first implemented until the date the noncompliant practice was replaced with a compliant practice) the difference is decreased cost to the Government;

(5) Calculate the total increase or decrease in contract and subcontract incentives, fees, and profits associated with the increased or decreased costs to the Government in accordance with 48 CFR 9903.306(c). The associated increase or decrease is based on the difference between the negotiated incentives, fees, and profits and the amounts that would have been negotiated had the contractor used a compliant practice; and

(6) Calculate the increased cost to the Government in the aggregate.

(i) *Remedies.* If the contractor does not correct the noncompliance or submit the proposal required in paragraph (d) or (f) of this section within the specified time, or any extension granted by the CFAO, the CFAO shall follow the procedures at 30.604(i).

30.606 Resolving cost impacts.

(a) *General.* (1) The CFAO shall coordinate with the affected contracting officers before negotiating and resolving the cost impact when the estimated cost impact on any of their contracts is at least $100,000. However, the CFAO has the sole authority for negotiating and resolving the cost impact.

(2) The CFAO may resolve a cost impact attributed to a change in cost accounting practice or a noncompliance by adjusting a single contract, several but not all contracts, all contracts, or any other suitable method.

(3) In resolving the cost impact, the CFAO—

(i) Shall not combine the cost impacts of any of the following:

(A) A required change and a unilateral change.

(B) A required change and a noncompliance.

(C) A desirable change and a unilateral change.

(D) A desirable change and a noncompliance.

(ii) Shall not combine the cost impacts of any of the following unless all of the cost impacts are increased costs to Government:

(A) One or more unilateral changes.

(B) One or more noncompliances.

(C) Unilateral changes and noncompliances; and

(iii) May consider the cost impacts of a unilateral change affecting two or more segments to be a single change if—

(A) The change affects the flow of costs between segments; or

(B) Implements a common cost accounting practice for two or more segments.

(4) For desirable changes, the CFAO should consider the estimated cost impact of associated management actions on contract costs in resolving the cost impact.

(b) *Negotiations.* The CFAO shall—

(1) Negotiate and resolve the cost impact on behalf of all Government agencies; and

(2) At the conclusion of negotiations, prepare a negotiation memorandum and send copies to the auditor and affected contracting officers.

(c) *Contract adjustments.* (1) The CFAO may adjust some or all contracts with a material cost impact, subject to the provisions in paragraphs (c)(2) through (c)(6) of this section.

(2) In selecting the contract or contracts to be adjusted, the CFAO should assure, to the maximum extent practical and subject to the provisions in paragraphs (c)(3) through (c)(6) of this section, that the adjustments reflect a *pro rata* share of the cost impact based on the ratio of the cost impact of each Executive agency to the total cost impact.

(3) For unilateral changes and noncompliances, the CFAO shall—

(i) To the maximum extent practical, not adjust the price upward for fixed-price contracts;

(ii) If contract adjustments are made, preclude payment of aggregate increased costs by taking one or both of the following actions:

(A) Reduce the contract price on fixed-price contracts.

(B) Disallow costs on flexibly-priced contracts; and

(iii) The CFAO may, in consultation with the affected contracting officers, increase or decrease individual contract prices, including contract cost ceilings or target costs on flexibly-priced contracts. In such cases, the CFAO shall limit any upward contract price adjustments on affected contracts to the amount of downward price adjustments to other affected contracts, *i.e.*, the aggregate price of all contracts affected by a unilateral change shall not be increased (48 CFR 9903.201–6(b)).

(4) For noncompliances that involve estimating costs, the CFAO—

(i) Shall, to the extent practical, not adjust the price upward for fixed-price contracts;

(ii) Shall, if contract adjustments are made, preclude payment of aggregate increased costs by reducing the contract price on fixed-price contracts;

(iii) May, in consultation with the affected contracting officers, increase or decrease individual contract prices, including costs ceilings or target costs on flexibly-priced contracts. In such cases, the CFAO shall limit any upward contract price adjustments to affected contracts to the amount of downward price adjustments to other affected contracts, *i.e.*, the aggregate price of all contracts affected by a noncompliance that involves estimating costs shall not be increased (48 CFR 9903.201–6(d));

(iv) Shall require the contractor to correct the noncompliance, *i.e.*, ensure that compliant cost accounting practices will now be utilized to estimate proposed contract costs; and

(v) Shall require the contractor to adjust any invoices that were paid based on noncompliant contract prices to reflect the adjusted contract prices, after any contract price adjustments are made to resolve the noncompliance.

(5) For noncompliances that involve cost accumulation, the CFAO—

(i) Shall require the contractor to—

(A) Correct noncompliant contract cost accumulations in the contractor's cost accounting records for affected contracts to reflect compliant contract cost accumulations; and

(B) Adjust interim payment requests (public vouchers and/or progress payments) and final vouchers to reflect the difference between the costs paid using the noncompliant practice and the costs that should have been paid using the compliant practice; or

(ii) Shall adjust contract prices. In adjusting contract prices, the CFAO shall preclude payment of aggregate increased costs by disallowing costs on flexibly-priced contracts.

(A) The CFAO may, in consultation with the affected contracting officers, increase or decrease individual contract prices, including costs ceilings or target costs on flexibly-priced contracts. In such cases, the CFAO shall limit any upward contract price adjustments to affected contracts to the amount of downward price adjustments to other affected contracts, *i.e.*, the aggregate price of all contracts affected by a noncompliance that involves cost accumulation shall not be increased (48 CFR 9903.201–6(d)).

