

DEPARTMENT OF DEFENSE

GENERAL SERVICES
ADMINISTRATIONNATIONAL AERONAUTICS AND
SPACE ADMINISTRATION

48 CFR Parts 48 and 52

[FAR Case 97-031]

RIN 9000-AH84

Federal Acquisition Regulation; Value
Engineering Change Proposals

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

ACTION: Proposed rule with request for comments.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are proposing to amend the Federal Acquisition Regulation (FAR) to change the sharing periods and rates that contracting officers may establish for individual value engineering change proposals. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. This is not a major rule under 5 U.S.C. 804.

DATES: Comments should be submitted on or before October 13, 1998 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (MVRs), Attn: Laurie Duarte, 1800 F Street, NW, Room 4035, Washington, DC 20405.

E-mail comments submitted over Internet should be addressed to: farcase.97-031@gsa.gov.

Please cite FAR case 97-031 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501-4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Klein, Procurement Analyst, at (202) 501-3775. Please cite FAR case 97-031.

SUPPLEMENTARY INFORMATION:

A. Background

This proposed rule amends the value engineering change proposal (VECP) guidance in FAR Parts 48 and 52 to allow the contracting officer to increase the sharing period from 36 to 60 months; increase the contractors share

of incentive and concurrent savings to 75 percent; and increase the contractors share of collateral savings to 100 percent on a case-by-case basis for each VECP. The contracting officers unilateral decision on each of these aspects is final. This revision is intended to incentivize contractors to submit more value engineering change proposals, by allowing contracting officers to unilaterally increase both the share percentage and the sharing period, so that contractors with meritorious proposals may be given adequate compensation for the effort required to prepare and negotiate individual change proposals.

B. Regulatory Flexibility Act

The proposed changes may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule could increase the number of VECP settlements negotiated between the Government and private entities. An Initial Regulatory Flexibility Analysis (IRFA) has been prepared and is summarized as follows:

The objective of the rule is to change the sharing periods and rates that contracting officers may establish for individual VECPs. By allowing longer sharing periods and allowing increased contractor sharing rates for collateral and concurrent savings, more contractors may find it feasible to submit VECPs. The rule could increase the number of VECP settlements negotiated between the Government and private entities, as the additional flexibility in sharing periods and contractor sharing rates it provides should incentivize contractors to submit more VECPs. Therefore, the rule may apply to all entities, large and small, that propose VECPs under Government contracts.

A copy of the IRFA has been submitted to the Chief Counsel for Advocacy of the Small Business Administration and may be obtained from the FAR Secretariat. Comments are invited. Comments from small entities concerning the affected FAR subparts will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAR Case 97-031), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose 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.*

List of Subjects in 48 CFR Parts 48 and 52

Government procurement.

Dated: August 5, 1998.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, it is proposed that 48 CFR Parts 48 and 52 be amended as set forth below:

1. The authority citation for 48 CFR Parts 48 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 48—VALUE ENGINEERING

2. Section 48.001 is amended by revising the definition "Sharing period" to read as follows:

48.001 Definitions.

* * * * *

Sharing period, as used in this part, means—

(1) The period beginning with acceptance of the first unit incorporating the VECP and ending at the later of—

(i) 36 to 60 months (set at the discretion of the contracting officer for each VECP) after the first unit affected by the VECP is accepted; or

(ii) The last scheduled delivery date of an item affected by the VECP under the instant contract delivery schedule in effect at the time the VECP is accepted (but see 48.102(g)); or

(2) For engineering-development and low-rate-initial-production contracts, a period of between 36 and 60 consecutive months (set at the discretion of the contracting officer for each VECP) that spans the period of highest planned production, based on planning or production documentation at the time the VECP is accepted.

