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Part II

**Department of
Defense**

**General Services
Administration**

**National Aeronautics
and Space
Administration**

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

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

Federal Acquisition Circular 2001–22; 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) 2001–22. 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.arnet.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 2001–22 and specific FAR case number(s). Interested parties may also visit our website at <http://www.arnet.gov/far>.

Item	Subject	FAR case	Analyst
I	Government Property Disposal	1995–013	Parnell
II	General Provisions of the Cost Principles	2001–034	Loeb
III	Unique Contract and Order Identifier Numbers	2002–025	Zaffos
IV	Unsolicited Proposals	2002–027	Wise
V	New Mexico Tax—United States Missile Defense Agency	2003–020	Loeb
VI	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 2001–22 amends the FAR as specified below:

Item I—Government Property Disposal (FAR Case 1995–013)

This final rule amends FAR Parts 1, 2, 8, 45, 49, 52, and 53 to simplify procedures, reduce recordkeeping, and eliminate requirements related to the disposition of Government property in the possession of contractors.

Item II—General Provisions of the Cost Principles (FAR Case 2001–034)

This final rule amends the FAR to revise certain general provisions of the cost principles contained at FAR 31.201–1, Composition of total cost; FAR 31.201–2, Determining allowability; FAR 31.202, Direct costs; and FAR 31.203, Indirect costs. The rule revises the cost principles by improving clarity and structure, and removing unnecessary and duplicative language. The final rule also adds the definition of “direct cost” and revises the definition of “indirect cost” at FAR 2.101, Definitions, to be consistent with the terminology used in the cost accounting standards (CAS). The case was initiated as a result of comments and recommendations received from industry and Government representatives during a series of public meetings. This rule is of particular

interest to contractors and contracting officers who use cost analysis to price contracts and modifications, and who determine or negotiate reasonable costs in accordance with a clause of a contract, e.g., price revision of fixed-price incentive contracts, terminated contracts, or indirect cost rates.

Item III—Unique Contract and Order Identifier Numbers (FAR Case 2002–025)

The interim rule published in the **Federal Register** at 68 FR 56679, October 1, 2003, is converted to a final rule, without change, to require each reporting agency to assign a unique procurement instrument identifier (PIID) for every contract, purchase order, BOA, Basic Agreement, and BPA reported to the Federal Procurement Data System; and to have in place a process that will ensure that each PIID reported to FPDS is unique, Governmentwide, and will remain so for at least 20 years from the date of contract award.

Item IV—Unsolicited Proposals (FAR Case 2002–027)

This final rule amends the FAR to implement section 834 of the Homeland Security Act of 2002 (Pub. L. 107–296). Section 834 adds new considerations concerning the submission, receipt, evaluation, and acceptance or rejection of unsolicited proposals. The rule will require that a valid unsolicited proposal not address a previously published agency requirement. It also requires that, before initiating a comprehensive evaluation, the agency must determine

that the proposal contains sufficient cost related or price related information for evaluation, and that it has overall scientific, technical, or socioeconomic merit.

Item V—New Mexico Tax—United States Missile Defense Agency (FAR Case 2003–020)

This final rule amends FAR 29.401–4(c) to incorporate the Defense Missile Agency as a participating agency within the terms and conditions stipulated in FAR 29.401–4, New Mexico Gross Receipts and Compensating Tax. This provision aims to eliminate the double taxation of Government cost reimbursement contracts when contractors and their subcontractors purchase tangible personal property to be used in performing services in the State of New Mexico and for which such property will pass to the United States.

Item VI—Technical Amendments

This amendment makes editorial changes at FAR 52.212–5(b)(24) and 52.213–4(a)(1)(iv).

Dated: March 26, 2004.

Laura Auletta,
Director, Acquisition Policy Division.

Federal Acquisition Circular

Federal Acquisition Circular (FAC) 2001–22 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 2001–22 are effective April 5, 2004, except for Items I, II, and IV which are effective May 5, 2004.

Dated: March 26, 2004.

Deidre A. Lee,

Director, Defense Procurement and Acquisition Policy.

Dated: March 19, 2004.

David A. Drabkin,

Deputy Associate Administrator, Office of Acquisition Policy, General Services Administration.

Dated: March 19, 2004.

Anne Guenther,

Acting Assistant Administrator for Procurement, National Aeronautics and Space Administration.

[FR Doc. 04–7404 Filed 4–2–04; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 2, 8, 45, 49, 52, and 53

[FAC 2001–22; FAR Case 1995–013; Item I]

RIN 9000–AH60

Federal Acquisition Regulation; Government Property Disposal

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 simplify procedures, reduce recordkeeping, and eliminate requirements related to the disposition of Government property in the possession of contractors.

DATES: *Effective Date:* May 5, 2004.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Ms. Jeritta Parnell, Procurement Analyst, at (202) 501–4082. Please cite FAC 2001–22, FAR case 1995–013.

SUPPLEMENTARY INFORMATION:

A. Background

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 65 FR 1438, January 10, 2000, to simplify the management and disposition of Government property in the possession of contractors. The FAR Council agreed to publish a final rule revising FAR Subpart 45.6, entitled Reporting, Reutilization, and Disposal. Comments on the other portions of the proposed Part 45 rewrite are still being evaluated.

Forty-five respondents provided public comments. Nineteen of the forty-five respondents provided comments on the reporting, reutilization, and disposal of Government property provisions in the proposed rule, and those comments were considered in drafting the final rule. Consideration of these comments resulted in only minor changes to the rule. The streamlining of the disposal process and the reductions in reporting requirements made it imperative that we finalize this FAR subpart. The resolution of the significant categories of comments concerning reporting, reutilization, and disposal of Government property follows:

Summary of Comments Received/Disposition

PR: Proposed Rule; FR: Final Rule

1. PR: 45.001, 52.245–2, and 52.245–7. FR: 45.601, 52.245–2(i), 52.245–5(i). Recommend you revisit your definition of “sensitive property” and separate the different types of materials, similar to the separate inventory disposal schedules called for in 52.245–2(g)(3)(B)(iii) and 52.245–7(g)(3)(B)(iii). Nonconcur. Under this final rule, the inventory disposal schedules do not separate the different types of materials.

2. Allow contractors to return Government property to the Government and have the Government dispose of the property. Nonconcur. Government cost would be prohibitive if all property was returned (shipping, packing, crating & handling).

3. PR: 45.506. FR: 45.603, 45.604–2. Do not allow unilateral abandonment by the Government on contractor premises. Nonconcur. Abandonment is consistent with current policy and to do otherwise would increase costs to the Government.

4. FR: 45.605–1, 52.245–2(i)(8)(iii), 52.245–5(i)(8)(iii). Do not impose demilitarization on the contractor. Nonconcur. Items have to be demilitarized. It is more cost effective for the Government to require the contractor to perform or be responsible for demilitarization of the property on a reimbursable basis than ship the property to the Government and have

the Government demilitarize the property.

5. PR: 45.507–2(b)(1). FR: 45.606–3(b), 52.245–2(i)(8)(i), 52.245–5(i)(8)(i). Disposition of scrap. Recommend changing to 30 days. Partially concur. We revised the timeframe for disposition instructions from 60 days to 45 days.

6. PR: 52.245–2(g)(2)(i). FR: 45.602–1(c), 52.245–2(i)(2)(i), 52.245–5(i)(2)(i). Delete. The cost burden of attempting to have vendors accept “returned inventory” far out-weighs the costs saved in this exercise. Nonconcur. Government experience has shown that property is returned both before and after being reported excess to plant clearance demonstrating cost recovery (it only applies to new property). This is the current FAR requirement.

7. PR: 52.245–2(g)(4)(i). FR: 52.245–2(i)(4)(i), 52.245–5(i)(4)(i). Thirty days following the contractor’s determination that a Government property item is no longer required for performance of the contract is too frequent. Nonconcur. We believe these timeframes are reasonable and will instill discipline to the process and is consistent with commercial practices. This is an effort to expedite the process and reduce costs.

8. PR: 52.245–2(g)(5). FR: 52.245–2(i)(5), 52.245–5(i)(5). Quantity reductions found after inventory schedule has been submitted should not be grounds for rejecting an inventory schedule. Nonconcur. The contractor is expected to submit accurate inventory disposal schedules. Adjustment or rejections are based on the severity or number of errors on a particular schedule.

9. PR: 52.245–2(g)(6). FR: 52.245–2(i)(6), 52.245–5(i)(6). The proposed statement reads; “The Contractor shall provide the Plant Clearance Officer (PLCO) at least 10 working days advance written notice of its intent to remove a property item from an approved inventory disposal schedule.” Delete timeframe. Revise statement to read: “The Contractor shall provide the Plant Clearance Officer written notice of its intent to remove a property item from an approved inventory disposal schedule.” Nonconcur. The property belongs to Government agencies. The time is needed to coordinate with the owning agency. It is a Government decision to delete property off the schedule.

10. Several contractors questioned why or how the Government performed internal Government processes. Response. After reviewing these comments the Government decided the Government internal processes are appropriate as stated.

11. *PR: 45.507. FR: 45.606.* Several comments addressed the requirement to screen scrap. Once scrap is reported, the Government makes the decision whether to screen, sell or abandon scrap. Not all scrap is screened.

12. *PR & FR: SF 1428.* Several comments addressed making the use of electronic submission of inventory disposal schedules mandatory. Other comments addressed the difference in distribution of paper copies and electronic copies. Nonconcur. To allow flexibility, the Government provides for electronic or paper copy submission of inventory disposal schedules. The paper copy process requires separate inventory disposal schedules in order for the different agencies to screen the items.

13. *PR: 52.245-7(g)(9). FR: 45.604-4, 52.245-2(i)(9); 52.245-5(i)(9).* The proposed statement reads; "The Contractor shall credit the net proceeds from a disposal of Government property in accordance with instructions received from the PLCO." Revise the statement to read: "* * * PLCO or in the case of scrap, in accordance with the Contractor's approved Property procedures." Same as 52.245-2. Nonconcur. This is an internal Government decision. The Government needs to reserve the right to direct proceeds.

14. *PR: 52.245-2(g)(10). FR: 52.245(i)(10), 52.245-5(i)(10).* The proposed statement reads "The Contractor shall require a subcontractor that is using property accountable under this contract at a subcontractor-managed site to submit inventory disposal schedules to the Contractor in sufficient time for the Contractor to comply with the requirements of paragraph (g)(4) of this clause." Revise the statement to read: "* * * to the Contractor as soon as reasonably possible." Same as 52.245-7. Nonconcur. Prime contractor should set limits to subcontractor, so that prime is in compliance.

15. *PR & FR. 49.108-4(a)(1)(ii)(B).* 45.504 reference is inconsistent. Make it 45.602-4. Concur. Changed in final rule to 45.602-3.

16. *PR: 45.001. FR: 2.101.* Definition of "plant clearance officer." The proposed definition fails to address that the plant clearance officer is a Government representative and is an authorized representative of the contracting officer. Concur. Made change.

17. *PR: 45.505-1.* Placed within 45.5, the proposed language has no force or effect. Relocate the provisions at proposed 45.505-1 within the applicable contract clauses at 52.245-xx. Concur. Removed from 45.505-1

and included in the appropriate provisions.

18. *PR: 45.507-2(a). FR: 52.245-2(i)(1)(i)(B), 52.245-5(i)(1)(i)(B).* This is not contractually binding. Relocate within the applicable clauses at 52.245. Concur. Coverage in clauses.

19. *PR: 45.001, 52.245-2, 52.245-7.* Add definition of "Export control and high risk property." Export controlled information means unclassified U.S. Government information if proposed for export by the private sector, would require a U.S. Department of Commerce or U.S. Department of State validated license, and which, if given uncontrolled release, could reasonably be expected to adversely affect U.S. national security or nuclear nonproliferation objectives. In suggesting the definition below it is recognized that the sensitive property definition is similar. Would suggest an incorporation of the two or additions of the portions of the high risk personal property definition that are not already included in the sensitive property definition. "High risk personal property" means property that, because of its potential impact on public health and safety, the environment, national security interests, or proliferation concerns, must be controlled and disposed of in other than the routine manner. The categories of high risk property are automatic data processing equipment, especially designed or prepared property, export controlled information, export controlled property, hazardous property, nuclear weapons components or weapon-like components, proliferation sensitive property, radioactive property, special nuclear material, and unclassified controlled nuclear information." Nonconcur. Subject is not referred to in text. Therefore, no definition is required.

20. *PR: 52.245-2(g)(8). FR: 52.245-2(i)(8), 52.245-5(i)(8).* Include a requirement that the contractor be notified in the disposal instructions that the property may be subject to U.S. Export Control regulations. Should also be a part of subcontract terms and conditions. Nonconcur. The PLCO will notify the contractor concerning disposal instructions of property that is subject to U.S. Export Control regulations.

21. *PR: 45.506(c). FR: 45.604-2.* Amend to permit agencies to abandon property that requires demilitarization if the contractor consents by adding; "to perform all required demilitarization at its own expense is a condition for the abandonment of the property." Concur. See 52.245-2(i)(8) and 52.245-5(i)(8)(iii).

22. *FR: 45.606, 52.245-2(i)(1), 52.245-5(i)(1).* Several contractors made comments relating to approved scrap procedures such as eliminating these procedures. Nonconcur. Not all contractors have approved scrap procedures.

23. *PR: 45.505-2, 52.245-2(g)(6), and 52.245-7(g)(6). FR: 45.602-1, 52.245-2(i)(6), 52.245-5(i)(6).* Replace (c) with: "If, before final disposition, the contractor becomes aware that any items of contractor acquired property listed in the inventory schedules are usable on other work without financial loss, the contractor shall purchase the items or retain them at cost and amend the inventory schedules and claim accordingly. Upon notifying the plant clearance officer, the contractor may purchase or retain at cost any other items of property included in the inventory schedules. Withdrawal of any Government-furnished property is subject to the written approval of the plant clearance officer. If withdrawal is requested after screening has started, the plant clearance officer shall notify immediately the appropriate screening activity." Nonconcur. This is a contractor option before reporting property for disposal, after reporting it for disposal it is a Government action.

24. *PR: 45.507-1. FR: 45.606-1.* Revise proposed statement to read: "Contractors may dispose of scrap left-over from the normal production process that has no further intrinsic value without Government approval provided the scrap does not contain precious metals, hazardous materials or wastes, nuclear materials, or classified materials; or requires demilitarization." Nonconcur. It is impracticable to list all items that could be included. See definition of scrap in 2.101.

25. *PR: 52.245-2(g). FR: 52.245-2(i).* Change (g) to read: "Except as provided in paragraphs (c)(8), (g)(1), (g)(2), and (g)(8) of this clause, the Contractor shall not dispose of Government property until authorized to do so by the Plant Clearance Officer." Concur. Clause updated.

26. *PR: 45.001. FR: 45.601.* Recommend you delete this definition, Demilitarization, in its entirety and substitute in lieu thereof the definition of demilitarization found in the DoD Federal Acquisition Regulation Supplement. Nonconcur. The definition is more understandable and current.

27. *PR: 45.505-3. FR: 45.602-2.* This section should be consistent with GSA's requirement at 41 CFR 102-36.250. Nonconcur. 41 CFR 102-36.250 deals with excess property and is a different subject.

28. *PR: 45.505-4. FR: 45.602-3.* Screening requirements should be consistent with the provisions as contained in 41 CFR 101-43.4801, which excludes items that cost under \$5,000. Nonconcur. FPMR has been changed. A low acquisition cost is no longer an exception to screening.

