originally authorized under the Federal Acquisition Streamlining Act of 1994 (Public Law 103–355, Sec. 7102) expired. This provision, as implemented in Federal Acquisition Regulation subpart 19.11 authorized agencies to apply the price evaluation adjustment to benefit certain small disadvantaged business concerns in competitive acquisitions. This change 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 civilian agencies (excluding NASA and Coast Guard) will no longer have the authority to apply the price evaluation adjustment to benefit certain small disadvantaged business concerns in competitive acquisitions. However, the price evaluation adjustment is still authorized for the Department of Defense, U.S. Coast Guard, and NASA.

The FAR Secretariat has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. Interested parties may obtain a copy from the FAR Secretariat. The Councils will consider comments from small entities concerning the affected FAR Part 19 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C 601 *et seq.* (FAC 2005–06, FAR case 2005–002), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

D. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary because the small disadvantaged business price evaluation adjustment for civilian agencies other than NASA and Coast Guard, originally authorized under the Federal Acquisition Streamlining Act of 1994 (Public Law 103–355, Sec. 7102) expired. This revision to the FAR is necessary to ensure that civilian agencies (except Coast Guard and NASA) are aware that the price evaluation adjustment should not be applied to their acquisitions. However, pursuant to Public Law 98–577 and FAR 1.501, the Councils will consider public comments received in response to this interim rule in the formation of the final rule.

List of Subjects in 48 CFR Parts 19 and 52

Government procurement.

Dated: September 22, 2005.

Julia B. Wise,

Director, Contract Policy Division.

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

■ 1. The authority citation for 48 CFR parts 19 and 52 continues to read as follows:

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

PART 19—SMALL BUSINESS PROGRAMS

■ 2. Amend section 19.1102 by redesignating paragraphs (a) and (b) as (b) and (c), respectively, and adding a new paragraph (a) to read as follows:

19.1102 Applicability.

(a) This subpart applies to the Department of Defense, National Aeronautics and Space Administration, and the U.S. Coast Guard. Civilian agencies do not have the statutory authority (originally authorized in the Federal Acquisition Streamlining Act of 1994 (Public Law 103–355, Sec. 7102)) for use of the Small Disadvantaged Business (SDB) price evaluation adjustment.

* * * * *

■ 2. Amend section 19.1103 by revising paragraph (a)(2) to read as follows:

19.1103 Procedures.

(a)* * *

(2) An otherwise successful offer from a historically black college or university or minority institution.

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 3. Amend section 52.212–5 by revising the date of the clause and paragraph (b)(10)(i) of the clause to read as follows:

52.212–5 Contract Terms and Conditions Required to Implement Statutes or Executive Orders—Commercial Items.

* * * * *

CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTES OR EXECUTIVE ORDERS—COMMERCIAL ITEMS (SEP 2005)

* * * * *

(b)* * *

(10)(i) 52.219–23, Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns (SEP 2005) (10 U.S.C. 2323) (if the offeror elects to waive the adjustment, it shall so indicate in its offer).

* * * * *

■ 4. Amend section 52.219–23 by revising the date of the clause and paragraph (b)(1)(ii) of the clause to read as follows:

52.219–23 Notice of Price Evaluation Adjustment for Small Disadvantaged Business Concerns.

* * * * *

NOTICE OF PRICE EVALUATION ADJUSTMENT FOR SMALL DISADVANTAGED BUSINESS CONCERNS (SEP 2005)

* * * * *

(b) Evaluation adjustment. (1)* * *

(ii) An otherwise successful offer from a historically black college or university or minority institution.

* * * * *

[FR Doc. 05–19475 Filed 9–29–05; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 31

[FAC 2005–06; FAR Case 2004–006; Item IX]

RIN 9000–AK06

Federal Acquisition Regulation; Accounting for Unallowable Costs

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

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) by revising language regarding accounting for unallowable costs. The final rule adds language which provides specific criteria on the use of statistical sampling as a method to identify unallowable costs, including the applicability of penalties for failure to exclude certain projected unallowable costs. The final rule also revises the language regarding advance agreements by adding statistical sampling methods as an example for which advance agreements between the

contracting officers and contractors may be appropriate.