(B) Shall require the contractor to—

(*1*) Correct contract cost accumulations in the contractor's cost accounting records to reflect the contract price adjustments; and

(*2*) Adjust interim payment requests (public vouchers and/or progress payments) and final vouchers to reflect the contract price adjustments.

(6) When contract adjustments are made, the CFAO shall—

(i) Execute the bilateral modifications if the CFAO and contractor agree on the amount of the cost impact and the adjustments (see 42.302(a)(11)(iv)); or

(ii) When the CFAO and contractor do not agree on the amount of the cost impact or the contract adjustments, issue a final decision in accordance with 33.211 and unilaterally adjust the contract(s).

(d) *Alternate methods.* (1) The CFAO may use an alternate method instead of adjusting contracts to resolve the cost impact, provided the Government will not pay more, in the aggregate, than would be paid if the CFAO did not use the alternate method and the contracting parties agree on the use of that alternate method.

(2) The CFAO may not use an alternate method for contracts when application of the alternate method to contracts would result in—

(i) An under recovery of monies by the Government (*e.g.*, due to cost overruns); or

(ii) Distortions of incentive provisions and relationships between target costs, ceiling costs, and actual costs for incentive type contracts.

(3) When using an alternate method that excludes the costs from an indirect cost pool, the CFAO shall—

(i) Apply such exclusion only to the determination of final indirect cost rates (*see* 42.705); and

(ii) Adjust the exclusion to reflect the Government participation rate for flexibly-priced contracts and subcontracts. For example, if there are aggregate increased costs to the Government of $100,000, and the indirect cost pool where the adjustment is to be effected has a Government participation rate of 50 percent for flexibly-priced contracts and subcontracts, the contractor shall exclude $200,000 from the indirect cost pool ($100,000/50% = $200,000).

30.607 Subcontract administration.

When a negotiated CAS price adjustment or a determination of noncompliance is required at the subcontract level, the CFAO for the subcontractor shall furnish a copy of the negotiation memorandum or the determination to the CFAO for the contractor of the next higher-tier subcontractor. The CFAO of the contractor or the next higher-tier subcontractor shall not change the determination of the CFAO for the lower-tier subcontractor. If the subcontractor refuses to submit a GDM or DCI proposal, remedies are made at the prime contractor level.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 8. Revise section 52.230–6 to read as follows:

52.230–6 Administration of Cost Accounting Standards.

As prescribed in 30.201–4(d)(1), insert the following clause:

Administration of Cost Accounting Standards (April 2005)

For the purpose of administering the Cost Accounting Standards (CAS) requirements under this contract, the Contractor shall take the steps outlined in paragraphs (b) through (i) and (k) through (n) of this clause:

(a) *Definitions.* As used in this clause—

Affected CAS-covered contract or subcontract means a contract or subcontract subject to CAS rules and regulations for which a Contractor or subcontractor—

(1) Used one cost accounting practice to estimate costs and a changed cost accounting practice to accumulate and report costs under the contract or subcontract; or

(2) Used a noncompliant practice for purposes of estimating or accumulating and reporting costs under the contract or subcontract.

Cognizant Federal agency official (CFAO) means the Contracting Officer assigned by the cognizant Federal agency to administer the CAS.

Desirable change means a compliant change to a Contractor's established or disclosed cost accounting practices that the CFAO finds is desirable and not detrimental to the Government and is, therefore, not subject to the no increased cost prohibition provisions of CAS-covered contracts and subcontracts affected by the change.

Fixed-price contracts and subcontracts means—

(1) Fixed-price contracts and subcontracts described at FAR 16.202, 16.203, (except when price adjustments are based on actual costs of labor or material, described at 16.203–1(a)(2)), and 16.207;

(2) Fixed-price incentive contracts and subcontracts where the price is not adjusted based on actual costs incurred (FAR Subpart 16.4);

(3) Orders issued under indefinite-delivery contracts and subcontracts where final payment is not based on actual costs incurred (FAR Subpart 16.5); and

(4) The fixed-hourly rate portion of time-and-materials and labor-hours contracts and subcontracts (FAR Subpart 16.6).

Flexibly-priced contracts and subcontracts means—

(1) Fixed-price contracts and subcontracts described 16.203–1(a)(2) at FAR 16.204, 16.205, and 16.206;

(2) Cost-reimbursement contracts and subcontracts (FAR Subpart 16.3);

(3) Incentive contracts and subcontracts where the price may be adjusted based on actual costs incurred (FAR Subpart 16.4);

(4) Orders issued under indefinite-delivery contracts and subcontracts where final payment is based on actual costs incurred (FAR Subpart 16.5); and

(5) The materials portion of time-and-materials contracts and subcontracts (FAR Subpart 16.6).

Noncompliance means a failure in estimating, accumulating, or reporting costs to—

(1) Comply with applicable CAS; or

(2) Consistently follow disclosed or established cost accounting practices.

Required change means—

(1) A change in cost accounting practice that a Contractor is required to make in order to comply with a CAS, or a modification or interpretation thereof, that subsequently becomes applicable to existing CAS-covered contracts or subcontracts due to the receipt of another CAS-covered contract or subcontract; or

(2) A prospective change to a disclosed or established cost accounting practice when the CFAO determines that the former practice was in compliance with applicable CAS and the change is necessary for the Contractor to remain in compliance.