29. *PR: 45.506. FR: 45.603.* The Government should be able to abandon certain property items where there is not a good reason for the Government to retain title. 40 U.S.C. Sec. 483(h) does not require an item to be excess in order to be abandoned. This provision of the law provides for abandonment based upon commercial value or estimated cost of continued care and handling. Nonconcur. 40 U.S.C. Sec 483(h) (now 40 U.S.C. 527) deals with excess property.

30. *PR: 45.507-2. FR: 45.606-2.* The approved scrap procedure should facilitate the efficient disposition of scrap while requiring the contractor to provide the Plant Clearance Officer the necessary information to make reasonable determinations. Requiring the contract number for each item of scrap necessitates the generation of a different scrap list for each contract, causing excessive administrative burden on the Government and the contractor. The quantity of scrap is generally measured in short tons—most contractors do not have the equipment to weigh scrap. Nonconcur. Scrap reimbursement is allocable to specific contracts.

31. *PR: 52.245-2(g)(7). FR: 52.245-2(i)(7), 52.245-5(i)(7).* Storage is a given requirement under the contract. When business conditions require the movement of stored items, this cost is merely a cost of doing business. These costs should always be allowable unless they are deemed unreasonable. Nonconcur. It is unreasonable to move property without prior approval of the Government after the property is submitted for disposal.

32. *PR: 52.245-2(h). FR: 52.245-2(j), 52.245-5(j).* Should provide for a request for abandonment in an effort to reduce cost of dismantlement, movement, storage and administration. Nonconcur. The FAR does not prohibit the contractor from asking that property be considered for abandonment.

33. Move property disposal into the FPMR. No need for the new SF 1428, because of the SF 120. Remove revisions to 45.505-3. Make 45.506 and 45.508-1 similar to 101-45.9. Nonconcur. It is not cost effective to change the current electronic processing systems just for convenience. The FAR allows for both electronic and paper forms to be used.

34. *PR: 52.245-2(g). FR: 52.245-5(i).* This paragraph gives disposal authority to the PLCO. Clarify what authority the CO has or does not have to authorize disposal (including abandonment). Concur. Changed definition of plant clearance officer. The CO has the authority but must follow the statutory and regulatory requirements (screening).

35. *PR: 52.245-2(g)(2)(i). FR: 52.245-2(i)(2)(i).* Address what must be done with proceeds if the fair market value of unused property returned to the supplier is higher than the original cost. Nonconcur. In the cases where the fair market value is higher than the original cost it will be addressed at the agency level because it creates an allocation issue rather than a regulatory issue.

36. *PR & FR SF 1428.* Require adequately detailed or commercial descriptions on inventory schedules for excess property and revise schedule format to allow space for this. Nonconcur. Item 14 of the SF 1428 requires description in sufficient detail.

37. Prescribe the length of the agency screening period as a maximum time period. Concur. The time period is 20 days.

38. *PR: 45.506. FR: 45.603.* Add language on abandonment of excess property or reference FPMR 101-45.900 to require a reviewing official for abandonment determinations, to require public notice and to define the circumstances when public notice is not required. Nonconcur. This is not a commercial practice and would add another layer of bureaucracy to the process with little added value.

39. Abandonment in lieu of sale of surplus property should reference FPMR 101-44.7 for details of requirements for abandonment of surplus property in lieu of sale. Nonconcur. The specific requirements are stated in 45.603 and 45.604-2.

40. Government involvement in disposal of other than scrap should be limited to assisting in the disposal process. Nonconcur. This is Government property and disposal must be at Government direction.

41. Demilitarization. The proposed rewrite does not adequately address the longstanding issue of demilitarization. Perhaps this is more appropriate for a DFARS revision, but references to demilitarization in the FAR should be deleted until a final policy is in place within DoD. Nonconcur. Needs to be addressed not just for DoD, but also NASA, DOE, Coast Guard, etc.

42. *PR: 1.106. FR: 1.106, 45.605.* Delete reference to SF 1424. See Part 53. SF 1424 is still being used. FAR 45.509 which is appropriately titled "Inventory Disposal Reports." Concur. SF 1424 is

still being used. Language at 1.106 was updated for OMB clearance purposes.

43. *PR: 45.505-1(a). FR: 45.602-1(c).* Text states: Make reasonable efforts to return Government property that was acquired or produced by the contractor and is no longer needed for contract performance to the appropriate supplier or to use the property in performance of other contracts * * * #1036 no longer makes reference to restocking charges or other charges for returns. Needs to be added. This definition is not consistent with the definition for GP. Concur. Added restocking charge.

44. *PR: 45.505-2. FR: 45.602-1.* Please consider slight reduction in some PLCO schedule acceptance times. Concur. It now reads 10 days.

45. *PR: 52.245-2(g)(7)(ii). FR: 52.245-2(i)(7)(ii).* To "If approval is granted, any costs incurred by the Contractor to transport or store the property shall not increase the price or fee of any Government contract." Add: " , unless incurred due to the Government's failure to provide disposal instructions within 120 days of receipt of * * * " Nonconcur. Covered in paragraph 52.245-2(g)(7)(i) (now 52.245-2(i)(7)(i)).

46. *PR: 45.505-4. FR: 45.602-3(b)(4).* Paragraph 45.505-4(b)(4) addresses the screening of hazardous waste. This should read "property contaminated with hazardous wastes." Waste of any kind should not be screened. If hazardous waste is a by-product of work performed on a contract, the contract should require its disposal in accordance with applicable Federal, State, and local laws. Nonconcur. Contractors must dispose of Government property in accordance with the new 45.602. The contractor is responsible for contractor-owned property and must dispose of it in accordance with applicable Federal, State, and local laws.

47. *PR: 45.506. FR: 45.603.* Paragraph 45.506(a)(2) provides a cost based justification for using abandonment, destruction, or donation in lieu of sale. The justification, as written, does not take into account that there are costs associated with these disposal alternatives. The Defense Reutilization and Marketing Service has long recognized that fact and has developed an economy formula to address the costs of disposal alternatives. There are times when a net sale loss can be less costly to the Government than exercising a disposal alternative. Therefore, this paragraph should be rewritten to require consideration of the cost of disposal alternatives in the decision process. Nonconcur. The plant clearance officer already considers these costs in all disposal determinations.

48. *PR: 45.506(c). FR: 45.604-2.* Paragraph (c) states: “* * * property that requires demilitarization may be abandoned. * * *” Property that requires demilitarization should not be abandoned unless the required demilitarization has been performed. Paragraph should read: “* * * property that has been demilitarized may be abandoned.” Concur in principle. See new paragraph 45.604-2.

49. *PR: 45.508. FR: 45.604-2.* The title of this section is incorrect. Part of the disposal process involving surplus property has already occurred at this point. On the 42nd day of screening, property that has not been selected for transfer to another Federal agency becomes surplus property which then becomes available for donation to eligible donees * * *. This section addresses what is done to surplus property that survives donation screening. Therefore, the section should be titled “Disposal of undonated surplus Government property.” 45.508(a), first sentence, should be written to read, “this section addresses the disposal of Government property * * * that, * * * has not been reutilized, transferred, or donated to eligible donees (*i.e.*, public airports, service educational activities, and State agencies for surplus property). The parenthetical phrase “(hereafter referred to as surplus property)” at the end of the sentence should be deleted. Concur. Corrected text, but not the title. “Undonated” was not added to the title because once an item has been donated it is no longer available for disposal.

50. *PR: 45.505-3. FR: 45.602-2.* Clarify. Subparagraph (b) seems to indicate that donation of educationally useful property to schools and non-profit organizations can only be accomplished after all Federal agencies have declined the property. However, subparagraph (c) identifies other agency screening as lower in priority than donation to schools or non-profit organizations. Nonconcur. The order of priority of 45.602-2 is clear as written.

The other comments concerning the other subparts of FAR Part 45 were conflicting and a satisfactory resolution of those comments was not attained. Therefore, the other subparts of FAR Part 45 are not being revised by this final rule. This final rule amends the FAR by—

- Replacing five inventory disposal forms with one;
- Clearly delineating the responsibilities of the plant clearance officer;
- Decreasing the time for Government acceptance of inventory disposal schedules from 15 to 10 days;

- Decreasing the time for Government inventory verification from 30 days to 20 days;

- Decreasing agency and Federal screening time from 90 days to 46 days;
- Eliminating the Government requirement to screen most scrap;
- Allowing contractors with approved scrap procedures to submit scrap lists instead of inventory disposal schedules;
- Eliminating reporting of production scrap for contractors with approved scrap procedures;
- Authorizing contractors to dispose of production scrap without Government approval under most conditions; and
- Placing contractor responsibilities in clauses rather than the FAR text.

Some terminology found in the FAR, while appearing in the Federal Property Management Regulation (FPMR) and Federal Management Regulation (FMR), may not have the same intended meaning or be used in the same manner (*e.g.*, reutilization, disposal, disposition). For this reason, the Councils are committed to the future establishment of a separate case for the purpose of reviewing and resolving possible inconsistent uses of terminology between the FAR and the FMR.

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, 5 U.S.C. 601, *et seq.*, applies to this final rule. The Councils prepared a Final Regulatory Flexibility Analysis (FRFA), and it is summarized as follows:

This final rule amends the FAR to simplify procedures, reduce recordkeeping, and eliminate requirements related to the disposition of Government property in the possession of contractors. No comments concerning the Initial Regulatory Flexibility Analysis were received that related to disposition of Government property. We estimate that approximately 6,850 contractors have Government property in their possession. Approximately 65 percent of DoD's contractors are small businesses. Given that property in the possession of contractors is overwhelmingly DoD property, it is estimated that the DoD ratio of small to total businesses having such property is a reasonable approximation for all Government contractors. Therefore, it is estimated that approximately 4,450 small businesses have Government property in their possession that at some point will need to be dispositioned. This final rule decreases the impact of the current FAR provisions by simplifying recordkeeping requirements, reducing the

number of records to be maintained, reducing the number of reports to be submitted, and replacing five inventory disposal schedules with one inventory disposal schedule. The rule also streamlines the Government property disposal process by decreasing agency, Federal, and donation screening times and virtually eliminating the requirement to screen scrap. The records and reports required by this rule have been reduced to the minimum necessary to assure compliance with the Government's statutory accountability and disposal requirements.

Interested parties may obtain a copy of the FRFA from the FAR Secretariat. The FAR Secretariat has submitted a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration.

C. 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 9000-0075 on October 28, 2003. This final rule reduces the annual reporting burden for disposal of Government property.

List of Subjects in 48 CFR Parts 1, 2, 8, 45, 49, 52, and 53

Government procurement.

Dated: March 26, 2004.

Laura Auletta,

Director, Acquisition Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 1, 2, 8, 45, 49, 52, and 53 as set forth below:

■ 1. The authority citation for 48 CFR parts 1, 2, 8, 45, 49, 52, and 53 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 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

1.106 [Amended]

■ 2. Amend section 1.106 in the table following the introductory paragraph by—

■ a. Revising the OMB Control Number, “9000-0015” at entries for FAR segments SF 1428 and SF 1429, to read “9000-0075”; and

■ b. Removing the FAR segment entries and their corresponding OMB Control Numbers at SF 1423, 1424, 1426, 1427, 1430, 1431, 1432, 1433, and 1434.

PART 2—DEFINITIONS OF WORDS AND TERMS

■ 3. Amend section 2.101 in paragraph (b) by adding, in alphabetical order, the definitions “Excess personal property,”

“Personal property,” “Plant clearance officer,” “Scrap,” and “Termination inventory,” to read as follows:

2.101 Definitions.

* * * *

(b) * * *

* * * *

Excess personal property means any personal property under the control of a Federal agency that the agency head determines is not required for its needs or for the discharge of its responsibilities.

* * * *

Personal property means property of any kind or interest in it except real property, records of the Federal Government, and naval vessels of the following categories:

- (1) Battleships;
- (2) Cruisers;
- (3) Aircraft carriers;
- (4) Destroyers; and
- (5) Submarines.

* * * *

Plant clearance officer means an authorized representative of the contracting officer appointed to disposition property accountable under Government contracts.

* * * *

Scrap means personal property that has no value except its basic metallic, mineral, or organic content.

* * * *

Termination inventory means any property purchased, supplied, manufactured, furnished, or otherwise acquired for the performance of a contract subsequently terminated and properly allocable to the terminated portion of the contract. It includes Government-furnished property. It does not include any facilities, material, special test equipment, or special tooling that are subject to a separate contract or to a special contract requirement governing their use or disposition.

* * * *

PART 8—REQUIRED SOURCES OF SUPPLIES AND SERVICES

8.101 [Reserved]

■ 4. Remove and reserve section 8.101.

8.104 [Amended]

■ 5. Amend section 8.104 by removing “Federal Property Management Regulations (41 CFR 101–43.312)” and adding “Federal Management Regulations (41 CFR 102–36.90)” in its place.

PART 45—GOVERNMENT PROPERTY

■ 6. Amend section 45.102 by revising paragraph (g) to read as follows:

45.102 Policy.

* * * *

(g) Ensure maximum practical reutilization of Government property (see 45.602) within the Government.

45.501 [Amended]

■ 7. Amend section 45.501 by removing the definition “Scrap.”

■ 8. Revise Subpart 45.6 to read as follows:

Subpart 45.6—Reporting, Reutilization, and Disposal

Sec.

45.600 Scope of subpart.

45.601 Definitions.

45.602 Reutilization of Government property.

45.602–1 Inventory disposal schedules.

45.602–2 Reutilization priorities.

45.602–3 Screening.

45.602–4 Interagency property transfer costs.

45.603 Abandonment, destruction or donation of excess personal property.

45.604 Disposal of surplus property.

45.604–1 Disposal methods.

45.604–2 Abandonment, destruction, or donation of surplus property.

45.604–3 Sale of surplus property.

45.604–4 Proceeds from sales of surplus property.

45.605 Inventory disposal reports.

45.606 Disposal of scrap.

45.606–1 Contractor with an approved scrap procedure.

45.606–2 Contractor without an approved scrap procedure.

45.606–3 Procedures.

Subpart 45.6—Reporting, Reutilization, and Disposal

45.600 Scope of subpart.

This subpart establishes policies and procedures for the reporting, reutilization, and disposal of Government property excess to contracts and of property that forms the basis of a claim against the Government (e.g., termination inventory under fixed-price contracts). This subpart does not apply to the disposal of real property or to property for which the Government has a lien or title solely as a result of advance or progress payments that have been liquidated.

45.601 Definitions.

As used in this subpart—

Common item means material that is common to the applicable Government contract and the contractor’s other work.

Demilitarization means rendering a product designated for demilitarization unusable for, and not restorable to, the

purpose for which it was designed or is customarily used.

Precious metals means silver, gold, platinum, palladium, iridium, osmium, rhodium, and ruthenium.

Sensitive property means property potentially dangerous to the public safety or security if stolen, lost, or misplaced, or that shall be subject to exceptional physical security, protection, control, and accountability such as classified property, weapons, ammunition, explosives, controlled substances, radioactive materials, hazardous materials or wastes, or precious metals.

Surplus property means excess personal property not required by any Federal agency as determined by the Administrator of General Services (GSA).

45.602 Reutilization of Government property.

This section is applicable to the reutilization, including transfer and donation, of Government property that is not required for continued performance of a Government contract. Except for 45.602–1, this section does not apply to scrap other than scrap aircraft parts.

45.602–1 Inventory disposal schedules.

(a) Plant clearance officers should review and accept, or return for correction, inventory disposal schedules within 10 days following receipt from a contractor. Schedules that are completed in accordance with the instructions for Standard Form 1428 should be accepted.

(b) Plant clearance officers shall—
(1) Use Standard Form 1423 to verify, in accordance with agency procedures, accepted schedules within 20 days following acceptance;

(2) Require a contractor to correct any discrepancies found during verification;

(3) Require a contractor to correct any failure to complete predisposal requirements of the contract; and
(4) Provide the contractor disposition instructions for property identified on an acceptable inventory disposal schedule within 120 days. A failure to provide timely disposition instructions might entitle the contractor to an equitable adjustment.

(c) Contractors shall obtain the plant clearance officer’s approval to remove Government property from an inventory disposal schedule.

(1) Plant clearance officers should approve removal when—

(i) The contractor wishes to purchase a contractor-acquired or contractor-produced item at acquisition cost and credit the contract;

(ii) The contractor is able to return unused property to the supplier at fair market value and credit the contract (less, if applicable, a reasonable restocking fee that is consistent with the supplier's customary practices);

(iii) The Government has authorized the contractor to use the property on another Government contract; or

(iv) The contractor has requested continued use of Government property, and the plant clearance officer has consulted with the appropriate program and technical personnel.

(2) If the screening process (see 45.602-3) has not begun, the plant clearance officer shall adjust the schedule or return the schedule to the contractor for correction. If screening has begun, the plant clearance officer shall promptly notify the activity performing the screening that the items should be removed from the screening process.

45.602-2 Reutilization priorities.

Plant clearance officers shall initiate reutilization actions using the highest priority method appropriate for the property. Authorized methods, listed in descending order from highest to lowest priority, are—

(a) Reuse within the agency (see 45.603 for circumstances under which excess personal property may be abandoned, destroyed, or donated);

(b) Transfer of educationally useful equipment, with GSA approval, to other Federal agencies that have expressed a need for the property;

(c) Transfer of educationally useful equipment to schools and nonprofit organizations (see Executive Order 12999, Educational Technology: Ensuring Opportunity For All Children In The Next Century, April 17, 1996), and 15 U.S.C. 3710(i);

(d) Reuse within the Federal Government; and

(e) Donation to an eligible donee designated by GSA.

45.602-3 Screening.

The screening period begins upon the plant clearance officer's acceptance of an inventory disposal schedule. The plant clearance officer shall determine whether standard or special screening is appropriate and initiate screening actions.

(a) *Standard screening.* The standard screening period is 46 days.

(1) *First through twentieth day—Screening by the contracting agency.* The contracting agency has 20 days to screen property reported on the inventory disposal schedule for: Other use within the agency; transfer of educationally useful equipment to other

Federal agencies that have expressed a need for the property; and transfer of educationally useful equipment to schools and nonprofit organizations if a Federal agency has not expressed a need for the property. Excess personal property, meeting the conditions of 45.603, may be abandoned, destroyed, or donated to public bodies. No later than the 21st day, the plant clearance officer shall submit four copies of the revised schedules and Standard Form (SF) 120, Report of Excess Personal Property, or an electronic equivalent to GSA (see 41 CFR 102-36.215).

(2) *Twenty-first through forty-sixth day (21 days concurrent screening plus 5 days donation processing).*—(i) *Screening by other Federal agencies.* GSA will normally honor requests for transfers of property on a first-come-first-served basis through the 41st day. When a request is honored, the GSA regional office shall promptly transmit to the plant clearance officer an approved transfer order that includes shipping instructions.

(ii) *Screening for possible donation.* Screening for donation is also completed during days 21 through 41. Property is not available for allocation to donees until after the completion of screening. Days 42 through 46 are reserved for GSA to make such allocation.

(3) *Screening period transfer request.* If an agency receives an intra-agency transfer request during the screening periods described in paragraph (a)(2) of this subsection, the plant clearance officer shall request GSA approval to withdraw the item from the inventory disposal schedule.

(b) *Special screening requirements.*—(1) *Special tooling and special test equipment without commercial components.* Agencies shall follow the procedures in paragraph (a) of this subsection. This property owned by the Department of Defense (DoD) or the National Aeronautics and Space Administration (NASA) may be screened for reutilization only within these agencies.

(2) *Special test equipment with commercial components.*—(i) Agencies shall complete the screening required by paragraph (a) of this subsection. If an agency has no further need for the property and the contractor has not expressed an interest in using or acquiring the property by annotating the inventory disposal schedule, the plant clearance officer shall forward the inventory disposal schedule to the GSA regional office that serves the region in which the property is located.

(ii) If the contractor has expressed an interest in using the property on another

Government contract, the plant clearance officer shall contact the contracting officer for that contract. If the contracting officer concurs with the proposed use, the contracting officer for the contract under which the property is accountable shall transfer the property's accountability to that contract. If the contracting officer does not concur with the proposed use, the plant clearance officer shall deny the contractor's request and shall continue the screening process.

(iii) If the property is contractor-acquired or -produced, and the contractor or subcontractor has expressed an interest in acquiring the property, and no other party expresses an interest during agency or GSA screening, the property may be sold to the contractor or subcontractor at acquisition cost.

(3) *Printing equipment.* Agencies shall report all excess printing equipment to the Public Printer, Government Printing Office, North Capitol and H Streets, NW., Washington, DC 20401, after screening within the agency (see 44 U.S.C. 312). If the Public Printer does not express a need for the equipment within 21 days, the agency shall submit the report to GSA for further use and donation screening as described in paragraph (a) of this subsection.

(4) *Non-nuclear hazardous materials, hazardous wastes, and classified items.* These items shall be screened in accordance with agency procedures. Report non-nuclear hazardous materials to GSA if the agency has no requirement for them.

(5) *Nuclear materials.* The possession, use, and transfer of certain nuclear materials are subject to the regulatory controls of the Nuclear Regulatory Commission (NRC). Contracting activities shall screen excess nuclear materials in the following categories:

(i) *By-product material.* Any radioactive material (except special nuclear material) yielded in or made radioactive by exposure to the radiation incident to producing or using special nuclear material.

(ii) *Source material.* Uranium or thorium, or any combination thereof, in any physical or chemical form; or ores that contain by weight one-twentieth of 1 percent (0.05 percent) or more of uranium, thorium, or any combination thereof. Source material does not include special nuclear material.

(iii) *Special nuclear material.* Plutonium, Uranium 233, Uranium enriched in the isotope 233 or in the isotope 235, any other material that the NRC determines to be special nuclear material (but not including source

material); or any material artificially enriched by any nuclear material.

45.602-4 Interagency property transfer costs.

Agencies whose property is transferred to other agencies shall not be reimbursed for the property in any manner unless the circumstances of FMR 102-36.285 (41 CFR 102-36.285) apply. The agency receiving the property shall pay any transportation costs that are not the contractor's responsibility and any costs to pack, crate, or otherwise prepare the property for shipment. The contract administration office shall process appropriate contract modifications. To accelerate plant clearance, the receiving agency shall promptly furnish funding data, and transfer or shipping documents to the contract administration office.

45.603 Abandonment, destruction or donation of excess personal property.

(a) Plant clearance officers may abandon, destroy, or donate to public bodies excess property that is not sensitive property and does not require demilitarization.

(b) Plant clearance officers may abandon sensitive property that does not require demilitarization, with contractor consent, provided appropriate instructions are provided with respect to the proper care, handling, and disposal of the property.

(c) The Government may donate excess personal property to eligible donees in lieu of abandonment if the Government will not bear any of the costs incident to a donation.

(d)(1) Before abandoning, destroying, or donating excess personal property, the plant clearance officer shall determine in writing that the property does not constitute a danger to public health or welfare and—

(i) The property has no residual monetary value; or

(ii) The estimated cost to sell the property, including advertising, storage, and other costs associated with making the sale, is greater than the probable sale proceeds; and

(2) A Government reviewing official shall approve all written determinations for abandonment and destruction actions.

45.604 Disposal of surplus property.

45.604-1 Disposal methods.

(a) Except as provided in paragraphs (b) and (c) of this subsection, surplus property that has completed screening in accordance with 45.602-3(a) shall be sold in accordance with 45.604-3 or abandoned, destroyed, or donated to

public bodies in accordance with 45.604-2.

(b) The following property that GSA has declared surplus or not required to be screened by GSA shall be disposed of in accordance with agency procedures:

(1) Classified items.

(2) Nonnuclear hazardous materials or hazardous wastes.

(3) Property that contains precious metals or requires demilitarization.

(4) Government property physically located outside the United States or its possessions (*see* 40 U.S.C. 701-705).

(c) Nuclear materials (*see* 45.602-3(b)(5)) shall be disposed of in accordance with NRC or applicable state licenses, applicable Federal regulations, and agency regulations.

45.604-2 Abandonment, destruction, or donation of surplus property.

(a) Plant clearance officers may abandon, destroy, or donate to public bodies surplus property that is not sensitive property, and does not require demilitarization.

(b) Plant clearance officers may abandon sensitive property that does not require demilitarization, with contractor consent, provided appropriate instructions are provided with respect to the proper care, handling, and disposal of the property.

(c) The Government may donate surplus property to eligible donees in lieu of abandonment if the Government will not bear any of the costs incident to donation.

(d) Before abandoning, destroying, or donating surplus property, the plant clearance officer shall determine in writing that the property does not constitute a danger to public health or welfare and—

(1) The property has no residual monetary value; or

(2) The estimated cost to sell the property, including advertising, storage, and other costs associated with making the sale, is greater than the probable sale proceeds.

45.604-3 Sale of surplus property.

Policy for the sale of surplus property is contained in the Federal Property Management Regulations, at Part 101-45 (41 CFR part 101-45). Agencies may specify implementing procedures.

45.604-4 Proceeds from sales of surplus property.

Proceeds of any sale are to be credited to the Treasury of the United States as miscellaneous receipts, unless otherwise authorized by statute or the contract or any subcontract thereunder authorizes the proceeds to be credited to

the price or cost of the work (40 U.S.C. 571 and 574).

45.605 Inventory disposal reports.

The plant clearance officer shall promptly prepare an SF 1424, Inventory Disposal Report, following disposition of the property identified on an inventory disposal schedule or scrap list and the crediting of any related proceeds. The report shall identify any lost, stolen, damaged, destroyed, or otherwise unaccounted for property and any changes in quantity or value of the property made by the contractor after submission of the initial inventory disposal schedule. The report shall be addressed to the administrative contracting officer or, for termination inventory, to the termination contracting officer, with a copy to the property administrator.

45.606 Disposal of scrap.

45.606-1 Contractor with an approved scrap procedure.

(a) The contractor may dispose of scrap resulting from production or testing under this contract without Government approval. However, if the scrap requires demilitarization or is sensitive property, then the contractor shall submit the scrap on an inventory disposal schedule.

(b) For scrap from other than production or testing, the contractor may prepare scrap lists in lieu of inventory disposal schedules (provided such lists are consistent with the approved scrap procedures) except that inventory disposal schedules shall be submitted for scrap aircraft or aircraft parts and scrap that—

(1) Requires demilitarization;

(2) Is a classified item;

(3) Is generated from classified items;

(4) Contains hazardous materials or hazardous wastes;

(5) Contains precious metals; or

(6) Is dangerous to the public health, safety, or welfare.

45.606-2 Contractor without an approved scrap procedure.

The contractor shall submit an inventory disposal schedule for all scrap.

45.606-3 Procedures.

(a) The plant clearance officer shall process inventory disposal schedules in accordance with 45.602-1.

(b) The plant clearance officer shall—

(1) Accept, reject, or return for correction scrap lists within 10 days following receipt;

(2) Accept scrap lists that are consistent with a contractor's approved scrap procedure, correctly identify the

contracts under which the scrap is accountable, and correctly identify the scrap's quantity and condition;

(3) Use Standard Form 1423 to verify accepted scrap lists, in accordance with agency procedures;

(4) Require a contractor to correct any discrepancies found during verification; and

(5) Provide disposition instructions to the contractor within 45 days following Government acceptance of a scrap list. If the plant clearance officer does not provide disposition instructions within that period, the contractor may dispose of scrap identified on a scrap list without further Government approval.

PART 49—TERMINATION OF CONTRACTS

49.001 [Amended]

■ 9. Amend section 49.001 by adding, in alphabetical order, the definition "Plant clearance period", and removing the definition "Termination inventory" to read as follows:

49.001 Definitions.

* * * * *

Plant clearance period, as used in this subpart, means the period beginning on the effective date of contract completion or termination and ending 90 days (or such longer period as may be agreed to) after receipt by the contracting officer of acceptable inventory schedules for each property classification. The final phase of the plant clearance period means that period after receipt of acceptable inventory schedules.

* * * * *

■ 10. Amend section 49.108-3 by revising paragraph (b)(1) to read as follows:

49.108-3 Settlement procedure.

* * * * *

(b) * * *

(1) All subcontractor termination inventory be disposed of and accounted for in accordance with the procedures contained in paragraphs (i) and (j) of the clause at 52.245-2, Government Property (Fixed-Price Contracts), and paragraphs (i) and (j) of the clause at 52.245-5, Government Property (Cost-Reimbursement, Time-and-Material, or Labor-Hour Contracts); and

* * * * *

■ 11. Amend section 49.108-4 by revising paragraphs (a)(1)(ii) and (b) to read as follows:

49.108-4 Authorization for subcontract settlements without approval or ratification.

(a)(1) * * *

(ii) Any termination inventory included in determining the amount of

the settlement will be disposed of as directed by the prime contractor, except that the disposition of the inventory shall not be subject to—

(A) Review by the TCO under 49.108-3(c); or

(B) The screening requirements in 45.602-3; and

* * * * *

(b) Section 45.602 shall apply to disposal of completed end items allocable to the terminated subcontract. However, these items may be disposed of without review by the TCO under 49.108-3 and without screening under 45.602-3, if the items do not require demilitarization and the total amount (at the subcontract price) when added to the amount of the settlement does not exceed the amount authorized under this subsection.

* * * * *

■ 12. Revise the section heading and text of 49.206-3 to read as follows:

49.206-3 Submission of inventory disposal schedules.

Subject to the terms of the termination clause, and whenever termination inventory is involved, the contractor shall submit complete inventory disposal schedules to the TCO reflecting inventory that is allocable to the terminated portion of the contract. The inventory disposal schedules shall be submitted within 120 days from the effective date of termination unless otherwise extended by the TCO based on a written justification to support the extension. The inventory schedules shall be prepared on Standard Form 1428, Inventory Disposal Schedule.

■ 13. Revise the section heading and text of 49.303-2 to read as follows:

49.303-2 Submission of inventory disposal schedules.

Subject to the terms of the termination clause, and whenever termination inventory is involved, the contractor shall submit complete inventory disposal schedules to the TCO reflecting inventory that is allocable to the terminated portion of the contract. The inventory disposal schedules shall be submitted within 120 days from the effective date of termination unless otherwise extended by the TCO based on a written justification to support the extension. The inventory disposal schedules shall be prepared on Standard Form 1428, Inventory Disposal Schedule.

■ 14. Revise the section heading and text of 49.602-2 to read as follows:

49.602-2 Inventory forms.

Standard Form (SF) 1428, Inventory Disposal Schedule, and SF 1429,

Inventory Disposal Schedule—Continuation Sheet, shall be used to support settlement proposals submitted on the forms specified in 49.602-1(b) and (d).

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 15. Amend section 52.245-2 by revising the date of the clause and paragraphs (i) and (j) to read as follows:

52.245-2 Government Property (Fixed-Price Contracts).

* * * * *

Government Property (Fixed-Price Contracts) (May 2004)

* * * * *

(i) *Government property disposal.* Except as provided in paragraphs (i)(1)(i), (i)(2), and (i)(8)(i) of this clause, the Contractor shall not dispose of Government property until authorized to do so by the Plant Clearance Officer.

(1) *Scrap (to which the Government has obtained title under paragraph (c) of this clause).*—(i) *Contractor with an approved scrap procedure.*—(A) The Contractor may dispose of scrap resulting from production or testing under this contract without Government approval. However, if the scrap requires demilitarization or is sensitive property, the Contractor shall submit the scrap on an inventory disposal schedule.

(B) For scrap from other than production or testing the Contractor may prepare scrap lists in lieu of inventory disposal schedules (provided such lists are consistent with the approved scrap procedures), except that inventory disposal schedules shall be submitted for scrap aircraft or aircraft parts and scrap that—

- (1) Requires demilitarization;
- (2) Is a classified item;
- (3) Is generated from classified items;
- (4) Contains hazardous materials or hazardous wastes;
- (5) Contains precious metals; or
- (6) Is dangerous to the public health, safety, or welfare.

(ii) *Contractor without an approved scrap procedure.* The Contractor shall submit an inventory disposal schedule for all scrap.

(2) *Pre-disposal requirements.* When the Contractor determines that a property item acquired or produced by the Contractor, to which the Government has obtained title under paragraph (c) of this clause, is no longer needed for performance of this contract, the Contractor, in the following order of priority:

- (i) May purchase the property at the acquisition cost.
- (ii) Shall make reasonable efforts to return unused property to the appropriate supplier at fair market value (less, if applicable, a reasonable restocking fee that is consistent with the supplier's customary practices).
- (iii) Shall list, on Standard Form 1428, Inventory Disposal Schedule, property that was not purchased under paragraph (i)(2)(i) of this clause, could not be returned to a

supplier, or could not be used in the performance of other Government contracts.

(3) *Inventory disposal schedules.*—(i) The Contractor shall use Standard Form 1428, Inventory Disposal Schedule, to identify—

(A) Government-furnished property that is no longer required for performance of this contract, provided the terms of another Government contract do not require the Government to furnish that property for performance of that contract; and

(B) Property acquired or produced by the Contractor, to which the Government has obtained title under paragraph (c) of this clause, that is no longer required for performance of that contract.

(ii) The Contractor may annotate inventory disposal schedules to identify property the Contractor wishes to purchase from the Government.

(iii) Unless the Plant Clearance Officer has agreed otherwise, or the contract requires electronic submission of inventory disposal schedules, the Contractor shall prepare separate inventory disposal schedules for—

(A) Special test equipment with commercial components;

(B) Special test equipment without commercial components;

(C) Printing equipment;

(D) Computers, components thereof, peripheral equipment, and related equipment;

(E) Precious Metals;

(F) Nonnuclear hazardous materials or hazardous wastes; or

(G) Nuclear materials or nuclear wastes.

(iv) Property with the same description, condition code, and reporting location may be grouped in a single line item. The Contractor shall describe special test equipment in sufficient detail to permit an understanding of the special test equipment's intended use.

(4) *Submission requirements.* The Contractor shall submit inventory disposal schedules to the Plant Clearance Officer no later than—

(i) Thirty days following the Contractor's determination that a Government property item is no longer required for performance of the contract;

(ii) Sixty days, or such longer period as may be approved by the Plant Clearance Officer, following completion of contract deliveries or performance; or

(iii) One hundred twenty days, or such longer period as may be approved by the Plant Clearance Officer, following contract termination in whole or in part.

(5) *Corrections.* The Plant Clearance Officer may require the Contractor to correct an inventory disposal schedule or may reject a schedule if the property identified on the schedule is not accountable under this contract or is not in the quantity or condition indicated.

(6) *Postsubmission adjustments.* The Contractor shall provide the Plant Clearance Officer at least 10 working days advance written notice of its intent to remove a property item from an approved inventory disposal schedule. Unless the Plant Clearance Officer objects to the intended schedule adjustment within the notice period, the Contractor may make the

adjustment upon expiration of the notice period.

(7) *Storage.*—(i) The Contractor shall store the property identified on an inventory disposal schedule pending receipt of disposal instructions. The Government's failure to provide disposal instructions within 120 days following acceptance of an inventory disposal schedule might entitle the Contractor to an equitable adjustment for costs incurred to store such property on or after the 121st day.

(ii) The Contractor shall obtain the Plant Clearance Officer's approval to remove Government property from the premises at which the property is currently located prior to receipt of final disposition instructions. If approval is granted, any costs incurred by the Contractor to transport or store the property shall not increase the price or fee of any Government contract. The storage facility shall be appropriate for assuring the property's physical safety and suitability for use. Approval does not relieve the Contractor of any liability under this contract for such property.

(8) *Disposition instructions.*—(i) If the Government does not provide disposition instructions to the Contractor within 45 days following acceptance of a scrap list, the Contractor may dispose of the listed scrap in accordance with the Contractor's approved scrap procedures.

(ii) The Contractor shall prepare for shipment, deliver f.o.b. origin, or dispose of Government property as directed by the Plant Clearance Officer. The Contractor shall remove and destroy any markings identifying the property as Government property prior to disposing of the property.

(iii) The Contracting Officer may require the Contractor to demilitarize the property prior to shipment or disposal. Any equitable adjustment incident to the Contracting Officer's direction to demilitarize Government property shall be made in accordance with paragraph (h) of this clause.

(9) *Disposal proceeds.* The Contractor shall credit the net proceeds from the disposal of Government property to the price or cost of work covered by this contract or to the Government as the Contracting Officer directs.

(10) *Subcontractor inventory disposal schedules.* The Contractor shall require a subcontractor that is using property accountable under this contract at a subcontractor-managed site to submit inventory disposal schedules to the Contractor in sufficient time for the Contractor to comply with the requirements of paragraph (i)(4) of this clause.

(j) *Abandonment of Government property.*—(1) The Government will not abandon sensitive Government property without the Contractor's written consent.

(2) The Government, upon notice to the Contractor, may abandon any nonsensitive Government property in place at which time all obligations of the Government regarding such abandoned property shall cease.

(3) The Government has no obligation to restore or rehabilitate the Contractor's premises under any circumstances; however, if Government-furnished property is withdrawn or is unsuitable for the intended

use, or if other Government property is substituted, then the equitable adjustment under paragraph (h) of this clause may properly include restoration or rehabilitation costs.

* * * * *

■ 16. Amend section 52.245–5 by revising the date of the clause and paragraphs (i) and (j) to read as follows:

52.245–5 Government Property (Cost-Reimbursement, Time-and-Material, or Labor-Hour Contracts).

Government Property (Cost-Reimbursement, Time-and-Material, or Labor-Hour Contracts) (May 2004)

* * * * *

(i) *Government property disposal.* Except as provided in paragraphs (i)(1)(i), (i)(2), and (i)(8)(i) of this clause, the Contractor shall not dispose of Government property until authorized to do so by the Plant Clearance Officer.

(1) *Scrap.* (i) *Contractor with an approved scrap procedure.* (A) The Contractor may dispose of scrap resulting from production or testing under this contract without Government approval. However, if the scrap requires demilitarization or is sensitive property, the Contractor shall submit the scrap on an inventory disposal schedule.

(B) For scrap from other than production or testing, the Contractor may prepare scrap lists in lieu of inventory disposal schedules (provided such lists are consistent with the approved scrap procedures), except that inventory disposal schedules shall be submitted for scrap aircraft or aircraft parts and scrap that—

(1) Requires demilitarization;

(2) Is a classified item;

(3) Is generated from classified items;

(4) Contains hazardous materials or hazardous wastes;

(5) Contains precious metals; or

(6) Is dangerous to the public health, safety, or welfare.

(ii) *Contractor without an approved scrap procedure.* The Contractor shall submit an inventory disposal schedule for all scrap.

(2) *Pre-disposal requirements.* When the Contractor determines that a property item acquired or produced by the Contractor, to which the Government has obtained title under paragraph (c) of this clause, is no longer needed for performance of this contract, the Contractor, in the following order of priority:

(i) May purchase the property at the acquisition cost.

(ii) Shall make reasonable efforts to return unused property to the appropriate supplier at fair market value (less, if applicable, a reasonable restocking fee that is consistent with the supplier's customary practices).

(iii) Shall list, on Standard Form 1428, Inventory Disposal Schedule, property that was not purchased under paragraph (i)(2)(i) of this clause, could not be returned to a supplier, or could not be used in the performance of other Government contracts.

(3) *Inventory disposal schedules.* (i) The Contractor shall use Standard Form 1428, Inventory Disposal Schedule, to identify—

(A) Government-furnished property that is no longer required for performance of this contract, provided the terms of another Government contract do not require the Government to furnish that property for performance of that contract; and

(B) Property acquired or produced by the Contractor, to which the Government has obtained title under paragraph (c) of this clause, that is no longer required for performance of that contract.

(ii) The Contractor may annotate inventory disposal schedules to identify property the Contractor wishes to purchase from the Government.

(iii) Unless the Plant Clearance Officer has agreed otherwise, or the contract requires electronic submission of inventory disposal schedules, the Contractor shall prepare separate inventory disposal schedules for—

(A) Special test equipment with commercial components;

(B) Special test equipment that does not contain commercial components;

(C) Printing equipment;

(D) Computers, components thereof, peripheral equipment, and related equipment;

(E) Precious Metals;

(F) Nonnuclear hazardous materials or hazardous wastes; or

(G) Nuclear materials or nuclear wastes.

(iv) Property with the same description, condition code, and reporting location may be grouped in a single line item. The Contractor shall describe special test equipment in sufficient detail to permit an understanding of the special test equipment's intended use.

(4) *Submission requirements.* The Contractor shall submit inventory disposal schedules to the Plant Clearance Officer no later than—

(i) Thirty days following the Contractor's determination that a Government property item is no longer required for performance of the contract;

(ii) Sixty days, or such longer period as may be approved by the Plant Clearance Officer, following completion of contract deliveries or performance; or

(iii) One hundred twenty days, or such longer period as may be approved by the Plant Clearance Officer, following contract termination in whole or in part.

(5) *Corrections.* The Plant Clearance Officer may require the Contractor to correct an inventory disposal schedule or may reject a schedule if the property identified on the schedule is not accountable under this contract or is not in the quantity or condition indicated.

(6) *Postsubmission adjustments.* The Contractor shall provide the Plant Clearance Officer at least 10 working days advance written notice of its intent to remove a property item from an approved inventory disposal schedule. Unless the Plant Clearance Officer objects to the intended schedule adjustment within the notice period, the Contractor may make the adjustment upon expiration of the notice period.

(7) *Storage.* (i) The Contractor shall store the property identified on an inventory disposal schedule pending receipt of disposal

instructions. The Government's failure to provide disposal instructions within 120 days following acceptance of an inventory disposal schedule, might entitle the Contractor to an equitable adjustment for costs incurred to store such property on or after the 121st day.

(ii) The Contractor shall obtain the Plant Clearance Officer's approval to remove Government property from the premises at which the property is currently located prior to receipt of final disposition instructions. If approval is granted, any costs incurred by the Contractor to transport or store the property shall not increase the price or fee of any Government contract. The storage facility must be appropriate for assuring the property's physical safety and suitability for use. Approval does not relieve the Contractor of any liability under this contract for such property.

(8) *Disposition instructions.* (i) If the Government does not provide disposition instructions to the Contractor within 45 days following acceptance of a scrap list, the Contractor may dispose of the listed scrap in accordance with the Contractor's approved scrap procedures.

(ii) The Contractor shall prepare for shipment, deliver f.o.b. origin, or dispose of Government property as directed by the Plant Clearance Officer. The Contractor shall remove and destroy any markings identifying the property as Government property prior to disposing of the property.

(iii) The Contracting Officer may require the Contractor to demilitarize the property prior to shipment or disposal. Any equitable adjustment incident to the Contracting Officer's direction to demilitarize Government property shall be made in accordance with paragraph (h) of this clause.

(9) *Disposal proceeds.* The Contractor shall credit the net proceeds from the disposal of Government property to the cost of work covered by this contract, or to the Government as directed by the Contracting Officer.

(10) *Subcontractor inventory disposal schedules.* The Contractor shall require a subcontractor that is using property accountable under this contract at a subcontractor-managed site to submit inventory disposal schedules to the Contractor in sufficient time for the Contractor to comply with the requirements of paragraph (i)(4) of this clause.

(j) *Abandonment of Government property.*

(1) The Government will not abandon sensitive Government property without the Contractor's written consent;

(2) The Government, upon notice to the Contractor, may abandon any nonsensitive Government property in place at which time all obligations of the Government regarding such abandoned property shall cease.

(3) The Government has no obligation to restore or rehabilitate the Contractor's premises under any circumstances; however, if Government-furnished property is withdrawn or is unsuitable for the intended use, or if other Government property is substituted, then the equitable adjustment under paragraph (h) of this clause may properly include restoration or rehabilitation costs.

* * * * *

■ 17. Amend section 52.245–17 by revising the date of the clause and paragraph (i)(2)(ii) to read as follows:

52.245–17 Special tooling.

* * * * *

Special Tooling (May 2004)

* * * * *

(i) *Lists of special tooling.*

* * * * *

(2) * * *

(ii) *Termination inventory.* The Contractor shall submit these items on an SF 1428 or by computer list attached to an SF 1428 in accordance with FAR 45.602–1. Format and content of this submission will be as prescribed by paragraph (i)(3) of this clause, but will contain information as prescribed by FAR Subpart 45.6, in effect on the date of award of this contract.

* * * * *

52.249–2, 52.249–3, 52.249–6, 52.249–11 [Amended]

■ 18. Revise the date of the clauses to read "(May 2004)" and remove "45.6" and add "49.001" in the following sections:

■ a. Section 52.249–2(d).

■ b. Section 52.249–3(d).

■ c. Section 52.249–6(e).

■ d. Section 52.249–11(d).

PART 53—FORMS

■ 19. Revise section 53.245 to read as follows:

53.245 Government property.

The following forms are prescribed, as specified in this section, for use in reporting, reutilization, and disposal of Government property and in accounting for this property:

(a) *SF 120 (GSA), Report of Excess Personal Property, and SF 120–A (GSA), Continuation Sheet (Report of Excess Personal Property).* See 45.602–3 and 41 CFR 102–36.215.)

(b) *SF 126 (GSA), Report of Personal Property for Sale, and SF 126–A (GSA), Report of Personal Property for Sale (Continuation Sheet).* See FPMR 101–45.303 (41 CFR 101–45.303.)

(c) *SF 1423 (Rev. 5/04), Inventory Verification Survey.* See 45.602–1(b)(1) and 45.606–3.)

(d) *SF 1424 (Rev. 5/04), Inventory Disposal Report* (See 45.605). SF 1424 is authorized for local reproduction.

(e) *SF 1428 (Rev. 5/04), Inventory Disposal Schedule, and SF 1429 (Rev. 5/04), Inventory Disposal Schedule—Continuation Sheet.* (See 45.602–1, 49.303–2, 52.245–2(i), 52.245–5(i), and 53.249(b).) SF's 1428 and 1429 are authorized for local reproduction.

■ 20. Amend section 53.249 by revising paragraphs (a)(3), (a)(5), and (b) to read as follows:

53.249 Termination of contracts.

(a) * * *

(3) *SF 1436 (Rev. 5/04), Settlement Proposal (Total Cost Basis)*. (See 49.602-1(b).) Standard Form 1436 is authorized for local reproduction.

* * * * *

(5) *SF 1438 (Rev. 5/04), Settlement Proposal (Short Form)*. (See 49.602-1(d).) Standard Form 1438 is authorized for local reproduction.

* * * * *

(b) *SF 1428 (Rev. 5/04), Inventory Disposal Schedule, and Standard Form*

1429 (Rev. 5/04), Inventory Disposal Schedule—Continuation Sheet, shall be used to support termination settlement proposals listed in paragraph (a) of this section, as specified in 49.602-2.

BILLING CODE 6820-EP-P

■ 21. Revise section 53.301-1423 to read as follows: **53.301-1423 Inventory Verification Survey.**

INVENTORY VERIFICATION SURVEY (See FAR 45.602-1(b)(1))				DATE			
SECTION I - GENERAL							
1. FROM: <i>(Include ZIP Code)</i>			2. TO: <i>(Include ZIP Code)</i>				
3. CONTRACT NUMBER AND TYPE			4. CONTRACTOR/SUBCONTRACTOR				
5A. SCHEDULES OF INVENTORY TO BE INSPECTED AND VERIFIED			5B. PLANT CLEARANCE CASE NUMBER/DOCUMENT NUMBER				
REFERENCE NUMBER	PAGES		AMOUNT (\$)				
	START NO.	END NO.					
SECTION II - TECHNICAL VERIFICATION							
6. IS PROPERTY LISTED ON THE INVENTORY DISPOSAL SCHEDULES ON HAND AND IN THE QUANTITIES INDICATED?		YES	NO	12. ARE THE WEIGHTS OF THE ITEMS APPROXIMATELY CORRECT? <i>IF WEIGHTS ARE NOT SHOWN, GIVE ESTIMATE OF WEIGHT BY BASIC MATERIAL CONTENT:</i>		YES	NO
			*				*
7. IS THE PROPERTY CORRECTLY DESCRIBED ON THE INVENTORY DISPOSAL SCHEDULES?			*				
8. IS THE PROPERTY SEGREGATED OR ADEQUATELY PROTECTED?			*	13. DO THE ITEMS APPEAR TO HAVE COMMERCIAL VALUE OTHER THAN SCRAP?		*	*
9. IS THE PROPERTY PROPERLY TAGGED?			*	14. DID CONTRACTOR MAKE REASONABLE EFFORTS TO RETURN THE PROPERTY?			*
10. ARE THE CONDITION CODES ACCURATE?			*	15. DO ANY ITEMS REQUIRE DEMILITARIZATION OR SPECIAL PROCESSING <i>(sensitive items)?</i>		*	
11. IS THE PROPERTY CLASSIFICATION CORRECTLY IDENTIFIED?			*	16. ARE COMMON ITEMS INCLUDED ON THE INVENTORY DISPOSAL SCHEDULE?		*	
SECTION III - TERMINATION INVENTORY							
COMPLETION OF THIS SECTION <input type="checkbox"/> IS <input type="checkbox"/> IS NOT REQUIRED <i>(Requester, check one)</i>							
17. DID WORK STOP PROMPTLY UPON RECEIPT OF THE TERMINATION NOTICE? DATE OF NOTICE: _____		YES	NO	20. DOES THE INVENTORY INCLUDE REJECTS? IF YES, EXPLAIN SPECIFIC LINE ITEM ENTRIES. OBTAIN FROM CONTRACTOR ESTIMATED COST OF REWORKING REJECTS ON SPECIFIC LINE ITEM BASIS.		YES	NO
			*			*	
18a. DO THE QUANTITIES OF MATERIAL EXCEED THE AMOUNTS THAT WOULD HAVE BEEN REQUIRED TO COMPLETE THE TERMINATED PORTION OF THE CONTRACT?		*		21a. HAVE COMPLETED ARTICLES BEEN INSPECTED AS TO QUALITY AND CONFORMANCE TO SPECIFICATIONS?			*
b. CAN THE ITEMS OF TERMINATION INVENTORY BE USED ON THE CONTINUING PORTION OF THE CONTRACT?		*		b. DO THE COMPLETED ITEMS INSPECTED CONFORM TO CONTRACT SPECIFICATIONS?			*
				c. DO OTHER THAN COMPLETED ITEMS CONFORM WITH TECHNICAL REQUIREMENTS OF THE CONTRACT OR ORDER?			*
19. ARE ALL ITEMS AND QUANTITIES ALLOCABLE TO THE TERMINATION PORTION OF THIS CONTRACT OR ORDER?			*	22. FOR WORK-IN-PROCESS, IS THE PERCENTAGE OF COMPLETION ACCURATE?			*
23. REQUESTING OFFICE REMARKS <i>(Where the answer to any question is placed in a block containing an asterisk (*) detailed comments of the verifier shall be included on the reverse of this form and identified by section and item number.)</i>							
24. SIGNATURE OF REQUESTER							
INVENTORY VERIFICATION The above information is based on a physical verification of inventory listed under Item 5.							
25. NAME AND TITLE			26. SIGNATURE OF VERIFIER			27. DATE	

■ 22. Revise section 53.301-1424 to **53.301-1424 Inventory Disposal Report.**
read as follows:

INVENTORY DISPOSAL REPORT (See FAR 45.605)		PLANT CLEARANCE CASE NUMBER
TO: <i>(Include ZIP Code)</i>		FROM: <i>(Include ZIP Code)</i>
1. DATE PLANT CLEARANCE CASE OPENED	2. DATE PLANT CLEARANCE CASE CLOSED	3. NUMBER OF DAYS BETWEEN OPENING AND CLOSING
4. NAME AND ADDRESS OF CONTRACTOR/SUBCONTRACTOR <i>(Include ZIP Code)</i>		5. IF SUBCONTRACTOR, STATE NAME AND ADDRESS OF PRIME CONTRACTOR <i>(Include ZIP Code)</i>
6. LOCATION OF PROPERTY <i>(City and State)</i>	7. CONTRACT NUMBER	8. DOCKET NUMBER <i>(Termination only)</i>
	9. SUBCONTRACT NUMBER	10. CONTRACTOR REFERENCE NUMBER

DISPOSITION OF PROPERTY			
ITEM DESCRIPTION	LINE ITEMS	ACQUISITION COST	PROCEEDS
11. TOTAL INVENTORY AS SUBMITTED			
12. ADJUSTMENTS <i>(Pricing errors, shortages, etc.)</i>			
13. ADJUSTED INVENTORY <i>(Line 11 + or - Line 12)</i>			
14. PURCHASE OR RETENTION AT COST			
15. RETURN TO SUPPLIERS <i>(Net Proceeds)</i>			
16. REDISTRIBUTIONS			
A. WITHIN OWNING AGENCY			
B. OTHER AGENCIES			
TOTAL			
17. DONATIONS			
18. SALES			
19. SALES - SCRAP PROCEEDS TO OVERHEAD			
20.			
21.			
22. TOTAL PROCEEDS CREDIT <i>(Total Lines 14, 15, and 18)</i>			
23. ABANDONED			
24. DESTROYED/ABANDONED			
25. DESTROYED/SCRAPPED			
26. OTHER <i>(Explain in Item 28, Remarks)</i>			
27. TOTAL DISPOSITIONS			

28. REMARKS *(Identify contract number in which proceeds were applied, or disbursing office where proceeds were deposited)*

To the best of my knowledge, disposition of all property on this case has been effected in accordance with existing regulations, all property has been accounted for and all disposal credits properly applied.

CONTRACT ADMINISTRATION OFFICE <i>(Authorized signature and title)</i>	DATE
--	------

53.301-1426 [Removed]

■ 23. Remove section 53.301-1426, Inventory Schedule A (Metals in Mill Product Form).

■ 24. Revise section 53.301-1428 to read as follows:

53.301-1428 Inventory Disposal Schedule.

INVENTORY DISPOSAL SCHEDULE (See Reverse for Instructions) (See FAR 52.245-2(i)(3) and 52.245-5(i)(3))		1. TYPE (Check block(s) when applicable) <input type="checkbox"/> TERMINATION <input type="checkbox"/> FINAL SCHEDULE <input type="checkbox"/> INVENTORY		PAGE NO.	NO. OF PAGES	OMB No.: 9000-0075 Expires: 10/31/2006					
Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (MVA), Regulatory and Federal Assistance Publications Division, GSA, Washington, DC 20405.											
3. PRIME CONTRACT NO.		4. SUBCONTRACTOR/P.O. NO.		5. CONTRACT TYPE		6. TERM DOCKET NUMBER					
7. TOTAL LINE ITEMS		8. TOTAL ACQUISITION COST									
9a. CAGE CODE		9b. PRIME CONTRACTOR (Point of Contact)		10a. CAGE CODE		10b. SUBCONTRACTOR (Point of Contact)					
9c. STREET ADDRESS											
9d. CITY, STATE, AND ZIP CODE											
11a. LOCATION OF PROPERTY			11b. POINT OF CONTACT FOR PROPERTY								
12. PRODUCT COVERED BY CONTRACT/ORDER											
13. ITEM NO.	14. ITEM DESCRIPTION	15. GOVT. CONTRACTOR FURNISHED/ACQUIRED	16. DML CODE	17. PROPERTY CLASSIFICATION	18. GOVERNMENT PART OR DRAWING NUMBER AND REVISION NUMBER	19. CONDITION CODE	20. QUANTITY	21. UNIT OF MEASURE	22. COST		23. CONTRACTOR'S OFFER
									UNIT (a)	TOTAL (b)	
24a. SIGNATURE OF CONTRACTOR SUBMITTING SCHEDULE			24b. NAME OF CONTRACTOR SUBMITTING SCHEDULE			24c. TITLE		24d. DATE			

INSTRUCTIONS

The Contractor shall submit all schedules to the Plant Clearance Officer.

Manual submissions. Prepare a separate schedule for items in each property classification (block 17) and a separate schedule for scrap. Submit an original and 2 copies of each scrap schedule and continuation sheet (SF 1429). For other schedules, an original and 7 copies are required.

Electronic submissions. Group all items of the same property classification. Submit separate schedules for scrap.

General Instructions.

BLOCKS 1, 2 & 4 - Self-explanatory.

BLOCK 3 - PRIME CONTRACT NO. (For contract modifications and BOAs). If the property applies solely to one contract modification indicate the modification number after the contract number. For task orders and orders under basic ordering agreements, enter the contract number or BOA number followed by the order number under which the property is accountable.

BLOCK 5 - CONTRACT TYPE. Use one of the following codes:

- J - Fixed-Price
- O - Other
- S - Cost-Reimbursement
- Y - Time-and-Material
- Z - Labor-Hour
- 9 - Task Order Contracts and Orders under Basic Ordering Agreements (BOAs)

BLOCKS 6-8 - Self-explanatory.

BLOCKS 9a and 10a - CAGE CODE. Enter the Commercial and Government Entity code when applicable.

BLOCKS 9b-d, 10b-d, and 11a-13 - Self-explanatory.

BLOCK 14 - ITEM DESCRIPTION. Describe each item in sufficient detail to permit the Government to determine its appropriate disposition. Scrap may be described as a lot including metal content, estimated weight and estimated acquisition cost. For all other property, provide the information required by FAR Part 45.505. List the national stock number (NSN) first. For the following, also provide:

Special tooling and special test equipment. Identify each part number with which the item is used.

Computers, components thereof, peripheral and related equipment. The manufacturer's name, model and serial number, and date manufactured.

Work in process. The estimated percentage of completion.

Precious metals. The metal type and estimated weight.

Hazardous material or property contaminated with hazardous material. The type of hazardous material.

Metals in mill product form. The form, shape, treatments, hardness, temper, specification (commercial or Government), and dimensions (thickness, width, and length).

BLOCK 15 - GOVERNMENT FURNISHED/CONTRACTOR ACQUIRED. Per line item, enter one of the following:

- GF - Government furnished
- CA - Contractor acquired

BLOCK 16 - DML CODE. (Demilitarization code). If applicable, enter the code specified in DoD 4160.21-M-1.

BLOCK 17 - PROPERTY CLASSIFICATION. Use one of the following classifications for each line item:

- EQ - Equipment
- M - Material
- STE - Special test equipment
- ST - Special tooling
- APP - Agency peculiar property

In addition, when applicable, list one of the following sub classifications for each line item below the property classification:

- COM - Computers, peripherals, etc.
- AAE - Arms, ammunition and explosives
- PM - Precious metals
- HAZ - Hazardous materials
- ME - Metals in mill product form
- WIP - Work in process
- CL - Classified

BLOCK 18 - Self-explanatory.

BLOCK 19 - CONDITION CODE. Assign one of the following codes to each item:

Code 1. Property which is in new condition or unused condition and can be used immediately without modifications or repairs.

Code 4. Property which shows some wear, but can be used without significant repair.

Code 7. Property which is unusable in its current condition but can be economically repaired.

Code X. Property which has value in excess of its basic material content, but repair or rehabilitation is impractical and/or uneconomical.

Code S. Property has no value except for its basic material content.

BLOCKS 20-22 - Self-explanatory.

BLOCK 23 - CONTRACTOR'S OFFER. The Contractor's offer to purchase the item if it survives screening.

■ 25. Revise section 53.301-1429 to read as follows:

53.301-1429 Inventory Disposal Schedule—Continuation Sheet.

13. ITEM NO.		14. ITEM DESCRIPTION		15. GOVT FURNISHED/ CONTRACTOR ACQUIRED	16. DML CODE	17. PROPERTY CLASSIFICATION	18. GOVERNMENT PART OR DRAWING NUMBER AND REVISION NUMBER	19. CONDITION CODE	20. QUANTITY	21. UNIT OF MEASURE	22. COST		23. CONTRACTOR'S OFFER
											UNIT (a)	TOTAL (b)	
<p style="text-align: center;">INVENTORY DISPOSAL SCHEDULE - CONTINUATION SHEET</p> <p>Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (MVA), Regulatory and Federal Assistance Publications Division, GSA, Washington, DC 20405.</p>													

2. SCHEDULE REFERENCE NUMBER

PAGE NO.

NO. OF PAGES

OMB No.: 9000-0075
Expires: 10/31/2006

STANDARD FORM 1429 (REV. 5/2004)
Prescribed by GSA-FAR (48 CFR) 53.245(e) and 53.249(b)

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**53.301-1430 and 53.301-1431
[Removed]**

- 26. Remove sections 53.301-1430, Inventory Schedule C (Work-in-Process), and 53.301-1431, Inventory Schedule C—Continuation Sheet (Work-in-Process).

**53.301-1432 and 53.301-1433
[Removed]**

- 27. Remove sections 53.301-1432, Inventory Schedule D (Special Tooling and Special Test Equipment), and 53.301-1433, Inventory Schedule D—Continuation Sheet (Special Tooling and Special Test Equipment).

53.301-1434 [Removed]

- 28. Remove section 53.301-1434, Termination Inventory Schedule E.
- 29. Revise section 53.301-1436 to read as follows:

53.301-1436 Settlement Proposal (Total Cost Basis).

SETTLEMENT PROPOSAL (TOTAL COST BASIS)

OMB No.: 9000-0012
Expires: 06/30/2004

Public reporting burden for this collection of information is estimated to average 2.5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (MVA), Regulatory and Federal Assistance Publications Division, GSA, Washington, DC 20405.