DATES: *Effective Date:* October 31, 2005.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Mr. Jeremy Olson at (202) 501–3221. Please cite FAC 2005–06, FAR case 2004–006.

SUPPLEMENTARY INFORMATION:

A. Background

DoD, GSA, and NASA published a proposed FAR rule for public comment in the **Federal Register** at 68 FR 28108, May 22, 2003, under FAR case 2002–006. The proposed rule related to FAR 31.201–6, Accounting for unallowable costs, and to FAR 31.204, Application of principles and procedures. No public comments were received on the proposed rule relating to FAR 31.204, and the Councils decided that the FAR 31.204 proposed rule should be converted to a final rule with no changes to the proposed rule. Public comments were received on the proposed rule relating to FAR 31.201–6, and the Councils decided to make substantive changes to the proposed rule and published a second proposed rule under separate FAR case 2004–006 in the **Federal Register** at 69 FR 58014, September 28, 2004, with a request for comments by November 29, 2004.

Five respondents submitted public comments in response to the second proposed FAR rule. A discussion of these public 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 to address the concerns raised in the public comments. Differences between the second proposed rule and the final rule are discussed in Comments 1, 2, and 3, below.

Public Comments

Application of statistical sampling, FAR 31.201–6(c)(2).

Comment 1: One respondent recommends clarifying paragraph (c)(2) to make it clear that this paragraph refers to contractors, not the Government. The respondent therefore recommends revising the first sentence to read as follows:

''Statistical sampling is an acceptable practice for contractors to follow in accounting for and presenting unallowable costs provided the following criteria are met.''

Councils' response: Concur. The Councils believe that the proposed change will enhance the clarity of the rule and emphasize that it is the contractor's ultimate responsibility for complying with the accounting and presentation of unallowable costs as prescribed in paragraph (c)(1). Therefore, the respondent's proposed language is added to FAR 31.201–6(c)(2). While it is the intent of the Councils to specifically state that statistical sampling is an acceptable method for contractors to comply with the identification and segregation requirements of this rule, this language in no way binds or limits the Government from performing their responsibilities in fulfilling the requirements for establishing indirect cost rates in accordance with FAR Subpart 42.7, Indirect Cost Rates.

Application of penalties, FAR 31.201–6(c)(3).

*Comment 2:*Three respondents recommend that the proposed paragraph (c)(3) be revised. One respondent believes that the proposed paragraph (c)(3) will cause more confusion than it is intended to preclude. This respondent states that the penalty provisions of FAR 42.709 can be invoked in statistical sampling by using a simpler paragraph that reads as follows:

''For any cost in the selected sample that is subject to the penalty provisions at FAR 42.709, the amount projected to the sampling universe from that sampled cost is also subject to the same penalty provisions.''

The second respondent believes that the proposed paragraph (c)(3) should be simplified to improve clarity and eliminate redundant text from FAR 42.709. This respondent believes that the penalty provisions in FAR 42.709 can be applied when sampling is used with a simpler, more concise paragraph that reads as follows:

''Any unallowable indirect costs that are not excluded from the universe, either as part of the projection of sample results or separate review of transactions, are subject to the penalty provisions at FAR 42.709.''

The third respondent believes that the proposed paragraph (c)(3) is rather confusing and subject to misinterpretation. This respondent therefore recommends that the paragraph be revised to read as follows:

''For any cost in the selected sample that is subject to the penalty provisions at FAR 42.709, the associated projected amount to the sampling universe derived from that sampled item is also subject to the same penalty provisions.''

This respondent states that if the proposed language is retained, the Councils need to address the following:

(a) The wording in (c)(3)(i) ''excluded from any final indirect rate proposal'' is technically incorrect. The amounts are not ''excluded'' from the ''proposal'', as the proposal would include gross, withdrawn, and claimed/recoverable costs. The respondent therefore recommends that this would need to be revised to read ''The following amounts must be excluded from any proposed final indirect rates or....''

(b) Proposed paragraph (c)(3)(i)(B) is not clear as to what is meant by ''determined to be unallowable.'' This could relate to paragraph (b) of this cost principle or it could relate to FAR 42.709–3(b) or something else.

(c) Proposed paragraph (c)(3)(iii) appears redundant and unnecessary. Paragraph (c)(3)(iii) provides ''...are subject to the penalties provisions at FAR 42.709.'' By virtue of this reference that includes contract applicability language at 42.709–6, it does not appear necessary to provide another paragraph with the same type of contract applicability language.

Councils' response: Concur. The Councils agree that the proposed language was potentially confusing. The Councils therefore recommend simplifying the language at FAR 31.201–6(c)(3) to read as follows:

''For any indirect cost in the selected sample that is subject to the penalty provisions at FAR 42.709, the amount projected to the sampling universe from that sampled cost is also subject to the same penalty provisions.''

The Councils note that the intent of the subject language in both the proposed rule and the final rule is the same.

Advance agreements, FAR 31.201–6(c)(4) and FAR 31.109.

Comment 3: Two respondents assert that paragraph (c)(4) is written in such a way as to suggest there is a requirement for an advance agreement. One respondent does not believe the potentially prescriptive language at paragraph (c)(4) is consistent with the examples of costs at FAR 31.109(h). Therefore, this respondent recommends eliminating this paragraph. The respondent further notes that if it is determined that the advance agreement reference must remain, the following text would be more acceptable to the contracting parties:

''An advance agreement (see 31.109) with respect to compliance with subparagraph (c)(3) of this subsection may be useful and desirable.''

The second respondent believes it would be more appropriate and consistent with the verbiage used in other cost principles to simply reference FAR 31.109, such as is done in FAR 31.205–37. This respondent therefore recommends that the language at FAR 31.109(h) include sampling for

unallowable costs as another example of items that may require an advance agreement, and that paragraph (c)(4) be revised to read as follows:

''See 31.109 regarding advance agreements.''

Councils' response: Partially concur. The Councils do not believe the proposed language requires an advance agreement. The proposed language states that use of statistical sampling should be the subject of an advance agreement. While the Councils believe that the advance agreement language should remain in FAR 31.201–6, the Councils do agree that it would be helpful to add sampling to FAR 31.109 as an example of the type of item for which an advance agreement may be appropriate, and therefore have added ''statistical sampling methods'' to FAR 31.109(a) and 31.109(h)(17).

Comment 4: One respondent asserts that if the proposed rule is enacted, the rule should require an advance agreement that specifies what an adequate sampling plan entails. As such, this respondent recommends that paragraph (c)(4) require an advance agreement that documents the objective of the sample, the population, the measures, the sampling parameters, the confidence level, the precision, the sampling design, and the decision rule.

Councils' response: Nonconcur. The Councils believe the comments submitted in response to the proposed rule and the second proposed rule demonstrate that it is preferable to provide general criteria rather than specific requirements. The use of specific requirements reduce the flexibility of the contracting parties to apply sampling in a manner that maximizes its efficient use while continuing to protect the Government interests. The Councils believe that the requirements for the sample to be a reasonable representation of the sampling universe, to permit audit verification, and to apply penalties to any projected amounts provides adequate protection for the Government without unduly restricting the effective use of proper statistical sampling techniques.

In addition, the Councils do not believe an advance agreement should be required. However, the Councils believe it is important that the rule clearly state that it is the contractor's responsibility to prove compliance with the sampling criteria in FAR 31.201–6(c) when no advance agreement exists. When a contractor elects to use statistical sampling without entering into an advance agreement, the contractor is at risk that the Government will find the sampling plan in noncompliance with FAR 31.201–6(c), and the Government will perform their own sampling or even possibly a 100 percent review of the costs at issue. In those cases where the contracting officer or contracting officer's representative challenges the contractor's sampling methods, and no advance agreement exists, the burden of proof should be on the contractor to establish that the sampling methods comply with the FAR requirements. The final rule at paragraph (c)(5) has been revised to include this provision. To mitigate the potential for disputes regarding the acceptability of sampling methods, it is generally advisable for the contractor and the Government to enter into an advance agreement. Since the advance agreement has a significant impact on the accounting for unallowable costs, the final rule at paragraph (c)(4) requires that the contracting officer request auditor input prior to entering into such agreements.

Directly associated costs, FAR 31.201–6(e).

Comment 5: One respondent believes that FAR 31.201–6(e) violates CAS 405 (Accounting for Unallowable Costs) and is subject to legal challenge by any Government contractor to which a procuring or administering agency might seek to apply it. This respondent believes that the proposed rule sends a message to the contracting community that contracting agencies follow CAS only where it suits them to do so, and may disregard CAS where it does not suit their interests. This respondent asserts that paragraph (e) ''...departs from the CAS 405 definition and substitutes a 'materiality' test for the 'but for' test and further extends the materiality test to encompass even more factors that are unrelated to the CAS definition. While a suitable materiality test could itself be reconcilable with the CAS 'but for' test, the FAR has gone well beyond this point to encompass additional factors that directly contradict the CAS 405 definition.'' The respondent states that the FAR could be revised to comply with CAS 405. The respondent asserts that ''a point clearly comes at which a particular cost becomes so significant that common sense tells us the 'but for' test is satisfied. Thus, a test seeking to establish that point using the term 'materiality' would be a valid implementation of CAS 405.'' The respondent therefore recommends that the FAR specify ''a sensible materiality test and delete the other two current criteria of FAR 31.201–6(e).'' The respondent further noted that it has submitted copies of its comments to the CAS Board and suggested that the Board ''review the conflict between CAS and FAR in the identification and allocation of directly associated cost and take what steps it may consider appropriate to defend its exclusive jurisdiction in this area.''

Councils' response: Nonconcur. The Councils do not believe the language at paragraph (e) conflicts with CAS 405. The current language at FAR 31.201–6(e)(2), which has been in the FAR for over twenty years, has not been ruled to conflict with CAS 405 by any Court or by the CAS Board. The Councils believe this is important language, because it provides contracting personnel and contractors with specific information on when to treat salaries and expenses as directly associated costs. As such, the Councils believe this language should be retained.

Sampling for large dollar transactions, FAR 31.201(c)(2)(ii).

Comment 6: One respondent believes that the proposed requirement at FAR 31.201–6(c)(2)(ii) that ''all large dollar and high risk transactions are separately reviewed for unallowable costs and excluded from the sampling process'' is overly restrictive. This respondent notes that its past experience has shown that sampling for unallowable costs is most efficient and effective for high volume accounts with low dollar, low risk transactions. Therefore, the respondent believes that for a given universe, there is often no need or benefit to set aside transactions for 100 percent review. The respondent notes that identification of any transactions requiring 100 percent review and the establishment of sampling strata or clusters as necessary are all inherent requirements of developing a sampling plan that provides a ''reasonable representation of the sampling universe,'' as required by FAR 31.201–6(c)(2)(i). The respondent therefore recommends that the language in paragraph (c)(2)(ii) be deleted.

Councils' response: Nonconcur. The Councils agree with the respondent that a reasonable representation of the sampling universe would require elimination of items that due to their nature and/or dollar amount are not reasonably similar to the other items in the universe. However, the Councils also believe this is an important area that requires clear language to assure that all parties understand that large dollar and high risk items must be removed from the sampling universe. Therefore, paragraph (c)(2)(ii) has been retained.

Use of statistical sampling, General.

Comment 7: A respondent believes that the use of statistical sampling will

result in confusion, inconsistencies, and disputes. The respondent believes that statistical sampling should not replace accounting policies and procedures for properly identifying and segregating unallowable costs. The respondent states that unallowable costs should be appropriately identified and excluded when they are initially incurred and recorded. The respondent asserts that this internal control assures that unallowable costs are accounted for and excluded from a contractor's submission. The respondent states that allowing statistical sampling for identifying unallowable costs weakens this key internal control. The respondent further notes that if sampling is to be permitted, the Government and the contractor must develop the expertise in statistical sampling to ensure sampling plans are adequate and executed properly.

