

activities are house publications, health clinics, wellness/fitness centers, employee counseling services, and food and dormitory services, which include operating or furnishing facilities for cafeterias, dining rooms, canteens, lunch wagons, vending machines, living accommodations, or similar types of services for the contractor's employees at or near the contractor's facilities.

(b) Costs of gifts are unallowable. (Gifts do not include awards for performance made pursuant to 31.205-6(f) or awards made in recognition of employee achievements pursuant to an established contractor plan or policy.)

(c) Costs of recreation are unallowable, except for the costs of employees' participation in company sponsored sports teams or employee organizations designed to improve company loyalty, team work, or physical fitness.

(d) Losses from operating food and dormitory services may be included as costs only if the contractor's objective is to operate such services on a break-even basis. Losses sustained because food services or lodging accommodations are furnished without charge or at prices or rates which obviously would not be conducive to the accomplishment of the above objective are not allowable. A loss may be allowed, however, to the extent that the contractor can demonstrate that unusual circumstances exist (*e.g.*, where the contractor must provide food or dormitory services at remote locations where adequate commercial facilities are not reasonably available; or where charged but unproductive labor costs would be excessive but for the services provided or where cessation or reduction of food or dormitory operations will not otherwise yield net cost savings) such that even with efficient management, operating the services on a break-even basis would require charging inordinately high prices, or prices or rates higher than those charged by commercial establishments offering the same services in the same geographical areas. Costs of food and dormitory services shall include an allocable share of indirect expenses pertaining to these activities.

(e) When the contractor has an arrangement authorizing an employee association to provide or operate a service, such as vending machines in the contractor's plant, and retain the profits, such profits shall be treated in the same manner as if the contractor were providing the service (but see paragraph (f) of this subsection).

(f) Contributions by the contractor to an employee organization, including funds from vending machine receipts or

similar sources, may be included as costs incurred under paragraph (a) of this subsection only to the extent that the contractor demonstrates that an equivalent amount of the costs incurred by the employee organization would be allowable if directly incurred by the contractor.

3. Section 31.205-14 is revised to read as follows:

31.205-14 Entertainment costs.

Costs of amusement, diversions, social activities, and any directly associated costs such as tickets to shows or sports events, meals, lodging, rentals, transportation, and gratuities are unallowable. Costs made specifically unallowable under this cost principle are not allowable under any other cost principle. Costs of membership in social, dining, or country clubs or other organizations having the same purposes are also unallowable, regardless of whether the cost is reported as taxable income to the employees.

[FR Doc. 95-19862 Filed 8-15-95; 8:45 am]

BILLING CODE 6820-EP-M

48 CFR Parts 42 and 52

[FAC 90-31; FAR Case 94-752; Item VI]

RIN 9000-AG29

Federal Acquisition Regulation; Contractor Overhead Certification

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

ACTION: Final rule.

SUMMARY: This final rule is issued pursuant to the Federal Acquisition Streamlining Act of 1994 (the Act) to implement the requirements for contractor certification of indirect costs (see proposed rule published at 59 FR 65464, December 19, 1994). Section 2151 of the Act amended Section 306 of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 256). This provision extended to the civilian agencies the same certificate of indirect costs which is currently applicable to Department of Defense (DOD) contracts, pursuant to 10 U.S.C. 2324(h). This regulatory action was subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

EFFECTIVE DATE: October 1, 1995.

FOR FURTHER INFORMATION CONTACT: Mr. Clarence Belton, Cost Principles Team Leader, at (703) 602-2357, in reference to this FAR case. For general information, contact the FAR

Secretariat, Room 4037, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAC 90-31, FAR case 94-752.

SUPPLEMENTARY INFORMATION:

A. Background

The Federal Acquisition Streamlining Act of 1994, Pub. L. 103-355 (the Act), provides authorities that streamline the acquisition process and minimize burdensome Government-unique requirements. Major changes that can be expected in the acquisition process as a result of the Act's implementation include changes in the areas of Commercial Item Acquisition, the Truth in Negotiations Act, and introduction of the Federal Acquisition Computer Network (FACNET).

Section 2151 of the Act amends Section 306 of the Federal Property and Administrative Services of 1949 (41 U.S.C. 256). It extends requirements for contractor certification of indirect costs to the civilian agencies. Pursuant to 10 U.S.C. 2324(h), the Department of Defense already determines or negotiates contractor indirect cost rates on the basis of a certified proposal.

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 businesses are awarded competitively on a firm-fixed-price basis and, therefore, do not require submission of indirect cost rate proposals.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose additional recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

D. Public Comments

Seven public comments were received in response to the proposed rule published in the **Federal Register** on December 19, 1994 (59 FR 65464). These comments were considered in the formulation of this final rule.

List of Subjects in 48 CFR Parts 42 and 52

Government procurement.

Dated: August 7, 1995.

Edward C. Loeb,

Deputy Project Manager for the Implementation of the Federal Acquisition Streamlining Act of 1994.

Therefore, 48 CFR Parts 42 and 52 are amended as set forth below:

1. The authority citation for 48 CFR Parts 42 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 42—CONTRACT ADMINISTRATION

42.703 General.

2. Section 42.703 is redesignated as 42.703-1 and a new section 42.703 is added as a heading to read as set forth above.

3. Section 42.703-2 is added to read as follows:

42.703-2 Certificate of indirect costs.

