

## DEPARTMENT OF DEFENSE

GENERAL SERVICES  
ADMINISTRATIONNATIONAL AERONAUTICS AND  
SPACE ADMINISTRATION

## 48 CFR Part 31

[FAR Case 98-006]

RIN 9000-A124

Federal Acquisition Regulation;  
Interest and Other Financial Costs

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

**ACTION:** Proposed rule.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are proposing to amend the Federal Acquisition Regulation (FAR) to add interest charges or other amounts as a consequence of late contractor payments to the list of unallowable costs in the "Interest and Other Financial Costs" cost principle, and to make several editorial revisions.

**DATES:** Comments should be submitted on or before March 30, 1999 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.98-006@gsa.gov.

Please cite FAR case 98-006 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 Nelson, Procurement Analyst, at (202) 501-1900. Please cite FAR case 98-006.

## SUPPLEMENTARY INFORMATION:

## A. Background

A ruling by the Court of Appeals for the Federal Circuit has raised a significant issue regarding the allowability of interest charges paid as a consequence of late contractor payments. In *Lockheed Corporation v. Secretary of the Air Force*, 113 F.3d 1225 (Fed. Cir. 1997), the court ruled that interest paid on an underpayment of State taxes is not "interest on borrowings" within the meaning of FAR 31.205-20, Interest and Other Financial Costs, and its predecessor provision, Defense Acquisition Regulation (DAR) 15-205.17, and, therefore, is an allowable cost.

It is Government policy to encourage contractors to pay their financial obligations on time. Government reimbursement of contractor interest charges for underpayment of taxes or other expenses resulting from late contractor payments of legal obligations is counter to this policy and an inappropriate expenditure of public funds. Therefore, the rule proposes to revise FAR 31.205-20, Interest and Other Financial Costs, to add interest charges or other amounts paid as a consequence of late contractor payments to the list of unallowable costs.

In addition, the rule proposes several editorial revisions, including the deletion of "and directly associated costs." This phrase is unnecessary since FAR 31.201-6(a) indicates that when "an unallowable cost is incurred, its directly associated costs are also unallowable."

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

## 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 principle contained in this rule. An Initial Regulatory Flexibility Analysis

has, therefore, not been performed. Comments from small entities concerning the affected FAR subpart 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 98-006), 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: January 21, 1999.

**Edward C. Loeb,**

Director, Federal Acquisition Policy Division.

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

PART 31—CONTRACT COST  
PRINCIPLES AND PROCEDURES

1. The authority citation for 48 CFR Part 31 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).

2. Section 31.205-20 is revised to read as follows:

## 31.205-20 Interest and other financial costs.

The following types of costs are unallowable—

(a) Interest on borrowings (however represented), bond discounts, costs of financing and refinancing capital (net worth plus long-term liabilities), legal and professional fees paid in connection with preparing prospectuses, costs of preparing and issuing stock rights (but see 31.205-28); and

(b) Interest charges and other amounts paid as a consequence of late contractor payments (except for interest assessed by State or local taxing authorities under the conditions specified in 31.205-41(a)(3)).

[FR Doc. 99-1997 Filed 1-28-99; 8:45 am]

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