Councils' response: Nonconcur. The Councils note that CAS 405 (Accounting for Unallowable Costs) already permits sampling. As such, it would be a conflict with the CAS to state that sampling is not permitted for CAS-covered contracts. While the FAR could add a specific provision stating that statistical sampling is not permitted for non-CAS covered contracts, the Councils do not believe this would be a prudent business action. The Councils believe that the use of statistical sampling should apply to all contracts covered by FAR Part 31, Contract Cost Principles and Procedures. The purpose of the proposed rule is to provide some general structure to the process. Statistical sampling, when properly applied, is acceptable for both segregating unallowable costs and verifying that such costs have been properly segregated (either by specific identification or using appropriate sampling techniques). A properly executed sampling plan should approximate the total unallowable costs from the sample universe. Internal controls and procedures established to meet the sampling objectives and evaluation of the sample selections should still be a key component of this process. The Councils are also concerned that it would be oxymoronic to argue that statistical sampling is not acceptable for segregating unallowable costs but is acceptable for verifying the validity of that segregation. As to the expertise that needs to be developed, the Councils again note that statistical sampling is already permitted by CAS, and is often used in both industry and the Government for many different types of applications. Thus, the Councils believe the necessary expertise for applying statistical sampling already exists within both the Government and the contractor community.

Comment 8: One respondent believes that the FAR should include guidance similar to that issued by the IRS in Revenue Procedure 2004–29. This respondent states that this Revenue Procedure establishes guidelines for using statistical sampling methods for meals and entertainment expenses. The respondent notes that this Revenue Procedure covered the sampling plan standards, the methods and attributes to be used with a sampling plan, the sampling documentation standards, and the technical formulas. In addition, the procedure specified a 95 percent one-sided confidence level.

Councils' response: Nonconcur. The Councils believe that such prescriptive language is not necessary. The Councils believe that it is preferable to provide for more general requirements regarding acceptable statistical methods than to provide a detailed listing of what must be present for each and every situation.

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 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 31

Government procurement.

Dated: September 22, 2005.

Julia B. Wise,

Director, Contract Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR part 31 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. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

■ 2. Amend section 31.109 by—

■ a. Removing the period from the end of the third sentence of paragraph (a) and adding ''and on statistical sampling methodologies at 31.201–6(c).'' in its place; and

■ b. Removing from the introductory text of paragraph (h) the words ''of costs''; removing from paragraph (h)(15) the last word ''and''; removing the period from the end of paragraph (h)(16) and adding ''; and'' in its place; and adding paragraph (h)(17) to read as follows:

31.109 Advance agreements.

* * * * *

(h) * * *

(17) Statistical sampling methods (see 31.201–6(c)(4).

■ 3. Amend section 31.201–6 by—

■ a. Removing from the second sentence of paragraph (a) and the first sentence of paragraph (b) the word ''which'' each time it appears (3 times) and adding the word ''that'' in its place;

■ b. Revising paragraph (c);

■ c. Removing from the first sentence of paragraph (d) the word ''which'' the first time it appears and adding ''that'' in its place; and

■ d. Removing from the end of paragraph (e)(1)(ii) the word ''or'' and adding the word ''and'' in its place; and revising paragraph (e)(3) to read as follows:

31.201–6 Accounting for unallowable costs.

* * * * *

(c)(1) The practices for accounting for and presentation of unallowable costs must be those described in 48 CFR 9904.405, Accounting for Unallowable Costs.

(2) Statistical sampling is an acceptable practice for contractors to follow in accounting for and presenting unallowable costs provided the criteria in paragraphs (c)(1)(i), (c)(1)(ii), and (c)(1)(iii) of this subsection are met:

(i) The statistical sampling results in an unbiased sample that is a reasonable representation of the sampling universe.

(ii) Any large dollar value or high risk transaction is separately reviewed for unallowable costs and excluded from the sampling process.

(iii) The statistical sampling permits audit verification.

(3) For any indirect cost in the selected sample that is subject to the

penalty provisions at 42.709, the amount projected to the sampling universe from that sampled cost is also subject to the same penalty provisions.

(4) Use of statistical sampling methods for identifying and segregating unallowable costs should be the subject of an advance agreement under the provisions of 31.109 between the contractor and the cognizant administrative contracting officer or Federal official. The advance agreement should specify the basic characteristics of the sampling process. The cognizant administrative contracting officer or Federal official shall request input from the cognizant auditor before entering into any such agreements.

(5) In the absence of an advance agreement, if an initial review of the facts results in a challenge of the statistical sampling methods by the contracting officer or the contracting officer's representative, the burden of proof shall be on the contractor to establish that such a method meets the criteria in paragraph (c)(2) of this subsection.

* * * * *

(e)(1) * * *

(3) When a selected item of cost under 31.205 provides that directly associated costs be unallowable, such directly associated costs are unallowable only if determined to be material in amount in accordance with the criteria provided in paragraphs (e)(1) and (e)(2) of this subsection, except in those situations where allowance of any of the directly associated costs involved would be considered to be contrary to public policy.

[FR Doc. 05–19476 Filed 9–29–05; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 31

[FAC 2005–06; FAR Case 2003–002; Item X]

RIN 9000–AJ81

Federal Acquisition Regulation; Reimbursement of Relocation Costs on a Lump-Sum Basis

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

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) by revising the relocation cost principle to permit contractors the option of being reimbursed on a lump-sum basis for three types of employee relocation costs: costs of finding a new home; costs of travel to the new location; and costs of temporary lodging. These three types of costs are in addition to the miscellaneous relocation costs for which lump-sum reimbursements are already permitted.

DATES: *Effective Date:* October 31, 2005.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Mr. Jeremy Olson, Procurement Analyst, at (202) 501–3221. Please cite FAC 2005–06, FAR case 2003–002.

SUPPLEMENTARY INFORMATION:

A. Background

The Councils originally considered expanding the reimbursement of relocation costs on a lump-sum basis under FAR case 1997–032, Relocation Costs. However, the Councils decided to study this issue further under a separate case and published a final rule on the remainder of FAR case 1997–032 in the **Federal Register** at 67 FR 43516, June 27, 2002. On October 24, 2002, the Councils published a Notice of Request for Comments in the **Federal Register** (67 FR 65468) with a list of questions regarding the use of a lump-sum approach for reimbursing employee relocation expenses. After reviewing the public comments that were submitted in response to that **Federal Register** notice, the Councils held a public meeting on February 6, 2003, to further explore the views of interested parties on this issue.

Public comments and the discussions at the public meeting revealed that, in addition to the miscellaneous relocation costs for which lump-sum reimbursements are already permitted by FAR 31.205–35(b)(4), it is common commercial practice to reimburse relocating employees on a lump-sum basis for their house-hunting, final move, and temporary lodging expenses. A FAR case was opened to expand the relocation cost principle to permit lump-sum reimbursements for these three types of costs.

The Councils published a proposed FAR rule in the **Federal Register** at 68 FR 69264, December 11, 2003, with a request for comments by February 9, 2004. Seven respondents submitted comments on the proposed FAR rule. Two respondents supported the proposed rule, four respondents opposed it, and one respondent requested clarification. 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 Section B, Comment 1, and Section C below.

B. Public Comments

No standard for measuring reasonableness

1. *Comment:* Four respondents opposed the proposed rule and expressed the concern that with contractors spending significant amounts on employee relocations, the Government would have no objective standard for evaluating the reasonableness of the new lump-sum amounts being claimed.

After conducting surveys that suggest ''contractors are incurring hundreds of millions of dollars of relocation costs annually,'' the first respondent expressed ''significant concern as to where an auditor, contracting officer, or contractor could turn to gather adequate data to make a determination as to the appropriateness and reasonableness of the lump-sum method or resulting amount.'' The respondent concluded its letter by stating it ''believes that paying a lump-sum for such significant amounts places an unacceptable risk on the Government and creates an excessive audit task to establish allowability of relocation costs.''

Also citing the above mentioned survey of the large amounts of relocation costs allocated to cost reimbursement contracts each year, the second respondent stated that ''allowing lump-sum reimbursement of these costs without supporting documentation is not in the best interests of the Government'' because ''the proposed revision would subject millions of dollars to a subjective test of reasonableness requiring Government auditors, contracting officials, attorneys, and others to expend significantly more resources to determine the reasonableness of the claimed costs, review the determination, and resolve disputes between the Government and the contractor involving disallowed costs.'' The respondent went on to suggest ''contractors will also incur additional expenses in excess of any administrative costs saved supporting the reasonableness of the relocation costs.''