(a) *General.* In accordance with 10 U.S.C. 2324(h) and 41 U.S.C. 256(h), a proposal shall not be accepted and no agreement shall be made to establish billing rates or final indirect cost rates unless the costs have been certified by the contractor.

(b) *Waiver of certification.* (1) The agency head, or designee, may waive the certification requirement when—

- (i) It is determined to be in the interest of the United States; and
- (ii) The reasons for the determination are put in writing and made available to the public.

(2) A waiver may be appropriate for a contract with—

- (i) A foreign government or international organization, such as a subsidiary body of the North Atlantic Treaty Organization;
- (ii) A state or local government subject to OMB Circular A-87;
- (iii) An educational institution subject to OMB Circular A-21; and
- (iv) A nonprofit organization subject to OMB Circular A-122.

(c) *Failure to certify.* (1) If the contractor has not certified its proposal for billing rates or indirect costs rates and a waiver is not appropriate, the contracting officer shall unilaterally establish the rates if they are necessary for continuation of the contract.

- (2) Rates established unilaterally should be—
 - (i) Based on audited historical data or other available data as long as unallowable costs are excluded; and

(ii) Set low enough to ensure that potentially unallowable costs will not be reimbursed.

(d) *False certification.* The contracting officer should consult with legal counsel to determine appropriate action when a contractor certificate of indirect costs is thought to be false.

(e) *Penalties for unallowable costs.* 10 U.S.C. 2324(a) through (d) and 41 U.S.C. 256 (a) through (d) prescribe penalties for submission of unallowable costs in final indirect cost rate proposals (see 42.709 for penalties and contracting officer responsibilities).

(f) *Contract clause.* (1) Except as provided in paragraph (f)(2) of this subsection, the clause at 52.242-4, Certification of Indirect Costs, shall be incorporated into all solicitations and contracts which provide for—

- (i) Interim reimbursement of indirect costs;
- (ii) Establishment of final indirect costs rates; or
- (iii) Contract financing that includes interim payment of indirect costs, e.g., progress payments based on cost (Subpart 32.5) or progress payments based on percentage or stage of completion.

(2) The Department of Energy may provide an alternate clause in its agency supplement for its Management and Operating contracts.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Section 52.242-4 is added to read as follows:

52.242-4 Certification of Indirect Costs.

As prescribed in 42.703-2(f), insert the following clause:

Certification of Indirect Costs (Oct 1995)

- (a) The Contractor shall—
 - (1) Certify any proposal to establish or modify billing rates or to establish final indirect cost rates;
 - (2) Use the format in paragraph (c) of this clause to certify; and
 - (3) Have the certificate signed by an individual of the Contractor's organization at a level no lower than a vice president or chief financial officer of the business segment of the Contractor that submits the proposal.
- (b) Failure by the Contractor to submit a signed certificate, as described in this clause, shall result in payment of indirect costs at rates unilaterally established by the Government.
- (c) The certificate of indirect costs shall read as follows:

Certificate of Indirect Costs

This is to certify that to the best of my knowledge and belief:

- 1. I have reviewed this indirect cost proposal;
- 2. All costs included in this proposal (*identify proposal and date*) to establish

billing or final indirect costs rates for (*identify period covered by rate*) are allowable in accordance with the requirements of contracts to which they apply and with the cost principles of the Federal Acquisition Regulation (FAR) and its supplements applicable to those contracts;

3. This proposal does not include any costs which are unallowable under applicable cost principles of the FAR or its supplements, including, but not limited to: advertising and public relations costs, contributions and donations, entertainment costs, fines and penalties, lobbying costs, defense of fraud proceedings, and goodwill; and

4. All costs included in this proposal are properly allocable to Government contracts on the basis of a beneficial or causal relationship between the expenses incurred and the contracts to which they are allocated in accordance with applicable acquisition regulations.

I declare under penalty of perjury that the foregoing is true and correct.

Firm: _____

Signature: _____

Name of Certifying Official: _____

Title: _____

Date of Execution: _____

(End of clause)

[FR Doc. 95-19863 Filed 8-15-95; 8:45 am]

BILLING CODE 6820-EP-M

48 CFR Parts 1 and 6

[Federal Acquisition Circular 90-31; Item VII]

Federal Acquisition Regulation; Technical Amendments

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

ACTION: Final rule; technical amendments.

SUMMARY: In Federal Acquisition Circular (FAC) 84-60 (55 FR 36782, September 6, 1990), section 52.237-9 was removed and reserved. This entry was inadvertently left in § 1.160. This document corrects § 1.106 by removing "52.237-9" from the List of approved OMB control numbers.

In FAC 84-56 (55 FR 3881, February 5, 1990), section 6.304(a)(1) was incorrectly revised. This document correctly revises section 6.304(a)(1) by removing subparagraphs (a)(1)(i) through (a)(1)(iv).

DATES: *Effective Date:* August 16, 1995.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4037, GS Building, Washington, DC 20405, (202) 501-4755. Please cite FAC 90-31, Technical Corrections.