FOR USE BY A FIXED-PRICE PRIME CONTRACTOR OR FIXED-PRICE SUBCONTRACTOR

THIS PROPOSAL APPLIES TO (Check one) <input type="checkbox"/> A PRIME CONTRACT WITH THE GOVERNMENT		<input type="checkbox"/> SUBCONTRACT OR PURCHASE ORDER		COMPANY	
SUBCONTRACT OR PURCHASE ORDER NO(S).		STREET ADDRESS			
CONTRACTOR WHO SENT NOTICE OF TERMINATION		CITY AND STATE (Include ZIP Code)			
NAME		NAME OF GOVERNMENT AGENCY			
ADDRESS (Include ZIP Code)		GOVERNMENT PRIME CONTRACT NO.		CONTRACTOR'S REFERENCE NO.	
If moneys payable under the contract have been assigned, give the following:		EFFECTIVE DATE OF TERMINATION			
NAME OF ASSIGNEE		PROPOSAL NO.		CHECK ONE	
ADDRESS (Include ZIP Code)				<input type="checkbox"/> INTERIM <input type="checkbox"/> FINAL	
SF 1439, SCHEDULE OF ACCOUNTING INFORMATION		<input type="checkbox"/> IS		<input type="checkbox"/> IS NOT ATTACHED (If not, explain below)	

SECTION I - STATUS OF CONTRACT OR ORDER AT EFFECTIVE DATE OF TERMINATION

PRODUCTS COVERED BY TERMINATED CONTRACT OR PURCHASE ORDER (a)		FINISHED		UNFINISHED OR NOT COMMENCED		TOTAL COVERED BY CONTRACT OR ORDER (g)	
		PREVIOUSLY SHIPPED AND INVOICED (b)	ON HAND		SUBSEQUENTLY COMPLETED AND INVOICED* (e)		NOT TO BE COMPLETED (f)
			PAYMENT TO BE RECEIVED THROUGH INVOICING (c)	PAYMENT NOT TO BE RECEIVED THROUGH INVOICING (d)			
	QUANTITY						
	\$						
	QUANTITY						
	\$						
	QUANTITY						
	\$						

SECTION II - PROPOSED SETTLEMENT

NO.	ITEM (a)	(Use Columns (b) and (c) only where previous proposal has been filed)		TOTAL PROPOSED TO DATE (d)	FOR USE OF CONTRACTING AGENCY ONLY (e)
		TOTAL PREVIOUSLY PROPOSED (b)	INCREASE OR DECREASE BY THIS PROPOSAL (c)		
1	DIRECT MATERIAL				
2	DIRECT LABOR				
3	INDIRECT FACTORY EXPENSE (from Schedule A)				
4	SPECIAL TOOLING AND SPECIAL TEST EQUIPMENT (SF 1428)				
5	OTHER COSTS (from Schedule B)				
6	GENERAL AND ADMINISTRATIVE EXPENSES (from Schedule C)				
7	TOTAL COSTS (Items 1 thru 6)				
8	PROFIT (Explain in Schedule D)				
9	TOTAL (Items 7 and 8)				
10	DEDUCT FINISHED PRODUCT INVOICED OR TO BE INVOICED*				
11	TOTAL (Item 9 less Item 10)				
12	SETTLEMENT EXPENSES (from Schedule E)				
13	TOTAL (Items 11 and 12)				
14	SETTLEMENTS WITH SUBCONTRACTORS (from Schedule F)				
15	GROSS PROPOSED SETTLEMENT (Items 13 thru 14)				
16	DISPOSAL AND OTHER CREDITS (from Schedule G)				
17	NET PROPOSED SETTLEMENT (Item 15 less 16)				
18	ADVANCE, PROGRESS & PARTIAL PAYMENTS (from Schedule H)				
19	NET PAYMENT REQUESTED (Item 17 less 18)				

* Column (e), Section I, should only be used in the event of a partial termination, in which the total cost reported in Section II should be accumulated to date of completion of the continued portion of the contract and the deduction for finished product (Item 10, Section II) should be the contract price of finished product in Column (b), (c), and (e), Section I.

NOTE: File inventory schedule (SF 1428) for allocable inventories on hand at date of termination (See 49.206).

(When the space provided for any information is insufficient, continue on a separate sheet.)

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STANDARD FORM 1436 (REV. 5/2004)
Prescribed by GSA - FAR (48 CFR) 53.249(a)(3)

SCHEDULE A - INDIRECT FACTORY EXPENSE (Item 3)

DETAIL OF EXPENSES	METHOD OF ALLOCATION	AMOUNT	FOR USE OF CONTRACTING AGENCY ONLY

NOTE: Individual items of small amounts may be grouped into a single entry in Schedules B, C, D, E, and G.

SCHEDULE B - OTHER COSTS (Item 5)

ITEM	EXPLANATION	AMOUNT	FOR USE OF CONTRACTING AGENCY ONLY

SCHEDULE C - GENERAL AND ADMINISTRATIVE EXPENSES (Item 6)

DETAIL OF EXPENSES	METHOD OF ALLOCATION	AMOUNT	FOR USE OF CONTRACTING AGENCY ONLY

SCHEDULE D - PROFIT (Item 8)

EXPLANATION	AMOUNT	FOR USE OF CONTRACTING AGENCY ONLY

(Where the space provided for any information is insufficient, continue on a separate sheet.)

SCHEDULE E - SETTLEMENT EXPENSES (Item 12)			
ITEM	EXPLANATION	AMOUNT	FOR USE OF CONTRACTING AGENCY ONLY

SCHEDULE F - SETTLEMENTS WITH IMMEDIATE SUBCONTRACTORS AND SUPPLIERS (Item 14)			
NAME AND ADDRESS OF SUBCONTRACTOR	BRIEF DESCRIPTION OF PRODUCT CANCELED	AMOUNT OF SETTLEMENT	FOR USE OF CONTRACTING AGENCY ONLY

SCHEDULE G - DISPOSAL AND OTHER CREDITS (Item 16)		
DESCRIPTION	AMOUNT	FOR USE OF CONTRACTING AGENCY ONLY

(If practicable, show separately amount of disposal credits applicable to acceptable finished product included on SF 1428.)

(Where the space provided for any information is insufficient, continue on a separate sheet.)

SCHEDULE H - ADVANCE, PROGRESS AND PARTIAL PAYMENTS (Item 19)			
DATE	TYPE OF PAYMENT	AMOUNT	FOR USE OF CONTRACTING AGENCY ONLY

(Where the space provided for any information is insufficient, continue on a separate sheet.)

CERTIFICATE

This is to certify that the undersigned, individually, and as an authorized representative of the Contractor, has examined this termination settlement proposal and that, to the best knowledge and belief of the undersigned:

(a) AS TO THE CONTRACTOR'S OWN CHARGES. The proposed settlement (exclusive of charges set forth in Item 14) and supporting schedules and explanations have been prepared from the books of account and records of the Contractor in accordance with recognized commercial accounting practices; they include only those charges allocable to the terminated portion of this contract; they have been prepared with knowledge that they will, or may, be used directly or indirectly as the basis of settlement of a termination settlement proposal or claim against an agency of the United States; and the charges as stated are fair and reasonable.

(b) AS TO THE SUBCONTRACTORS' CHARGES. (1) The Contractor has examined, or caused to be examined, to an extent it considered adequate in the circumstances, the termination settlement proposals of its immediate subcontractors (exclusive of proposals filed against these immediate subcontractors by their subcontractors); (2) The settlements on account of immediate subcontractors own charges are fair and reasonable, the charges are allocable to the terminated portion of this contract, and the settlements were negotiated in good faith and are not more favorable to its immediate subcontractors than those that the Contractor would make if reimbursement by the Government were not involved; (3) The Contractor has received from all its immediate subcontractors appropriate certificates with respect to their termination settlement proposals, which certificates are substantially in the form of this certificate; and (4) The Contractor has no information leading it to doubt (i) the reasonableness of the settlements with more remote subcontractors or (ii) that the charges for them are allocable to this contract. Upon receipt by the Contractor of amounts covering settlements with its immediate subcontractors, the Contractor will pay or credit them promptly with the amounts so received, to the extent that it has not previously done so. The term "subcontractors," as used above, includes suppliers.

NOTE: The Contractor shall, under conditions stated in FAR 15.403, be required to submit a Certificate of Current Cost or Pricing Data (see FAR 15.406-2 and 15.408 Table 15-2).

NAME OF CONTRACTOR	BY (Signature of authorized official)	
	TITLE	DATE
NAME OF SUPERVISORY ACCOUNTING OFFICIAL	TITLE	

■ 30. Revise section 53.301-1438 to read as follows:

53.301-1438 Settlement Proposal (Short Form).

SETTLEMENT PROPOSAL (SHORT FORM)	OMB No.: 9000-0012 Expires: 06/30/2004
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Public reporting burden for this collection of information is estimated to average 2.5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the FAR Secretariat (MVA), Regulatory and Federal Assistance Publications Division, GSA, Washington, DC 20405.

For Use by a Prime Contractor or Subcontractor in Settlement of a Fixed Price Terminated Contract When Total Charges Claimed Are Less Than \$10,000.

THIS PROPOSAL APPLIES TO (Check one) <input type="checkbox"/> A PRIME CONTRACT WITH THE GOVERNMENT <input type="checkbox"/> SUBCONTRACT OR PURCHASE ORDER SUBCONTRACT OR PURCHASE ORDER NO.(S)	COMPANY (Prime or Subcontractor) STREET ADDRESS CITY AND STATE (Include ZIP code) NAME OF GOVERNMENT AGENCY GOVERNMENT PRIME CONTRACT NO. CONTRACTOR'S REFERENCE NO. EFFECTIVE DATE OF TERMINATION
CONTRACTOR WHO SENT NOTICE OF TERMINATION NAME ADDRESS (Include ZIP Code)	
If moneys payable under the contract have been assigned, give the following: NAME OF ASSIGNEE ADDRESS (Include ZIP Code)	

SECTION I - STATUS OF CONTRACT OR ORDER AT EFFECTIVE DATE OF TERMINATION

PRODUCTS COVERED BY TERMINATED CONTRACT OR PURCHASE ORDER <small>(a)</small>	PREVIOUSLY SHIPPED AND INVOICED <small>(b)</small>	FINISHED ON HAND		UNFINISHED OR NOT COMMENCED		TOTAL COVERED BY CONTRACT OR ORDER <small>(g)</small>
		PAYMENT TO BE RECEIVED THROUGH INVOICING <small>(c)</small>	INCLUDED IN THIS PROPOSAL <small>(d)</small>	TO BE COMPLETED (Partial termination only) <small>(e)</small>	NOT TO BE COMPLETED <small>(f)</small>	
		QUANTITY	QUANTITY	QUANTITY	QUANTITY	

SECTION II - PROPOSED SETTLEMENT

NO.	ITEM <small>(Include only items allocable to the terminated portion of contract)</small>	AMOUNT OF CHARGE (\$)
1	CHARGE FOR ACCEPTABLE FINISHED PRODUCT NOT COVERED BY INVOICING (from SF 1428)	
2	CHARGE FOR WORK-IN-PROGRESS, RAW MATERIAL, ETC. ON HAND (from SF 1428)	
3	OTHER CHARGES INCLUDING PROFIT AND SETTLEMENT EXPENSES	
4	CHARGES FOR SETTLEMENT(S) WITH SUBCONTRACTORS	
5	GROSS PROPOSED SETTLEMENT (Sum of Items 1 thru 4)	
6	DISPOSAL AND OTHER CREDITS (from SF 1424, Item 27, Col. 3)	
7	NET PROPOSED SETTLEMENT (Item 5 less 6)	
8	ADVANCE, PROGRESS, AND PARTIAL PAYMENTS	
9	NET PAYMENT REQUESTED (Item 7 less 8)	

List your inventory on SF 1428 and attach a copy thereto. Retain for the applicable period specified in the prime contract all papers and records relating to this proposal for future examination.

GIVE A BRIEF EXPLANATION OF HOW YOU ARRIVED AT THE AMOUNTS SHOWN IN ITEMS 3, 4, 6, AND 7

I CERTIFY that the above proposed settlement includes only charges allocable to the terminated portion of the contract or purchase order, that the total charges (Item 5) and the disposal credits (Item 6) are fair and reasonable, and that this proposal has been prepared with knowledge that it will, or may, be used directly or indirectly as a basis for reimbursement under a settlement proposal(s) against agencies of the United States.	NAME OF YOUR COMPANY BY (Signature of authorized official) TITLE DATE
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(Where the space provided for any information is insufficient, continue on a separate sheet.)

INSTRUCTIONS

1. This settlement proposal should be submitted to the contracting officer, if you are a prime contractor, or to your customer, if you are a subcontractor. The term contract as used hereinafter includes a subcontract or a purchase order.

2. Proposals that would normally be included in a single settlement proposal, such as those based on a series of separate orders for the same item under one contract should be consolidated wherever possible, and must not be divided in such a way as to bring them below \$10,000.

3. You should review any aspects of your contract relating to termination and consult your customer or contracting officer for further information. Government regulations pertaining to the basis for determining a fair and reasonable termination settlement are contained in Part 49 of the Federal Acquisition Regulation. Your proposal for fair compensation should be prepared on the basis of the costs shown by your accounting records. Where your costs are not so shown, you may use any reasonable basis for estimating your costs which will provide for fair compensation for the preparations made and work done for the terminated portion of the contract, including a reasonable profit on such preparation and work.

4. Generally your settlement proposal may include under Items 2, 3, and 4, the following:

a. **COSTS** - Costs incurred which are rea-

sonably necessary and are properly allocable to the terminated portion of your contract under recognized commercial accounting practices, including direct and indirect manufacturing, selling and distribution, administrative, and other costs and expenses incurred.

b. **SETTLEMENT WITH SUBCONTRACTORS** - Reasonable settlements of proposals of subcontractors allocable to the terminated portion of the subcontract. Copies of such settlements will be attached hereto.

c. **SETTLEMENT EXPENSES** - Reasonable costs of protecting and preserving termination inventory in your possession and preparing your proposal.

d. **PROFIT** - A reasonable profit with respect to the preparations you have made and work you have actually done for the terminated portion of your contract. No profit should be included for work which has not been done, nor shall profit be included for settlement expenses, or for settlement with subcontractors.

5. If you use this form, your total charges being proposed (line 5), must be less than \$10,000. The Government has the right to examine your books and records relative to this proposal, and if you are a subcontractor, your customer must be satisfied with your proposal.

STANDARD FORM 1438 (REV. 5/2004) BACK

DEPARTMENT OF DEFENSE**GENERAL SERVICES
ADMINISTRATION****NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION****48 CFR Parts 2 and 31**

[FAC 2001-22; FAR Case 2001-034; Item II]

RIN 9000-AJ60

**Federal Acquisition Regulation;
General Provisions of the Cost
Principles**

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

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to revise certain general provisions of the cost principles pertaining to Composition of total cost; Determining allowability; Direct costs; and Indirect costs. The rule revises the cost principles by improving clarity and structure, and removing unnecessary and duplicative language. The revisions are intended to revise Contract Cost Principles and Procedures in light of the evolution of Generally Accepted Accounting Principles (GAAP), the advent of Acquisition Reform, and experience gained from implementation of FAR Contract Cost Principles and Procedures. The final rule also adds the definition of "direct cost" and revises the definition of "indirect cost" to be consistent with the terminology used in the cost accounting standards (CAS).

DATES: *Effective Date:* May 5, 2004.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat at (202) 501-4755 for information pertaining to status or publication schedules. For clarification of content, contact Mr. Edward Loeb, Policy Advisor, at (202) 501-0650. Please cite FAC 2001-22, FAR case 2001-034.

SUPPLEMENTARY INFORMATION:**A. Background**

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 68 FR 5774, February 4, 2003, with request for comments. Four respondents submitted comments; a discussion of the comments is 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 proposed rule and final rule are discussed in paragraphs 4, 5, 6, 7, and 8 below.

Public Comments

FAR 2.101—Definition of "Indirect Cost"—Reference to CAS

1. *Comment:* A respondent recommends that if the FAR is going to include CAS definitions, these definitions should be referenced rather than restated to eliminate redundancy and any inadvertent differences of interpretation when CAS is not directly quoted.

Councils' Response: Nonconcur. The Councils believe it is better to include the definitions in the FAR rather than include a reference to another regulation to which a user may not have easy access. This is particularly important in this instance, since the term "indirect cost" is used in various parts of the FAR.

FAR 31 Cost Principles—Incorporating CAS Provisions

2. *Comment:* A respondent recommends that FAR 31 make CAS standards applicable to FAR contracts, and then exclude certain standards and/or certain classes of contracts from FAR Part 31 application.

Councils' Response: Nonconcur. The Councils believe it is not desirable to incorporate all of the CAS standards and then exclude certain ones. The Councils believe the current approach in FAR Part 31 that adopts certain standards in specific sections of the FAR provides easier application than the suggested revision.

3. *Comment:* A respondent asserts that the proposed rule incorporates substantial CAS provisions into the FAR cost principles. The respondent states that, by law, the CAS Board governs the measurement, assignment, and allocation of cost to cost objectives, and that FAR cost principles should be limited to matters of allowability. The respondent further states that if the FAR includes CAS concepts, the inclusion should be done using direct quotes or references.

Councils' Response: Nonconcur. The Councils considered this proposal but believe that eliminating all CAS from FAR would create significant problems.

It is the responsibility of the Councils, not the CAS Board, to promulgate rules for the measurement, assignment, and allocation of costs for non-CAS covered contracts. The CAS Board does not have jurisdiction over non-CAS covered contracts. For some costs, particularly

deferred compensation including pension costs (CAS 412, 413, and 415), cost of money (CAS 414/417), and self-insurance (CAS 416), the Councils have chosen to use the same requirements for non-CAS covered contracts as the CAS Board has chosen to use for CAS-covered contracts. Furthermore, the Councils have chosen to use some of the same definitions and concepts as used in CAS, including the definitions of direct and indirect costs. To eliminate all CAS from the FAR would require removal of these key FAR Part 31 provisions.

As for the incorporation of the CAS provisions into the FAR, the respondent did not specify any particular language that it believes has been paraphrased. Nevertheless, the Councils reviewed the proposed rule to see if any such paraphrasing existed, and found that the proposed rule does not paraphrase any CAS requirements.

FAR 31.106-2 and 31.203—Special Allocations

4. *Comment:* A respondent recommends that the special allocation language include an illustration similar to those that are included in the CAS. The respondent notes that CAS 410.60(g) makes a point that contract costs that are outside the contractor's normal productive activity should be excluded from the G&A base. The respondent also recommends that the language at 31.106-2(b)(3) be revised to read "Exclude the related allocation base data for the facilities contract from the base used to allocate the pool."

Three other respondents recommend that FAR 31.106-2 be eliminated in its entirety. One respondent asserts that this topic is adequately addressed in CAS. If this suggestion is not adopted, the three respondents recommend that the proposed language not be promulgated and the existing language remain unchanged. Two respondents assert that the proposed rule adds language prescribing the use of certain accounting methods for special allocations for "facilities contracts" that will lead to disagreements as to accounting decisions. This includes requiring the contracting officer to enter into an advance agreement. To correct this, they recommend replacing "shall" with "may" at 31.106-2(b).

Three respondents contend that the proposed rule "flips" the responsibility of accounting decisions from the contractor to the contracting officer by stating "The Cognizant Federal Agency

is responsible for determining whether the conditions necessitating a special allocation exist and negotiating the terms of an advance agreement." Two respondents assert that this language takes the accounting decisions out of the hands of contractors, which is clearly against public policy. One respondent further asserts that it is the contractor's responsibility to determine if the conditions necessitating a special allocation exist. Another respondent asks what is the remedy if a contractor does not agree to a special allocation. One respondent recommends that the language be removed and replaced with "Negotiate an advance agreement with the cognizant Federal agency in accordance with 31.109 criteria".

Two respondents note that the proposed language at 31.106-2(d) and (e) provides examples that are not all inclusive and could be misleading. One respondent believes that this will give rise to disputes because of differences in interpretation between the CAS and the FAR. The other respondent believes the conceptual framework for this language is already covered by 31.109 and thus it is not needed in this paragraph.

Councils' Response: Concur in part. After reviewing the public comments and the background underlying this revision, the Councils believe it is preferable to not include the concept of special allocations in FAR Part 31. The Councils believe the current language is adequate and necessary to address this issue, since that language provides the contracting parties with the necessary flexibility to address those unique circumstances when a particular contract requires special treatment. As a result, the Councils agreed that the proposed rule for FAR 31.106-2 not be published (the only proposed change to this provision was for the special allocation). The Councils also agreed to delete the proposed language on special allocations at FAR 31.203(f), and retain the current language at FAR 31.203(f) (renumbered as paragraph (h)).

FAR 31.201-1(a)—Standard Cost

5. *Comment:* Two respondents assert that the language at 31.201-1(a) on "standard cost" is duplicated at the beginning and end of this paragraph. They further assert that standard costs are fully defined and dealt with in CAS 407, Use of Standard Costs for Direct Material and Direct Labor, and there is no need to paraphrase CAS language or to eliminate the reference to the CAS requirements.

Councils' Response: Concur in part. The Councils agree that the phrase "including standard costs properly adjusted for applicable variances" is

repeated at the beginning and end of the paragraph at FAR 31.201-1(a), and, therefore, they agreed to delete it from the end of the paragraph. However, the Councils do not believe the paragraph should completely delete the reference to standard costs. The reference is intended to assure that standard costs are included as part of the composition of total costs, provided they are properly adjusted to reflect applicable variances. Without this language, the cost principles could be misinterpreted as excluding standard costs from the determination of total cost.

FAR 31.201-2(a)—Determining Allowability

6. *Comment:* Three respondents state that the proposed language constitutes a major change in determining allowability because it revises the language on determining allowability from "factors to be considered" to "A cost is allowable only when all of the following requirements are met." Two respondents recommend that this language be deleted.

Two respondents assert that the proposed language is overly prescriptive, limits contracting officer discretion, and violates the guiding principles at FAR 1.102. One respondent asserts that such language does not "encourage innovation, and local adaptation where uniformity is not essential," nor does it provide "the authority to the maximum extent practicable and consistent with the law, to determine the application of rules, regulations, and policies on a specific contract." The respondent also believes this language is contrary to FAR 1.102-4(e), which states "If a policy or procedure, or a particular strategy or practice, is in the best interest of the Government and is not specifically addressed in the FAR, nor prohibited by law (statutes or case law), Executive order or other regulation, Government members of the Team should not assume it is prohibited. Rather, absence of direction should be interpreted as permitting the Team to innovate and use sound business judgment that is otherwise consistent with the law and within the limits of their authority. Contracting Officers should take the lead in encouraging business process innovations and ensuring that business decisions are sound."

One respondent asserts that the proposed language would allow Government auditors to disregard CAS allocability requirements in seeking to prove that the Government was charged costs that were deemed unallocable on Government contracts. If this language is retained, the respondent recommends

that the allocability requirements in subparagraphs (2) and (3) be deleted. The respondent also notes that all five criteria are not necessarily present in all cases (such as when there are no specific reimbursement requirements in the terms of the contract) and thus the language is not appropriate.

Councils' Response: Nonconcur. The Councils believe the proposed language is consistent with established case law, *i.e.*, a cost must meet all five factors to be allowable. In *Celesco Industries* (ASBCA Case Number 22402, 80-1 BCA, 14721, dated 1/31/80), the court stated:

"Of course, appellant's methods of allocation of indirect costs are *required*, pursuant to DAR 15-201.2, to be in accord with the generally accepted accounting principles." (Emphasis added.)

In this case, the ASBCA clearly stated that application of Generally Accepted Accounting Principles is required under the cost principle (DAR 15-201.2 is the predecessor to the current 31.201-2 and included the same language).

The argument that these are just "considerations" also fails when viewed in light of the "factors" listed at FAR 31.201-2. Included in this list are the Cost Accounting Standards (CAS) and the terms of the contract. These are not items that can simply be "considered" but not necessarily followed. The CAS, when applicable to a particular contract, is a statutory requirement that cannot be disregarded at the discretion of the contracting parties. In addition, the terms of the contract cannot just be considered; they must be adhered to. Furthermore, certain parts of FAR 31 implement statutory provisions that preclude reimbursement of certain costs, and as such, cannot be subjectively applied.

It is also evident that the promulgators have, for many years, intended for these items to be requirements rather than just considerations. In particular, DFARS 2.402 states that the Director for Defense Procurement and Acquisition Policy is the approval authority for any individual or class deviation to FAR subpart 31.2. If the intention of 31.201-2 was to only consider the factors listed, the provision at DFARS 2.402 would not be necessary. The contracting officer would consider these factors (which includes the requirements of FAR subpart 31.2), and apply them at his/her discretion. Such an application would circumvent the requirement at DFARS 2.402. The specific approval authority for deviations at DFARS 2.402 exists because these are intended to be requirements, not just considerations.

As to FAR 1.102, this provision provides direction to the contracting officer and other acquisition team members to use when the regulations do not address a particular situation. It does not direct that the regulations should not provide for specific allowability criteria.

In those rare situations where a particular cost does not meet the requirements of the five factors but is the type that the contracting activity wants to allow, a deviation should be requested in accordance with the FAR requirements.

As for the argument that the five requirements may not always be present and therefore this provision is not appropriate, the Councils disagree. However, the Councils review of this comment disclosed that the proposed wording might have lead to some confusion. As a result, the proposed language at 31.201-2(a) has been revised.

FAR 31.203—Indirect Costs

7. Comment: A respondent asserts that the proposed language includes direct quotes from CAS 402, Consistency in Allocating Costs Incurred for the Same Purpose, and other CAS language that should be eliminated in the spirit of DFARS transformation. The respondent states that a simple word count shows the word "allocate" in various forms twenty times. The respondent also states that cost allocation is the responsibility of the CAS Board, and sees no valid reason to replicate CAS in FAR.

Councils' Response: Concur in part. The proposed language is intended to apply to contractors that are not subject to the CAS allocation standards, i.e., full CAS coverage. For contracts not subject to full CAS-coverage, the Councils believe that some basic requirements are needed for determining the allocation of indirect costs to Government cost-based contracts; the absence of such requirements would result in significant disagreements and potential misallocations of costs to cost-based Government contracts. Accordingly, to provide clarity, the Councils added paragraph (a) to FAR 31.203.

FAR 31.203(b)—Final Cost Objectives

8. Comment: A respondent recommends that FAR 31.203(a) (renumbered as paragraph (b)) be revised to add the words "two or more" before "final cost objectives."

Councils' Response: Concur. The Councils believe the revision will provide for increased consistency with the definition of indirect costs at 2.101.

FAR 31.203(d)—Revising FAR To Reflect Court Decisions

9. Comment: A respondent asserts that while the FAR revises the language at 31.203(c) (renumbered as paragraph (d)) to reflect the outcome in a recent court case where the Government position was sustained, there is no FAR revision to reflect the outcome of another court case on changes in cost accounting practice where the Government position was not sustained. The respondent believes the Councils should treat both situations alike and not attempt to sway contracting officers in one direction or another by selectively adding the outcome of certain court cases.

Councils' Response: Nonconcur. The language at 31.203(d) is not being modified to reflect the outcome of any court case. This paragraph revises the term "distributing" to "allocating," to be consistent with the terminology used throughout FAR Part 31. The Councils also note that the respondent's referenced case on changes in cost accounting practice does not address any FAR requirements, i.e., the provisions at issue were solely in the CAS.

FAR 31.203(g)—Base Period for Allocating Indirect Costs

10. Comment: A respondent recommends that CAS 406, Cost Accounting Period, be used in lieu of FAR 31.203(g). If FAR 31.203(g) is not replaced by CAS 406, the respondent recommends that the language at FAR 31.203(g) replace the term "base period" with "cost accounting periods", to be consistent with the language in CAS 406.

Councils' Response: Nonconcur. The Councils believe that the detailed requirements in CAS 406 are not necessary for non-CAS covered contracts. As for the "base period," paragraph (g) defines the base period as "the cost accounting period during which * * *" Since the definition of a base period includes the cost accounting period, the Councils do not believe it is necessary to change the term "base period" to "cost accounting period."

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

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 104-13) 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 Parts 2 and 31

Government procurement.

Dated: March 26, 2004.

Laura Auletta,

Director, Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 2 and 31 as set forth below:

1. The authority citation for 48 CFR parts 2 and 31 is revised to read as follows:

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

PART 2—DEFINITIONS OF WORDS AND TERMS

2. Amend section 2.101 in paragraph (b) by adding, in alphabetical order, the definition "Direct cost" and by revising the definition "Indirect cost" to read as follows:

2.101 Definitions.

* * * * *
(b) * * *
* * * * *

Direct cost means any cost that is identified specifically with a particular final cost objective. Direct costs are not limited to items that are incorporated in the end product as material or labor. Costs identified specifically with a contract are direct costs of that contract. All costs identified specifically with other final cost objectives of the contractor are direct costs of those cost objectives.

* * * * *

Indirect cost means any cost not directly identified with a single final cost objective, but identified with two or more final cost objectives or with at least one intermediate cost objective.

* * * * *

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES**31.109 [Amended]**

■ 3. Amend section 31.109(h)(13) by removing “31.203(f)” and adding “31.203(h)” in its place.

31.201–1 [Amended]

■ 4. Revise section 31.201–1 to read as follows:

31.201–1 Composition of total cost.

(a) The total cost, including standard costs properly adjusted for applicable variances, of a contract is the sum of the direct and indirect costs allocable to the contract, incurred or to be incurred, plus any allocable cost of money pursuant to 31.205–10, less any allocable credits. In ascertaining what constitutes a cost, any generally accepted method of determining or estimating costs that is equitable and is consistently applied may be used.

(b) While the total cost of a contract includes all costs properly allocable to the contract, the allowable costs to the Government are limited to those allocable costs which are allowable pursuant to Part 31 and applicable agency supplements.

■ 5. Amend section 31.201–2 by revising paragraphs (a), (c), and (d) to read as follows:

31.201–2 Determining allowability.

(a) A cost is allowable only when the cost complies with all of the following requirements:

(1) Reasonableness.

(2) Allocability.

(3) Standards promulgated by the CAS Board, if applicable, otherwise, generally accepted accounting principles and practices appropriate to the circumstances.

(4) Terms of the contract.

(5) Any limitations set forth in this subpart.

* * * * *

(c) When contractor accounting practices are inconsistent with this subpart 31.2, costs resulting from such inconsistent practices in excess of the amount that would have resulted from using practices consistent with this subpart are unallowable.

(d) A contractor is responsible for accounting for costs appropriately and for maintaining records, including supporting documentation, adequate to demonstrate that costs claimed have been incurred, are allocable to the contract, and comply with applicable cost principles in this subpart and agency supplements. The contracting officer may disallow all or part of a

claimed cost that is inadequately supported.

■ 6. Revise section 31.202 to read as follows:

31.202 Direct costs.

(a) No final cost objective shall have allocated to it as a direct cost any cost, if other costs incurred for the same purpose in like circumstances have been included in any indirect cost pool to be allocated to that or any other final cost objective. Direct costs of the contract shall be charged directly to the contract. All costs specifically identified with other final cost objectives of the contractor are direct costs of those cost objectives and are not to be charged to the contract directly or indirectly.

(b) For reasons of practicality, the contractor may treat any direct cost of a minor dollar amount as an indirect cost if the accounting treatment—

(1) Is consistently applied to all final cost objectives; and

(2) Produces substantially the same results as treating the cost as a direct cost.

■ 7. Revise section 31.203 to read as follows:

31.203 Indirect costs.

(a) For contracts subject to full CAS coverage, allocation of indirect costs shall be based on the applicable provisions. For all other contracts, the applicable CAS provisions in paragraphs (b) through (h) of this section apply.

(b) After direct costs have been determined and charged directly to the contract or other work, indirect costs are those remaining to be allocated to intermediate or two or more final cost objectives. No final cost objective shall have allocated to it as an indirect cost any cost, if other costs incurred for the same purpose, in like circumstances, have been included as a direct cost of that or any other final cost objective.

(c) The contractor shall accumulate indirect costs by logical cost groupings with due consideration of the reasons for incurring such costs. The contractor shall determine each grouping so as to permit use of an allocation base that is common to all cost objectives to which the grouping is to be allocated. The base selected shall allocate the grouping on the basis of the benefits accruing to intermediate and final cost objectives. When substantially the same results can be achieved through less precise methods, the number and composition of cost groupings should be governed by practical considerations and should not unduly complicate the allocation.

(d) Once an appropriate base for allocating indirect costs has been

accepted, the contractor shall not fragment the base by removing individual elements. All items properly includable in an indirect cost base shall bear a pro rata share of indirect costs irrespective of their acceptance as Government contract costs. For example, when a cost input base is used for the allocation of G&A costs, the contractor shall include in the base all items that would properly be part of the cost input base, whether allowable or unallowable, and these items shall bear their pro rata share of G&A costs.

(e) The method of allocating indirect costs may require revision when there is a significant change in the nature of the business, the extent of subcontracting, fixed-asset improvement programs, inventories, the volume of sales and production, manufacturing processes, the contractor's products, or other relevant circumstances.

(f) Separate cost groupings for costs allocable to offsite locations may be necessary to permit equitable distribution of costs on the basis of the benefits accruing to the several cost objectives.

(g) A base period for allocating indirect costs is the cost accounting period during which such costs are incurred and accumulated for allocation to work performed in that period.

(1) For contracts subject to full or modified CAS coverage, the contractor shall follow the criteria and guidance in 48 CFR 9904.406 for selecting the cost accounting periods to be used in allocating indirect costs.

(2) For contracts other than those subject to paragraph (g)(1) of this section, the base period for allocating indirect costs shall be the contractor's fiscal year used for financial reporting purposes in accordance with generally accepted accounting principles. The fiscal year will normally be 12 months, but a different period may be appropriate (e.g., when a change in fiscal year occurs due to a business combination or other circumstances).

(h) Special care should be exercised in applying the principles of paragraphs (c), (d), and (e) of this section when Government-owned contractor-operated (GOCO) plants are involved. The distribution of corporate, division or branch office G&A expenses to such plants operating with little or no dependence on corporate administrative activities may require more precise cost groupings, detailed accounts screening, and carefully developed distribution bases.

31.205–42 [Amended]

■ 8. Amend section 31.205–42 in the second sentence of paragraph (h) by

removing "31.203(c)" and adding "31.203(d)" in its place.

[FR Doc. 04-7406 Filed 4-2-04; 8:45 am]

BILLING CODE 6820-EP-P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 4

[FAC 2001-22; FAR Case 2002-025; Item III]

RIN 9000-AJ70

Federal Acquisition Regulation; Unique Contract and Order Identifier Numbers

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 convert the interim rule published at 68 FR 56679, October 1, 2003, to a final rule without change. The final rule requires that Federal agencies assign a unique identifier for every contract, purchase order, BOA, Basic Agreement, and BPA reported to the Federal Procurement Data System (FPDS).

DATES: *Effective Date:* April 5, 2004.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat at (202) 501-4755 for information pertaining to status or publication schedules. For clarification of content, contact Mr. Gerald Zaffos, Procurement Analyst, at (202) 208-6091. Please cite FAC 2001-22, FAR case 2002-025.

SUPPLEMENTARY INFORMATION:

A. Background

DoD, GSA, and NASA published an interim rule implementing this requirement in the *Federal Register* at 68 FR 56679, October 1, 2003. The interim rule required agencies to be in compliance by October 1, 2003. The 30-day public comment period for the interim rule ended October 31, 2003. No comments were received in response to the interim rule.

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, 5 U.S.C. 601, *et seq.*, does not apply because the rule applies to the internal process of Federal agencies. An Initial Regulatory Flexibility Analysis has, therefore, not been prepared.

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 4

Government procurement.

Dated: March 26, 2004.

Laura Auletta,

Director, Acquisition Policy Division.

Interim Rule Adopted as Final Without Change

■ Accordingly, DoD, GSA, and NASA adopt the interim rule amending 48 CFR part 4, which was published in the *Federal Register* at 68 FR 56679, October 1, 2003, as a final rule without change.

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

[FR Doc. 04-7407 Filed 4-2-04; 8:45 am]

BILLING CODE 6820-EP-P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 15

[FAC 2001-22; FAR Case 2002-027; Item IV]

RIN 9000-AJ66

Federal Acquisition Regulation; Unsolicited Proposals

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 implement Section 834 of the Homeland Security Act of 2002 (Public Law 107-296). Section 834 adds new considerations concerning the submission, receipt, evaluation, and acceptance or rejection of unsolicited proposals.

DATES: *Effective Date:* May 5, 2004.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat at (202) 501-4755 for information pertaining to status or publication schedules. For clarification of content, contact Ms. Julia Wise, Procurement Analyst, at (202) 208-1168. Please cite FAC 2001-22, FAR case 2002-027.

SUPPLEMENTARY INFORMATION:

A. Background

This rule amends the FAR to implement section 834 of the Homeland Security Act of 2002 (Pub. L. 107-296). Section 834 adds new considerations concerning the submission, receipt, evaluation, and acceptance or rejection of unsolicited proposals. The rule will require that a valid unsolicited proposal not address a previously published agency requirement. It also requires that, before initiating a comprehensive evaluation, the agency must determine that the proposal contains sufficient cost-related or price-related information for evaluation, and that it has overall scientific, technical, or socioeconomic merit.

DOD, GSA, and NASA published a proposed rule in the *Federal Register* at 68 FR 33330, June 3, 2003. A comment was received from one respondent. The Councils considered the comment before agreeing to publish the proposed rule as final. A summary of the comment and the disposition follows:

Comment: The proposed language in FAR 15.606-1(a)(4), Receipt and initial review, should be revised to more closely mirror the wording in Section 834 as follows: "Contains sufficient technical and cost information including cost-related or price related factors for evaluation."

Response: The Councils do not concur. Proposals do not typically include cost-related or price-related factors. Such factors are developed by agencies in competitive acquisitions prior to soliciting proposals and are used to assess the offeror's proposal and the offeror's ability to perform the prospective contract successfully. This allows all proposals to be evaluated for award based on the identical factors. Inserting a requirement for proposals to contain factors would likely create confusion between the competitive

selection process and the unsolicited proposal process. The addition of the phrase "and cost-related or price-related information" instead of "factors" more clearly addresses the requirements of statute and is consistent with established procedures for initial review of unsolicited proposals.

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, while we have made changes in accordance with plain language guidelines, we have not substantively changed procedures for award and administration of contracts.

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 15

Government procurement.

Dated: March 26, 2004.

Laura Auletta,

Director, Acquisition Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR part 15 as set forth below:

PART 15—CONTRACTING BY NEGOTIATION

■ 1. The authority citation for 48 CFR part 15 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 15.603 by removing "and" from the end of paragraph (c)(4); removing the period from the end of paragraph (c)(5) and adding "; and" in its place; and adding a new paragraph (c)(6) to read as follows:

15.603 General.

* * * * *

(c) * * *

(6) Not address a previously published agency requirement.

* * * * *

■ 3. In section 15.606–1, amend paragraph (a) by—

■ a. Revising paragraph (a)(4);

■ b. Redesignating paragraphs (a)(5) and (a)(6) as (a)(6) and (a)(7), respectively; and

■ c. Adding a new paragraph (a)(5). The revised and added text reads as follows:

15.606–1 Receipt and initial review.

(a) * * *

(4) Contains sufficient technical information and cost-related or price-related information for evaluation;

(5) Has overall scientific, technical, or socioeconomic merit;

* * * * *

[FR Doc. 04–7408 Filed 4–2–04; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 29

[FAC 2001–22; FAR Case 2003–020; Item V]

RIN 9000–AJ89

Federal Acquisition Regulation; New Mexico Tax—United States Missile Defense Agency

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 incorporate the Missile Defense Agency (MDA), as a participating agency within the terms and conditions stipulated in the FAR.

DATES: *Effective Date:* April 5, 2004.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Mr. Edward Loeb, Policy Advisor, at (202) 501–0650. Please cite FAC 2001–22, FAR case 2003–020.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends FAR 29.401–4(c), to include the Missile Defense Agency in the list of agencies that have entered into an agreement with the State of New Mexico to eliminate the double taxation of Government cost-reimbursement contracts when contractors and their subcontractors purchase tangible personal property to be used in the performance of services in the State of New Mexico and for which title to such property will subsequently pass to the United States upon delivery of the property to the contractor and its subcontractor by the vendor.

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 Law 98–577, and publication for public comments is not required. However, the Councils will consider comments from small entities concerning the affected FAR Part 29 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 2001–22, FAR case 2003–020), 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 29

Government procurement.

Dated: March 26, 2004.

Laura Auletta,

Director, Acquisition Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR part 29 as set forth below:

PART 29—TAXES

■ 1. The authority citation for 48 CFR part 29 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).

29.401-4 [Amended]

- 2. Amend section 29.401-4 in the list following paragraph (c)(1) by—
- a. Removing “United States Defense Special Weapons Agency” and adding “United States Defense Threat Reduction Agency” in its place;
- b. Removing “and” after “United States General Services Administration;”; and
- c. Adding, in alphabetical order, “United States Missile Defense Agency; and”.

[FR Doc. 04-7409 Filed 4-2-04; 8:45 am]
BILLING CODE 6820-EP-P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 52

[FAC 2001-22; Item VI]

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:* April 5, 2004.

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 2001-22, Technical Amendments.

List of Subjects in 48 CFR Part 52

Government procurement.

Dated: March 26, 2004.

Laura Auletta,

Director, Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR part 52 as set forth below:

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

1. The authority citation for 48 CFR part 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).

52.212-5 [Amended]

2. Amend section 52.212-5 by revising the date of the clause to read “(Apr 2004)”; and in paragraph (b)(24) of the clause by removing “(Oct 2003)” and adding “(Dec 2003)” in its place.

52.213-4 [Amended]

3. Amend section 52.213-4 by revising the date of the clause to read “(Apr 2004)”; and in paragraph (a)(1)(iv) of the clause by removing “(Oct 2003)” and adding “(Dec 2003)” in its place.

[FR Doc. 04-7410 Filed 4-2-04; 8:45 am]

BILLING CODE 6820-EP-P

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) 2001-22 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 2001-22 which precedes this document. These documents are also available via the Internet at <http://www.arnet.gov/far>.

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

LIST OF RULES IN FAC 2001-22

Item	Subject	FAR case	Analyst
I*	Government Property Disposal	1995-013	Parnell.
II	General Provisions of the Cost Principles	2001-034	Loeb.
III	Unique Contract and Order Identifier Numbers	2002-025	Zaffos.
IV	Unsolicited Proposals	2002-027	Wise.
V	New Mexico Tax—United States Missile Defense Agency	2003-020	Loeb.
VI	Technical Amendments.		

Item I—Government Property Disposal (FAR Case 1995-013)

This final rule amends FAR Parts 1, 2, 8, 45, 49, 52, and 53 to simplify procedures, reduce recordkeeping, and eliminate requirements related to the disposition of Government property in the possession of contractors.

Item II—General Provisions of the Cost Principles (FAR Case 2001-034)

This final rule amends the FAR to revise certain general provisions of the cost principles contained at FAR 31.201-1, Composition of total cost; FAR 31.201-2, Determining allowability; FAR 31.202, Direct costs; and FAR 31.203, Indirect costs. The rule revises the cost principles by improving clarity and structure, and removing

unnecessary and duplicative language. The final rule also adds the definition of “direct cost” and revises the definition of “indirect cost” at FAR 2.101, Definitions, to be consistent with the terminology used in the cost accounting standards (CAS). The case was initiated as a result of comments and recommendations received from industry and Government representatives during a series of public

meetings. This rule is of particular interest to contractors and contracting officers who use cost analysis to price contracts and modifications, and who determine or negotiate reasonable costs in accordance with a clause of a contract, *e.g.*, price revision of fixed-price incentive contracts, terminated contracts, or indirect cost rates.

Item III—Unique Contract and Order Identifier Numbers (FAR Case 2002–025)

The interim rule published in the **Federal Register** at 68 FR 56679, October 1, 2003, is converted to a final rule, without change, to require each reporting agency to assign a unique procurement instrument identifier (PIID) for every contract, purchase order, BOA, Basic Agreement, and BPA reported to the Federal Procurement Data System; and to have in place a process that will ensure that each PIID reported to FPDS is unique, Governmentwide, and will remain so for

at least 20 years from the date of contract award.

Item IV—Unsolicited Proposals (FAR Case 2002–027)

This final rule amends the FAR to implement section 834 of the Homeland Security Act of 2002 (Pub. L. 107–296). Section 834 adds new considerations concerning the submission, receipt, evaluation, and acceptance or rejection of unsolicited proposals. The rule will require that a valid unsolicited proposal not address a previously published agency requirement. It also requires that, before initiating a comprehensive evaluation, the agency must determine that the proposal contains sufficient cost related or price related information for evaluation, and that it has overall scientific, technical, or socioeconomic merit.

Item V—New Mexico Tax—United States Missile Defense Agency (FAR Case 2003–020)

This final rule amends FAR 29.401–4(c) to incorporate the Defense Missile

Agency as a participating agency within the terms and conditions stipulated in FAR 29.401–4, New Mexico Gross Receipts and Compensating Tax. This provision aims to eliminate the double taxation of Government cost reimbursement contracts when contractors and their subcontractors purchase tangible personal property to be used in performing services in the State of New Mexico and for which such property will pass to the United States.

Item VI—Technical Amendments

This amendment makes editorial changes at FAR 52.212–5(b)(24) and 52.213–4(a)(1)(iv).

Dated: March 26, 2004.

Laura Auletta,

Director, Acquisition Policy Division.

[FR Doc. 04–7411 Filed 4–2–04; 8:45 am]

BILLING CODE 6820–EP–P