Unilateral change means a change in cost accounting practice from one compliant practice to another compliant practice that a Contractor with a CAS-covered contract(s) or subcontract(s) elects to make that has not been deemed a desirable change by the CFAO and for which the Government will pay no aggregate increased costs.

(b) Submit to the CFAO a description of any cost accounting practice change as outlined in paragraphs (b)(1) through (3) of this clause (including revisions to the Disclosure Statement, if applicable), and any written statement that the cost impact of the change is immaterial. If a change in cost accounting practice is implemented without submitting the notice required by this paragraph, the CFAO may determine the change to be a failure to follow paragraph (a)(2) of the clause at FAR 52.230–2, Cost Accounting Standards; paragraph (a)(4) of the clause at FAR 52.230–3, Disclosure and Consistency of Cost Accounting Practices; or paragraph (a)(2) of the clause at FAR 52.230–5, Cost Accounting Standards—Educational Institution.

(1) When a description has been submitted for a change in cost accounting practice that is dependent on a contact award and that contract is subsequently awarded, notify the CFAO within 15 days after such award.

(2) For any change in cost accounting practice not covered by (b)(1) of this clause that is required in accordance with paragraphs (a)(3) and (a)(4)(i) of the clause at FAR 52.230–2; or paragraphs (a)(3), (a)(4)(i), or (a)(4)(iv) of the clause at FAR 52.230–5; submit a description of the change to the CFAO not less than 60 days (or such other date as may be mutually agreed to by the CFAO and the Contractor) before implementation of the change.

(3) For any change in cost accounting practices proposed in accordance with paragraph (a)(4)(ii) or (iii) of the clauses at FAR 52.230–2 and FAR 52.230–5; or with paragraph (a)(3) of the clause at FAR 52.230–3, submit a description of the change not less than 60 days (or such other date as may be mutually agreed to by the CFAO and the Contractor) before implementation of the change. If the change includes a proposed retroactive date submit supporting rationale.

(4) Submit a description of the change necessary to correct a failure to comply with an applicable CAS or to follow a disclosed practice (as contemplated by paragraph (a)(5) of the clause at FAR 52.230–2 and FAR 52.230–5; or by paragraph (a)(4) of the clause at FAR 52.230–3)—

(i) Within 60 days (or such other date as may be mutually agreed to by the CFAO and the Contractor) after the date of agreement with the CFAO that there is a noncompliance; or

(ii) In the event of Contractor disagreement, within 60 days after the CFAO notifies the Contractor of the determination of noncompliance.

(c) When requested by the CFAO, submit on or before a date specified by the CFAO—

(1) A general dollar magnitude (GDM) proposal in accordance with paragraph (d) or (g) of this clause. The Contractor may submit a detailed cost-impact (DCI) proposal in lieu of the requested GDM proposal provided the DCI proposal is in accordance with paragraph (e) or (h) of this clause;

(2) A detailed cost-impact (DCI) proposal in accordance with paragraph (e) or (h) of this clause;

(3) For any request for a desirable change that is based on the criteria in FAR 30.603–2(b)(3)(ii), the data necessary to demonstrate the required cost savings; and

(4) For any request for a desirable change that is based on criteria other than that in

FAR 30.603–2(b)(3)(ii), a GDM proposal and any other data necessary for the CFAO to determine if the change is a desirable change.

(d) For any change in cost accounting practice subject to paragraph (b)(1), (b)(2), or (b)(3) of this clause, the GDM proposal shall—

(1) Calculate the cost impact in accordance with paragraph (f) of this clause;

(2) Use one or more of the following methods to determine the increase or decrease in cost accumulations:

(i) A representative sample of affected CAS-covered contracts and subcontracts.

(ii) The change in indirect rates multiplied by the total estimated base computed for each of the following groups:

(A) Fixed-price contracts and subcontracts.

(B) Flexibly-priced contracts and subcontracts.

(iii) Any other method that provides a reasonable approximation of the total increase or decrease in cost accumulations for all affected fixed-price and flexibly-priced contracts and subcontracts;

(3) Use a format acceptable to the CFAO but, as a minimum, include the following data:

(i) The estimated increase or decrease in cost accumulations by Executive agency, including any impact the change may have on contract and subcontract incentives, fees, and profits, for each of the following groups:

(A) Fixed-price contracts and subcontracts.

(B) Flexibly-priced contracts and subcontracts.

(ii) For unilateral changes, the increased or decreased costs to the Government for each of the following groups:

(A) Fixed-price contracts and subcontracts.

(B) Flexibly-priced contracts and subcontracts; and

(4) When requested by the CFAO, identify all affected CAS-covered contracts and subcontracts.

(e) For any change in cost accounting practice subject to paragraph (b)(1), (b)(2), or (b)(3) of this clause, the DCI proposal shall—

(1) Show the calculation of the cost impact in accordance with paragraph (f) of this clause;

(2) Show the estimated increase or decrease in cost accumulations for each affected CAS-covered contract and subcontract unless the CFAO and Contractor agree to include—

(i) Only those affected CAS-covered contracts and subcontracts having an estimate to complete exceeding a specified amount; and

(ii) An estimate of the total increase or decrease in cost accumulations for all affected CAS-covered contracts and subcontracts, using the results in paragraph (e)(2)(i) of this clause;

(3) Use a format acceptable to the CFAO but, as a minimum, include the information in paragraph (d)(3) of this clause; and

(4) When requested by the CFAO, identify all affected CAS-covered contracts and subcontracts.

(f) For GDM and DCI proposals that are subject to the requirements of paragraph (d) or (e) of this clause, calculate the cost impact as follows:

(1) The cost impact calculation shall include all affected CAS-covered contracts and subcontracts regardless of their status (*i.e.*, open or closed) or the fiscal year in which the costs were incurred (*i.e.*, whether or not the final indirect rates have been established).

(2) For unilateral changes—

(i) Determine the increased or decreased cost to the Government for flexibly-priced contracts and subcontracts as follows:

(A) When the estimated cost to complete using the changed practice exceeds the estimated cost to complete using the current practice, the difference is increased cost to the Government.

(B) When the estimated cost to complete using the changed practice is less than the estimated cost to complete using the current practice, the difference is decreased cost to the Government;

(ii) Determine the increased or decreased cost to the Government for fixed-priced contracts and subcontracts as follows:

(A) When the estimated cost to complete using the changed practice is less than the estimated cost to complete using the current practice, the difference is increased cost to the Government.

(B) When the estimated cost to complete using the changed practice exceeds the estimated cost to complete using the current practice, the difference is decreased cost to the Government;

(iii) Calculate the total increase or decrease in contract and subcontract incentives, fees, and profits associated with the increased or decreased costs to the Government in accordance with 48 CFR 9903.306(c). The associated increase or decrease is based on the difference between the negotiated incentives, fees, and profits and the amounts that would have been negotiated had the cost impact been known at the time the contracts and subcontracts were negotiated; and

(iv) Calculate the increased cost to the Government in the aggregate.

(3) For equitable adjustments for required or desirable changes—

(i) Estimated increased cost accumulations are the basis for increasing contract prices, target prices and cost ceilings; and

(ii) Estimated decreased cost accumulations are the basis for decreasing contract prices, target prices and cost ceilings.

(g) For any noncompliant cost accounting practice subject to paragraph (b)(4) of this clause, prepare the GDM proposal as follows:

(1) Calculate the cost impact in accordance with paragraph (i) of this clause.

(2) Use one or more of the following methods to determine the increase or decrease in contract and subcontract prices or cost accumulations, as applicable:

(i) A representative sample of affected CAS-covered contracts and subcontracts.

(ii) When the noncompliance involves cost accumulation the change in indirect rates multiplied by the applicable base for only flexibly-priced contracts and subcontracts.

(iii) Any other method that provides a reasonable approximation of the total increase or decrease.

(3) Use a format acceptable to the CFAO but, as a minimum, include the following data:

(i) The total increase or decrease in contract and subcontract price and cost accumulations, as applicable, by Executive agency, including any impact the noncompliance may have on contract and subcontract incentives, fees, and profits, for each of the following groups:

(A) Fixed-price contracts and subcontracts.

(B) Flexibly-priced contracts and subcontracts.

(ii) The increased or decreased cost to the Government for each of the following groups:

(A) Fixed-price contracts and subcontracts.

(B) Flexibly-priced contracts and subcontracts.

(iii) The total overpayments and underpayments made by the Government during the period of noncompliance.

(4) When requested by the CFAO, identify all CAS-covered contracts and subcontracts.

(h) For any noncompliant practice subject to paragraph (b)(4) of this clause, prepare the DCI proposal as follows:

(1) Calculate the cost impact in accordance with paragraph (i) of this clause.

(2) Show the increase or decrease in price and cost accumulations for each affected CAS-covered contract and subcontract unless the CFAO and Contractor agree to—

(i) Include only those affected CAS-covered contracts and subcontracts having—

(A) Contract and subcontract values exceeding a specified amount when the noncompliance involves estimating costs; and

(B) Incurred costs exceeding a specified amount when the noncompliance involves accumulating costs; and

(ii) Estimate the total increase or decrease in price and cost accumulations for all affected CAS-covered contracts and subcontracts using the results in paragraph (h)(2)(i) of this clause.

(3) Use a format acceptable to the CFAO that, as a minimum, include the information in paragraph (g)(3) of this clause.

(4) When requested by the CFAO, identify all CAS-covered contracts and subcontracts.

(i) For GDM and DCI proposals that are subject to the requirements of paragraph (g) or (h) of this clause, calculate the cost impact as follows:

(1) The cost impact calculation shall include all affected CAS-covered contracts and subcontracts regardless of their status (*i.e.*, open or closed) or the fiscal year in which the costs are incurred (*i.e.*, whether or not the final indirect rates have been established).

(2) For noncompliances that involve estimating costs, determine the increased or decreased cost to the Government for fixed-price contracts and subcontracts as follows:

(i) When the negotiated contract or subcontract price exceeds what the negotiated price would have been had the Contractor used a compliant practice, the difference is increased cost to the Government.

(ii) When the negotiated contract or subcontract price is less than what the negotiated price would have been had the Contractor used a compliant practice, the difference is decreased cost to the Government.

(3) For noncompliances that involve accumulating costs, determine the increased or decreased cost to the Government for

flexibly-priced contracts and subcontracts as follows:

(i) When the costs that were accumulated under the noncompliant practice exceed the costs that would have been accumulated using a compliant practice (from the time the noncompliant practice was first implemented until the date the noncompliant practice was replaced with a compliant practice), the difference is increased cost to the Government.

(ii) When the costs that were accumulated under the noncompliant practice are less than the costs that would have been accumulated using a compliant practice (from the time the noncompliant practice was first implemented until the date the noncompliant practice was replaced with a compliant practice), the difference is decreased cost to the Government.

(4) Calculate the total increase or decrease in contract and subcontracts incentives, fees, and profits associated with the increased or decreased cost to the Government in accordance with 48 CFR 9903.306(c). The associated increase or decrease is based on the difference between the negotiated incentives, fees, and profits and the amounts that would have been negotiated had the Contractor used a compliant practice.

(5) Calculate the increased cost to the Government in the aggregate.

(j) If the Contractor does not submit the information required by paragraph (b) or (c) of this clause within the specified time, or any extension granted by the CFAO, the CFAO may take one or both of the following actions:

(1) Withhold an amount not to exceed 10 percent of each subsequent amount payment to the Contractor's affected CAS-covered contracts, (up to the estimated general dollar magnitude of the cost impact), until such time as the Contractor provides the required information to the CFAO.

(2) Issue a final decision in accordance with FAR 33.211 and unilaterally adjust the contract(s) by the estimated amount of the cost impact.

(k) Agree to—

(1) Contract modifications to reflect adjustments required in accordance with paragraph (a)(4)(ii) or (a)(5) of the clauses at FAR 52.230–2 and 52.230–5; or with paragraph (a)(3)(i) or (a)(4) of the clause at FAR 52.230–3; and

(2) Repay the Government for any aggregate increased cost paid to the Contractor.

(l) For all subcontracts subject to the clauses at FAR 52.230–2, 52.230–3, or 52.230–5—

(1) So state in the body of the subcontract, in the letter of award, or in both (do not use self-deleting clauses);

(2) Include the substance of this clause in all negotiated subcontracts; and

(3) Within 30 days after award of the subcontract, submit the following information to the Contractor's CFAO:

(i) Subcontractor's name and subcontract number.

(ii) Dollar amount and date of award.

(iii) Name of Contractor making the award.

(m) Notify the CFAO in writing of any adjustments required to subcontracts under this contract and agree to an adjustment to this contract price or estimated cost and fee. The Contractor shall—

(1) Provide this notice within 30 days after the Contractor receives the proposed subcontract adjustments; and

(2) Include a proposal for adjusting the higher-tier subcontract or the contract appropriately.

(n) For subcontracts containing the clause or substance of the clause at FAR 52.230–2, FAR 52.230–3, or FAR 52.230–5, require the subcontractor to comply with all Standards in effect on the date of award or of final agreement on price, as shown on the subcontractor's signed Certificate of Current Cost or Pricing Data, whichever is earlier.

(End of clause)

■ 9. Add section 52.230–7 to read as follows:

52.230–7 Proposal Disclosure—Cost Accounting Practice Changes.

As prescribed in 30.201–3(c), insert the following provision:

Proposal Disclosure—Cost Accounting Practice Changes (Apr 2005)

The offeror shall check ''yes'' below if the contract award will result in a required or unilateral change in cost accounting practice, including unilateral changes requested to be desirable changes.

☐ Yes ☐ No

If the offeror checked ''Yes'' above, the offeror shall—

(1) Prepare the price proposal in response to the solicitation using the changed practice for the period of performance for which the practice will be used; and

(2) Submit a description of the changed cost accounting practice to the Contracting Officer and the Cognizant Federal Agency Official as pricing support for the proposal.

(End of provision)

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 44 and 52

[FAC 2005–01; FAR Case 2003–024; Item VII]

RIN 9000–AK10

Federal Acquisition Regulation; Elimination of Certain Subcontract Notification Requirements

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

ACTION: Interim rule with request for comments.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (the Councils) have agreed to amend the Federal Acquisition Regulation language regarding advance notification requirements. This change is required to implement Section 842 of the National Defense Authorization Act for Fiscal Year 2004, Public Law 108–136, which resulted in revisions to 10 U.S.C. 2306(e).

DATES: *Effective Date*: March 9, 2005.

Comment Date: Interested parties should submit comments to the FAR Secretariat at the address shown below on or before May 9, 2005 to be considered in the formulation of a final rule.

ADDRESSES: Submit comments identified by FAC 2005–01, FAR case 2003–024 by any of the following methods:

- Federal eRulemaking Portal: *http://www.regulations.gov*. Follow the instructions for submitting comments.
- Agency Web Site: *http://www.acqnet.gov/far/ProposedRules/proposed.htm*. Click on the FAR case number to submit comments.
- E-mail: *farcase.2003–024@gsa.gov*. Include FAC 2005–01, FAR case 2003–024 in the subject line of the message.
- Fax: 202–501–4067.
- Mail: General Services Administration, Regulatory Secretariat (VIR), 1800 F Street, NW., Room 4035, ATTN: Laurieann Duarte, Washington, DC 20405.

Instructions: Please submit comments only and cite FAC 2005–01, FAR case 2003–024, in all correspondence related to this case. All comments received will be posted without change to *http://www.acqnet.gov/far/ProposedRules/proposed.htm*, including any personal information provided.

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. Rhonda Cundiff, at (202) 501–0044. Please cite FAC 2005–01, FAR case 2003–024.

SUPPLEMENTARY INFORMATION:

A. Background

This rule revises FAR 44.201–2, Advance notification requirements, and amends Alternate I of FAR clause 52.244–2, Subcontracts. This change is required in order to implement Section 842 of the National Defense Authorization Act for Fiscal Year 2004, Public Law 108–136. Section 842

removes the requirement for contractors under cost-reimbursement contracts with the Department of Defense (DoD), Coast Guard, and National Aeronautics and Space Administration (NASA) to notify the agency before the award of any cost-plus-fixed-fee subcontract or any fixed-price subcontract that exceeds the greater of the simplified acquisition threshold or 5 percent of the total estimated cost of the contract if the contractor maintains a purchasing system approved by the contracting officer for the contract.

In addition, the rule makes a technical amendment to Alternate II of FAR clause 52.244–2, Subcontracts. The rule deletes the reference to paragraph (c) from paragraph (f)(2) of Alternate II because paragraph (c) applies to fixed price type contracts, whereas Alternate II applies to cost-reimbursement contracts.

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

This interim rule 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 it will have a small positive effect. Also, small businesses do not usually hold prime contracts which are cost-reimbursement contracts, so this section would not apply to them, and any changes would not apply. Therefore, an Initial Regulatory Flexibility Analysis has not been performed. We invite comments from small business concerns and other interested parties. The Councils will consider comments from small entities concerning the affected FAR Parts 44 and 52 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C 601, *et seq.* (FAC 2005–01, FAR case 2003–024), in correspondence.

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.*

D. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary to implement Section 842 of the National Defense Authorization Act for Fiscal Year 2004, Public Law 108–136, which went into effect November 24, 2003, and which resulted in revisions to 10 U.S.C. 2306 (e). However, pursuant to Public Law 98–577 and FAR 1.501, the Councils will consider public comments received in response to this interim rule in the formation of the final rule.

List of Subjects in 48 CFR Parts 44 and 52

Government procurement.

Dated: February 24, 2005.

Rodney P. Lantier,

Director, Contract Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 44 and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 44 and 52 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).

PART 44—SUBCONTRACTING POLICIES AND PROCEDURES

■ 2. Revise section 44.201–2 to read as follows:

44.201–2 Advance notification requirements.

Under cost-reimbursement contracts, the contractor is required by statute to notify the contracting officer as follows:

(a) For the Department of Defense, the Coast Guard, and the National Aeronautics and Space Administration, unless the contractor maintains an approved purchasing system, 10 U.S.C. 2306 requires notification before the award of any cost-plus-fixed-fee subcontract, or any fixed-price subcontract that exceeds the greater of the simplified acquisition threshold or 5 percent of the total estimated cost of the contract.

(b) For civilian agencies other than the Coast Guard and the National Aeronautics and Space Administration, even if the contractor has an approved purchasing system, 41 U.S.C. 254(b) requires notification before the award of any cost-plus-fixed-fee subcontract, or any fixed-price subcontract that exceeds either the simplified acquisition threshold or 5 percent of the total estimated cost of the contract.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 3. Amend section 52.244–2—

■ a. In Alternate I, by removing ''(*Aug 1998*)'' and adding ''(MAR 2005)'' in its place, and revising the first sentence of paragraph (f)(2); and

■ b. In Alternate II, by removing ''(*Aug 1998*)'' and adding ''(MAR 2005)'' in its place, and in paragraph (f)(2) by removing ''(c), (d),'' and adding ''(d)'' in its place. The revised text reads as follows:

52.244–2 Subcontracts.

* * * * *

Alternate I * * *

(f)(2) Unless the Contractor maintains an approved purchasing system, the Contractor shall notify the Contracting Officer reasonably in advance of entering into any (i) cost-plus-fixed-fee subcontract, or (ii) fixed-price subcontract that exceeds the greater of the simplified acquisition threshold or 5 percent of the total estimated cost of this contract. * * *

[FR Doc. 05–4092 Filed 3–8–05; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 44

[FAC 2005–01; FAR Case 2002–021; Item VIII]

RIN 9000–AJ75

Federal Acquisition Regulation; Use of FAR Clause 52.244–6, Subcontracts for Commercial 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 the FAR clause, Subcontracts for Commercial Items, be inserted in solicitations and contracts other than those for commercial items.

DATES: *Effective Date*: March 9, 2005.

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. Michael Jackson, Procurement Analyst, at (202) 208–4949. Please cite FAC 2005–01, FAR case 2002–021.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends FAR 44.403 by requiring the use of the clause at 52.244–6, Subcontracts for Commercial Items, in solicitations and contracts other than those for commercial items.

The current clause prescription requires use of the clause in solicitations and contracts for ''supplies or services'' other than commercial items. It is not clear whether this includes solicitations and contracts for construction. The clause matrix at FAR 52.301 lists the clause at 52.244–6 as required for solicitations and contracts for construction.

The revised clause prescription clarifies that the clause is required in all solicitations and contracts other than those for commercial items, thereby clearly including construction contracts that are not for the acquisition of commercial items.

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 68 FR 61302, October 27, 2003. One positive public comment was received supporting the revisions to the clause prescription. This final rule differs from the proposed rule by not adding the phrase ''. . . and includes commercial construction materials but does not include construction itself'' to the definition ''Commercial item'' under paragraph (a) of FAR clause 52.244–6, Definitions. This additional language is unnecessary to clarify the ambiguity between the matrix and the clause prescription. The change at FAR 44.403 and the clause matrix, that already requires the clause in solicitations and contracts for construction, provide sufficient clarity. Also, the additional language in the proposed rule could have been interpreted to conflict with OFPP Memorandum dated July 3, 2003, Applicability of FAR Part 12 to Construction Acquisitions. This rule is not intended to make any changes to existing OFPP guidance addressing the applicability of FAR Part 12 to construction acquisitions.

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 rule is a clarification of existing policy. Inclusion of FAR clause 52.244–6 reduces the number of flow down clauses required in subcontracts for commercial items and commercial components.

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 44

Government procurement.

Dated: February 24, 2005.

Rodney P. Lantier,

Director, Contract Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR part 44 as set forth below:

PART 44—SUBCONTRACTING POLICIES AND PROCEDURES

■ 1. The authority citation for 48 CFR part 44 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. Revise section 44.403 to read as follows:

44.403 Contract clause.

The contracting officer shall insert the clause at 52.244–6, Subcontracts for Commercial Items, in solicitations and contracts other than those for commercial items.

[FR Doc. 05–4091 Filed 3–8–05; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 28, 31, 42, and 52

[FAC 2005–01; Item IX]

Federal Acquisition Regulation; Technical Amendments

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

ACTION: Final rule.

SUMMARY: This document makes amendments to the Federal Acquisition Regulation (FAR) in order to make editorial changes.

DATES: *Effective Date*: March 9, 2005.

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. Please cite FAC 2001–05, Technical Amendments.

List of Subjects in 48 CFR Parts 28, 31, 42, and 52

Government procurement.

Dated: February 24, 2005.

Rodney P. Lantier,

Director, Contract Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 28, 31, 42, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 28, 31, 42, and 52 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).

PART 28—BONDS AND INSURANCE

28.203 [Amended]

■ 2. Amend section 28.203–3 in paragraph (d) by removing ''19'' each time it appears and adding ''20'' in its place.

PART 31—CONTRACT COST PRINCIPALS AND PROCEDURES

31.101 [Amended]

■ 3. Amend section 31.101 by removing from the fifth sentence ''Assistant Administrator for Procurement'' and adding ''Deputy Chief Acquisition Officer'' in its place.

PART 42—CONTRACT ADMINISTRATION AND AUDIT SERVICES

■ 4. Revise section 42.203 to read as follows:

42.203 Contract administration services directory.

The Defense Contract Management Agency (DCMA) maintains the Federal Directory of Contract Administration Services Components. The directory lists the names and telephone numbers of those DCMA and other agency offices that offer contract administration services within designated geographic areas and at specified contractor plants. Federal agencies may access it on the Internet at *http://www.dcma.mil/*. For additional information contact—Defense Contract Management Agency, ATTN: DCMA-DSL, 6350 Walker Lane, Alexandria, VA 22310–3226.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.225-13 [Amended]

■ 5. Amend section 52.225–13 by removing from paragraph (b) ''*http://www.epls.gov/TerList1.html*'' and adding ''*http://epls.arnet.gov/News.html*'' in its place.

[FR Doc. 05–4090 Filed 3–8–05; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

Federal Acquisition Regulation; Small Entity Compliance Guide

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

ACTION: Small Entity Compliance Guide.

SUMMARY: This document is issued under the joint authority of the Secretary of Defense, the Administrator of General Services and the Administrator for the National Aeronautics and Space Administration. This *Small Entity Compliance Guide* has been prepared in accordance with Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It consists of a summary of rules appearing in Federal Acquisition Circular (FAC) 2005–01 which amend the FAR. An asterisk (*) next to a rule indicates that a regulatory flexibility analysis has been prepared. Interested parties may obtain further information regarding these rules by referring to FAC 2005–01 which precedes this document. These documents are also available via the Internet at *http://www.acqnet.gov/far.*

FOR FURTHER INFORMATION CONTACT: Laurieann Duarte, FAR Secretariat, (202) 501–4225. For clarification of content, contact the analyst whose name appears in the table below.

Item	Subject	FAR case	Analyst
I	Improvements in Contracting for Architect-EngineerServices (Interim)	2004–001	Jackson.
II	Increased Justification and Approval Threshold for DoD, NASA, and Coast Guard (Interim)	2004–037	Jackson.
III	Extension of Authority for Use of Simplified Acquisition Procedures for Certain Commercial Items, Test Program.	2004–034	Jackson.
*IV	Addition of Landscaping and Pest Control Services to the Small Business Competitiveness Demonstration Program (Interim).	2004–036	Marshall.
V	Nonavailable Articles—Policy	2003–021	Davis.
VI	Cost Accounting Standards Administration	1999–025	R. C. Loeb.
VII	Elimination of Certain Subcontract Notification Requirements (Interim)	2003–024	Cundiff.
VIII	Use of FAR Clause 52.244-6, Subcontracts for Commercial Items	2002–021	Jackson.
IX	Technical Amendments.		

Item I—Improvements in Contracting for Architect-Engineer Services (FAR Case 2004–001) (Interim)

This interim rule is of particular interest to contracting officers who acquire architect-engineer services. It clarifies to contracting officers that architect-engineer services offered under multiple award schedule contracts or under Federal governmentwide task and delivery order contracts must—

- Be performed under the supervision of a licensed professional architect or engineer; and
- Be awarded in accordance with the quality-based selection procedures in FAR Subpart 36.6.