* * * * *

3. Section 48.102 is amended by redesignating paragraphs (g), (h), and (i) as (h), (i), and (j), respectively, adding a new paragraph (g); and further amending newly designated paragraph (h) by removing the last sentence. The added text reads as follows:

48.102 Policies.

* * * * *

(g) Sharing periods and sharing rates are determined on a case-by-case basis by the contracting officer, using the guidelines in the definition of "sharing period" at 48.001 and in 48.104-1. In determining whether to establish a sharing period greater than 36 months or to increase the sharing rate beyond the minimum levels in 48.104-1(a), the contracting officer shall consider the

following, as appropriate, and shall insert supporting rationale in the contract file:

- (1) Extent of the change.
- (2) Complexity of the change.
- (3) Development risk (e.g., contractor's financial risk).
- (4) Development cost.
- (5) Performance and/or reliability impact.

(6) Production period remaining at the time of VECP acceptance.
 (7) Number of units affected.
 * * * * *

4. Section 48.103 is amended by adding paragraph (c)(4) to read as follows:

48.103 Processing value engineering change proposals.
 * * * * *
 (c) * * *

(4) The contracting officer's determination of the duration of the sharing period and the contractor's sharing rate.

5. Section 48.104-1 is amended by revising the table in paragraph (a)(1) to read as follows:

48.104-1 Sharing acquisition savings.
 (a) *Supply or service contracts.* (1)
 * * *

Government/Contractor Shares of Net Acquisition Savings
 [Figures in percent]

Contract type	Sharing arrangement			
	Incentive (Voluntary)		Program requirement (Mandatory)	
	Instant contract rate	Concurrent and future contract rate	Instant contract rate	Concurrent and future contract rate
Fixed-price (includes fixed-price-award-fee; excludes other fixed-price incentive contracts)	*50/50	*50/50	75/25	75/25
Incentive (fixed-price or cost) (other than award fee)	(**)	*50/50	(**)	75/25
Cost-reimbursement (includes cost-plus-award-fee; excludes other cost-type incentive contracts)	***75/25	***75/25	85/15	85/15

* The contracting officer may increase the contractor's sharing rate to as high as 75 percent for each VECP. See 48.102(g)(1) through (7).
 ** Same sharing arrangement as the contract's profit or fee adjustment formula.
 *** The contracting officer may increase the contractor's sharing rate to as high as 50 percent for each VECP. See 48.102(g)(1) through (7).

* * * * *
 6. Section 48.104-2 is amended by revising paragraph (b) to read as follows:

48.104-2 Sharing collateral savings.
 * * * * *

(b) The contractor's share of collateral savings may range from 20 to 100 percent of the estimated savings to be realized during an average year of use but shall not exceed the contract's firm-fixed-price, target price, target cost, or estimated cost, at the time the VECP is accepted, or \$100,000, whichever is greater. The contractor's sharing rate is determined by the contracting officer for each VECP. In determining collateral savings, the contracting officer shall consider any degradation of performance, service life, or capability. (See 48.104-1(a)(4) for payment of collateral savings through the instant contract.)

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

7. Section 52.248-1 is amended in the introductory paragraph by revising the first sentence and removing the last sentence; by revising the date of the clause; and in the clause, in paragraph (b) by revising the definition "Sharing period"; in paragraph (e)(3) by revising the last sentence; in paragraph (f)(3) by revising the table; and in paragraph (j) by revising the first sentence. The revised text reads as follows:

52.248-1 Value Engineering.

As prescribed in 48.201, insert the following clause. * * *

Value Engineering (XXX)
 * * * * *

(b) Definitions.

* * * * *

Sharing period, as used in this clause, means—

- (1) The period beginning with acceptance of the first unit incorporating the VECP and ending at the later of—

- (i) 36 to 60 months (set at the discretion of the Contracting Officer for each VECP) after the first unit affected by the VECP is accepted; or

- (ii) The last scheduled delivery date of an item affected by the VECP under this contract's delivery schedule in effect at the time the VECP is accepted; or

(2) For engineering-development and low-rate-initial-production contracts, a period of between 36 and 60 consecutive months (set at the discretion of the Contracting Officer for each VECP) that spans the period of highest planned production, based on planning or production documentation at the time the VECP is accepted.