In addition, the rule clarifies to contracting officers that task orders issued under an indefinite delivery contract must be issued using the procedures in FAR Subpart 36.6 if the services being acquired specify, substantially or to a dominant extent, the performance of architect-engineer services. This rule implements section 1427 of the Services Acquisition Reform Act of 2003 (Pub. L. 108–136).

Item II—Increased Justification and Approval Threshold for DoD, NASA, and Coast Guard (FAR Case 2004–037) (Interim)

This interim rule amends the FAR by increasing the justification and approval thresholds for DoD, NASA, and the U.S. Coast Guard from $50,000,000 to $75,000,000. This change implements Section 815 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005, which amends 10 U.S.C. 2304(f)(1)(B) (Public Law 108–375). This reduces the administrative burden of approving a justification for other than full and open competition by allowing the head of the procuring activity in DoD, NASA, or the Coast Guard to approve justifications up to $75 million. In addition to this change, FAR 6.304(a)(3)(ii) is corrected to replace the outdated GS–16 reference with ''a grade above GS–15.''

Item III—Extension of Authority for Use of Simplified Acquisition Procedures for Certain Commercial Items, Test Program (FAR Case 2004–034)

This final rule amends the Federal Acquisition Regulation (FAR) by extending until January 1, 2008, the timeframe in which an agency may use simplified procedures to purchase commercial items in amounts greater than the simplified acquisition threshold, but not exceeding $5,000,000 ($10,000,000 for acquisitions in support of a contingency operation or to facilitate the defense against or recovery from nuclear, biological, chemical, or radiological attack). This change

implements section 817 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005, which amended section 4202(e) of the Clinger-Cohen Act of 1996 (Public Law 104–106). The statute allows continued reduction of the burden on contracting officers and industry when acquiring commercial items or items treated as commercial items in accordance with 12.102(f)(1).

Item IV—Addition of Landscaping and Pest Control Services to the Small Business Competitiveness Demonstration Program (FAR Case 2004–036) (Interim)

This interim rule amends Federal Acquisition Regulation (FAR) Subpart 19.10, Small Business Competitiveness Demonstration Program, to add two North American Industry Classification System (NAICS) codes, landscaping (561730) and pest control services (561710) to this program. This amendment implements Section 821 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005, Public Law 108–375, which amends Section 717 of the Small Business Competitiveness Demonstration Program Act of 1988 (15 U.S.C. 644 note). This rule provides unrestricted competition in acquisitions of landscaping and pest control services.

Item V—Nonavailable Articles—Policy (FAR Case 2003–021)

This final rule addresses Congressional concerns regarding appropriate use of the list of domestically nonavailable items at FAR 25.104(a). This final rule primarily impacts contracting officers who purchase items that are on the list, or items that contain an item on the list as a significant component. The final rule clarifies that being on the list does not mean that an item is completely nonavailable from U.S. sources, but that the item is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality. Therefore, the final rule emphasizes the need to conduct market research, appropriate to the circumstances, for potential domestic sources, when acquiring an article on the list.

Item VI—Cost Accounting Standards Administration (FAR Case 1999–025)

This final rule amends the FAR by revising Part 30, Cost Accounting Standards Administration, and the related contract clause at FAR 52.230–6, Administration of Cost Accounting Standards. In addition, a new contract clause is added at FAR 52.230–7, Proposal Disclosure—Cost Accounting Practice Changes. The rule describes the process for determining and resolving the cost impact on contract and subcontracts when a contractor makes a compliant change to a cost accounting practice or follows a noncompliant practice. The case was initiated by OUSD(AT&L)DPAP to address the CAS cost-impact process. The rule is of particular importance to contracting officers and contractors who negotiate and administer CAS-covered contracts and subcontracts in accordance with FAR Part 30.

Item VII—Elimination of Certain Subcontract Notification Requirements (FAR Case 2003–024) (Interim)

This interim rule affects contractors that have cost-reimbursement contracts with the Department of Defense, Coast Guard, or NASA. It amends FAR 44.201–2, Advance Notification Requirements, under cost-reimbursement contracts so that contractors that maintain a purchasing system approved by the contracting officer for the contract do not have to notify the agency before the award of any—

- Cost-plus-fixed-fee subcontract; or
- Fixed-price subcontract that exceeds the greater of the simplified acquisition threshold or 5 percent of the total estimated cost of the contract.

This rule implements section 842 of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108–136).

Item VIII—Use of FAR Clause 52.244–6, Subcontracts for Commercial Items (FAR Case 2002–021)

This final rule revises FAR 44.403 by requiring the use of the clause at 52.244–6, Subcontracts for Commercial Items, in solicitations and contracts other than those for commercial items. The revised clause prescription clarifies to contracting officers who acquire construction that the clause is required in all solicitations and contracts other than those for commercial items, thereby clearly including construction contracts that are not for the acquisition of commercial items. This rule does not make any changes to existing OFPP guidance addressing the applicability of FAR Part 12 to construction acquisitions.

Item IX—Technical Amendments

Editorial changes are made at FAR 28.203–3(d), 31.101, 42.203, and 52.225–13(b) in order to update references.

Dated: February 24, 2005.

Rodney P. Lantier,

Director, Contract Policy Division.

[FR Doc. 05–4089 Filed 3–8–05; 8:45 am]

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