* * * * *

(e) * * *

(3) * * * The Contracting Officer's unilateral decisions whether to accept or reject all or part of any VECP, as to which of the sharing rates applies, and as to the duration of the sharing period shall be final and not subject to the Disputes clause or otherwise subject to litigation under the Contract Disputes Act of 1978 (41 U.S.C. 601-613).

(f) * * *

(3) * * *

CONTRACTOR'S SHARE OF NET ACQUISITION SAVINGS
[Figures in percent]

Contract type	Sharing Arrangement			
	Incentive (Voluntary)		Program requirement (Mandatory)	
	Instant contract rate	Concurrent and future contract rate	instant contract rate	Concurrent and future contract rate
Fixed-price (includes fixed-price-award-fee; excludes other fixed-price incentive contracts)	* 50	*50	25	25
Incentive (fixed-price or cost) (other than award fee)	(**)	*50	(**)	25
Cost-reimbursement (includes cost-plus-award-fee; excludes other cost-type incentive contracts)	*** 25	*** 25	15	15

* The Contracting Officer may increase the Contractor's sharing rate to as high as 75 percent for each VECP.
 ** Same sharing arrangement as the contract's profit or fee adjustment formula.
 *** The Contracting Officer may increase Contractor's sharing rate to as high as 50 percent for each VECP.

* * * * *

(j) *Collateral savings.* If a VECP is accepted, the instant contract amount shall be increased, as specified in subparagraph (h)(5) of this subsection, by a rate from 20 to 100 percent, as determined by the Contracting Officer, of any projected collateral savings determined to be realized in a typical year of use after subtracting any Government costs not previously offset.

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 31

[FAR Case 98-001]

RIN 9000-A106

Federal Acquisition Regulation; Recruitment Costs Principle

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

ACTION: Proposed rule with request for comments.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are proposing to amend the Federal Acquisition Regulation (FAR) to revise the "recruitment costs" and the "public relations and advertising costs" cost principles for streamlining purposes. This regulatory action was not subject to

Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. This is not a major rule under 5 U.S.C. 804.

DATES: Comments should be submitted on or before October 13, 1998 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (MVR), Attn: Laurie Duarte, 1800 F Street, NW, Room 4035, Washington, DC 20405.

E-mail comments submitted over Internet should be addressed to: farcase.98-001@gsa.gov.

Please cite FAR case 98-001 in all correspondence related to this case.
FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, 1800 F Street, NW, Washington, DC 20405, (202) 501-4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Nelson, Procurement Analyst, at (202) 501-1900. Please cite FAR case 98-001.

SUPPLEMENTARY INFORMATION:

A. Background

The proposed rule amends FAR 31.205-1, Public relations and advertising costs, and FAR 31.205-34, Recruitment costs, to remove excessive wording and details for streamlining purposes. FAR 31.205-1(d) was revised to indicate that the allowability of recruitment expenses in connection with advertising costs is addressed at FAR 31.205-34. Certain restrictive language at FAR 31.205-34 was removed since the normal standards at FAR 31.201-3, Determining reasonableness, and FAR 31.201-4, Determining allocability, applies to these types of expenses. In addition,

FAR 31.205-34(c) has been deleted since excessive compensation is already adequately addressed at FAR 31.205-6, Compensation for personal services.

B. Regulatory Flexibility Act

This proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most contracts awarded to small entities use simplified acquisition procedures or are awarded on a competitive, fixed-price basis, and do not require application of the cost principles contained in this rule. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected FAR subpart also will be considered in accordance with 5 U.S.C. 610 of the Act. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 98-001), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose 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.*

List of Subjects in 48 CFR Part 31

Government procurement.

Dated: August 5, 1998.

Edward C. Loeb,
 Director, Federal Acquisition Policy Division.

Therefore, it is proposed that 48 CFR Part 31 be amended as set forth below: