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

■ 2. Amend section 31.205–35 by revising paragraph (b)(4); and adding paragraphs (b)(5) and (b)(6) to read as follows:

31.205–35 Relocation costs.

* * * * *

(b)* * *

(4) Amounts to be reimbursed shall not exceed the employee's actual expenses, except as provided for in paragraphs (b)(5) and (b)(6) of this subsection.

(5) For miscellaneous costs of the type discussed in paragraph (a)(5) of this subsection, a lump-sum amount, not to exceed $5,000, may be allowed in lieu of actual costs.

(6)(i) Reimbursement on a lump-sum basis may be allowed for any of the following relocation costs when adequately supported by data on the individual elements (e.g., transportation, lodging, and meals) comprising the build-up of the lump-sum amount to be paid based on the circumstances of the particular employee's relocation:

(A) Costs of finding a new home, as discussed in paragraph (a)(2) of this subsection.

(B) Costs of travel to the new location, as discussed in paragraph (a)(1) of this subsection (but not costs for the transportation of household goods).

(C) Costs of temporary lodging, as discussed in paragraph (a)(2) of this subsection.

(ii) When reimbursement on a lump-sum basis is used, any adjustments to reflect actual costs are unallowable.

* * * * *

[FR Doc. 05–19477 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 2001–021; Item XI]

RIN 9000–AJ38

Federal Acquisition Regulation; Training and Education Cost Principle

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 ''training and education costs'' contract cost principle. The amendment streamlines the cost principle and increases clarity by eliminating restrictive and confusing language, and by restructuring the rule to list only specifically unallowable costs. The final rule eliminates several specific limitations on the allowability of costs associated with the various categories of education, eliminates the disparate treatment of full-time and part-time undergraduate education costs, and limits allowable costs to training and education related to the field in which the employee is working or may reasonably be expected to work. The rule makes job-related training and education costs generally allowable, except for six public policy exceptions that are retained from the current cost principle. Except for the six expressly unallowable cost exceptions, the reasonableness of specific contractor training and education costs is assessed by reference to the FAR section entitled ''Determining reasonableness.''

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. Jerry Olson at (202) 501–3221. Please cite FAC 2005–06, FAR case 2001–021.

SUPPLEMENTARY INFORMATION:

A. Background

The Councils published a proposed FAR rule in the **Federal Register** (67 FR 34810) on May 15, 2002, with a request for comments by July 15, 2002. On June 11, 2002, an amendment was published in the **Federal Register** (67 FR 40136) to correct an error in the Supplementary Information section accompanying the proposed rule. Six respondents submitted public comments. As a result of the comments received, the Councils made significant changes to the proposed FAR rule and published a second proposed FAR rule in the **Federal Register** (69 FR 4436) on January 29, 2004, with a request for comments by March 29, 2004.

Nine respondents submitted 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. Differences between the second proposed rule and final rule are discussed in Section B, Comments 1, 2, 4, and 6, below.

B. Public Comments

Proposed paragraph (a): Education for sole purpose to obtain academic degree or qualify for job.

Comment 1: Seven respondents generally supported the proposed rule; however, they strongly recommended that proposed paragraph (a) be deleted before issuing a final rule. Several of the respondents pointed out that paragraph (a) is inconsistent with the Councils' own **Federal Register** comments that they ''support upward mobility, job retraining, and educational advancement.'' In this regard, one respondent stated its concern that paragraph (a) would prevent it from providing ''the educational opportunities that we have provided for decades.'' Some respondents complained that it had ''no idea how one is to discern whether the training and education relates 'solely' to obtaining an academic degree or to a particular position'' and that ''implementation of this provision will be burdensome and lead to contested costs; hardly a simplification that increases the clarity of the cost principle.''

Several respondents challenged the fundamental notion that the allowability of contractor employee training and education costs must parallel exactly the treatment afforded Federal employees. One respondent wrote—

''We believe that utilization of the test of whether the Federal Government is willing to reimburse education costs for Federal employees is an inappropriate basis for determining cost allowability. The

benchmark for measuring the cost reasonableness of payments for education and training should be based on commercial practices that encourage the continued training and education of our workforce. Accordingly, we recommend that paragraph 31.205–44(a) of the proposed rule ... be deleted prior to issuing the final rule.''

To further support this position, another respondent pointed out that Congress has long advocated increased use of commercial practices in the Federal acquisition process:

''Congress has consistently endorsed and supported the adoption of commercial practices—not Government practices—in the Government procurement arena. The most recent example is the 2004 DoD Authorization Legislation (P.L. 108–136), Section 1423. This section prescribes the establishment of a panel to propagate the use of commercial practices by, among other things, reviewing all regulations.''

One respondent stated that the proposed paragraph (a) ''will decrease industry's ability to assist the U.S. Government in ensuring future economic strength'' through private sector training and education which often involves employees ''in Government–authorized, socioeconomic/disadvantaged programs that encourage upward mobility.'' In support of this assessment, the respondent provided a detailed description of the benefits that accrue to the company, the Government, and society in general from its Employee Scholar Program (ESP):

''There are over 9,000 U.S. employees (approximately 25% of whom are hourly workers) currently participating in respondent's ESP. These people are pursuing degrees from colleges and universities that many undoubtedly could not have afforded to fund on their own. ESP is encouraging educational pursuits that support social, political, and business needs, for example:

- Approximately 40% of the respondent's employees participating from the aerospace and defense business units in the ESP are obtaining first degrees;
- Over 80% of the degrees awarded to the respondent's employees from the aerospace and defense business units over the last 3 years are in the business/management or technical/engineering areas (less than 3% of degrees awarded were not in current or possible future job-related areas);
- Female and Hispanic employees participate in the ESP at about 11/2 times their proportion in the respondent's workforce;
- ESP participants have increased loyalty and motivation to remain with the respondent. They leave their jobs at a lower rate than the general population, thereby enhancing retention and reducing allowable recruiting, relocation, and job training costs;
- ESP graduates are promoted at a higher rate than the general population;
- The average age of a ESP participant is 39 years old (suggesting that most participants are of an age where they are able to use their education on the job, and seek further education in the future to keep their skills current).''

Finally, one respondent summarized the confusion expressed by several respondents over the purpose and effect of the proposed paragraph (a):

''However, we are troubled by the statement in the comment section that the Councils' intent is also to ''... make it (the rule) consistent with recent statutory changes that cover the payment of costs for Federal employee academic degree training.'' This statement and the resulting proposed paragraph 31.205–44(a) nullify the benefits of simplification and adopting commercial practices. We are perplexed as to how the costs for allowing and encouraging employees to obtain degrees and take classes to provide for future opportunities is against public policy and how these costs potentially could be classified as unallowable.''

Councils' response: The Councils agree that the allowability of contractor employee training and education costs, to the extent that it is job related, should be rooted in sound commercial practices that encourage upward mobility in the private sector workforce. The Councils also are acutely sensitive to the concern about the appearance of disparate treatment of contractor and Federal employees' full-time undergraduate level educational expenses. Therefore, the Councils carefully examined the comments of the largest Federal employee union, the American Federation of Government Employees (AFGE), and noted that the inclusion of the statutory limitations on agency payment of Federal employee educational costs in paragraph (a) apparently did little to temper the union's strong opposition to the proposed rule. Instead, AFGE focused its criticism primarily on the lack therein of a job-relatedness requirement for allowable contractor employee full-time undergraduate educational costs, while it asserted that a demonstration of job-relatedness would be essential before the Government would pay these expenses for a Federal employee (see Comment 6, below). Accordingly, the Councils have deleted the proposed paragraph (a) and added the following allowability requirement for all training and education costs in the introductory sentence of the final rule: ''Costs of training and education that are related to the field in which the employee is working or may reasonably be expected to work are allowable, except as follows:'' The Councils believe that this broad accommodation of AFGE's principal criticism of the proposed rule constitutes sound public policy.

Proposed paragraph (d): Full-time graduate level education.

Comment 2: Three respondents expressed concern that the proposed paragraph (d) would make currently allowable full-time graduate level educational costs unallowable. They pointed out that under the current coverage for such education, only the costs in excess of two years or the length of the graduate degree program, whichever is less, are unallowable. They argued that, in contrast, the proposed paragraph (d) would make the entire cost (not just the excess) of the graduate program unallowable if it exceeded two years or the length of the degree program.

Councils' response: Concur. There was never any intent to change this aspect of the current allowability criteria for full-time graduate level educational costs. Accordingly, the Councils have revised this coverage (now paragraph (c) of the final rule) to clarify that only the costs in excess of two school years or the length of the degree program, whichever is less, are unallowable.

Proposed paragraph (e): Grants.

Comment 3: Two respondents recommended that the proposed paragraph (e) on grants to educational or training institutions be deleted ''because this subject matter is adequately covered by FAR 31.205–8, Contributions or donations.''

Councils' response: Nonconcur. The Councils believe that the proposed paragraph (e) (which is essentially the same as the current paragraph (g), Grants) provides very helpful guidance regarding specific types of unallowable grants to educational or training institutions which should be retained. To avoid confusion, the Councils have also added back the explanatory words ''are considered contributions and'' from the current paragraph (g) to this provision (now paragraph (d) of the final rule).

Proposed paragraph (g): Employee dependents college savings plans.

Comment 4: Three respondents expressed concern that the proposed paragraph (g), which makes costs of university and college plans for employee dependents unallowable, could be misinterpreted to make the administrative costs of such plans unallowable. One of the respondents suggested changing the words ''Costs of'' to ''Contractor contributions to'' to clarify the intent of this provision.

Councils' response: Concur. The **Federal Register** notice accompanying

the January 29, 2004, proposed rule provided the following response to essentially this same industry concern:

''The cost principle does not address the administrative costs of such plans; therefore, the administrative costs are allowable, subject to the reasonableness criteria at FAR 31.201–3. However, any contributions to the plan by the company for employee dependents would be unallowable under the redesignated paragraph (g) in this second proposed rule.''

Even though the Councils are unaware of any problems involving the misapplication of this provision to the administrative costs of college savings plans, they see no problem in making the suggested clarifying change. As stated above, the intent of the proposed paragraph (g) (which is the same as that of the current paragraph (j), *Employee dependent education plans*) is to make contractor contributions to college savings plans for employee dependents unallowable. Reasonable administrative costs for college savings plans funded by employee contributions should continue to be allowable. In revising this provision (now paragraph (f) of the final rule), the Councils have also used the appropriate financial planning term, ''college savings plans.''

Current paragraph (h): Advance agreements.

Comment 5: Two respondents argued that in view of the potential changes in the allowability of full-time graduate level educational costs in the proposed paragraph (d), it is necessary to retain the current paragraph (h), Advance agreements, in order to keep currently allowable costs from becoming unallowable. This is because the current paragraph (h) permits advance agreements that would make costs allowable ''in excess of those otherwise allowable under paragraphs (c) and (d)'' of the current cost principle.

Councils' response: Nonconcur. Since the Councils have revised the coverage for full-time graduate level educational costs in the final rule to prevent a possible ''all or nothing'' interpretation (see Comment 2, above), this should no longer be a concern for industry.

Job-relatedness.

Comment 6: In opposing the proposed rule, one respondent categorized it as ''another attempt on the part of the Director of Procurement and Acquisition Policy at DoD to accord contractors and contractor employees further benefits not granted to Federal employees in similar circumstances.'' Continuing that theme, the respondent expressed its principal criticism of the proposed rule as follows:

''The proposed rule makes at least one extremely offensive change to the contract cost allowability rules that is not accorded to Federal employees, despite the misleading statement contained in the proposal's preamble. Permitting contractors to claim as an allowable cost, the costs of providing employees with full-time undergraduate education, amounts to nothing more than a contractor scholarship program, at taxpayer expense. While the respondent, as a matter of public policy, encourages Federal employees to further their education and training, it is well understood, that when taxpayers pick up these costs, such education and training must reasonably relate to the employee's actual or anticipated duties.''

Councils' response: Partially concur. The Councils see significant benefits to both the Government and industry in publishing the final rule in this case. However, the Councils agree with the respondent that job-relatedness should be a requirement for allowable contractor employee full-time undergraduate level educational costs. In fact, the Councils have added such an allowability requirement for all training and education costs in the introductory sentence of the recommended final rule (see Comment 1, above). The Councils believe this change constitutes sound public policy.

Applicability to Federal employees.

Comment 7: One respondent stated ''The combination of training and education for the 1102 series is critical, without the Government paying for the required courses and training, most employees could not afford to get the degree required.'' The respondent concluded with the request to ''Please reconsider and completely fund the education and training of current employees.''

Councils' response: The respondent apparently confused the proposed rule as applying to Federal employees. The proposed rule does not apply to Federal employees.

C. Regulatory Planning and Review

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.

D. 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.

E. 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. Revise section 31.205–44 to read as follows:

31.205–44 Training and education costs.

Costs of training and education that are related to the field in which the employee is working or may reasonably be expected to work are allowable, except as follows:

(a) Overtime compensation for training and education is unallowable.

(b) The cost of salaries for attending undergraduate level classes or part-time graduate level classes during working hours is unallowable, except when unusual circumstances do not permit attendance at such classes outside of regular working hours.

(c) Costs of tuition, fees, training materials and textbooks, subsistence, salary, and any other payments in connection with full-time graduate level education are unallowable for any portion of the program that exceeds two school years or the length of the degree program, whichever is less.

(d) Grants to educational or training institutions, including the donation of facilities or other properties, scholarships, and fellowships are considered contributions and are unallowable.

(e) Training or education costs for other than bona fide employees are unallowable, except that the costs incurred for educating employee dependents (primary and secondary

level studies) when the employee is working in a foreign country where suitable public education is not available may be included in overseas differential pay.

(f) Contractor contributions to college savings plans for employee dependents are unallowable.

[FR Doc. 05–19478 Filed 9–29–05; 8:45 am]

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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) 2005–06 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 2005–06 which precedes this document. These documents are also available via the Internet at *http://www.acqnet.gov/far*.

FOR FURTHER INFORMATION CONTACT: Laurieann Duarte, FAR Secretariat, (202) 501–4755. For clarification of content, contact the analyst whose name appears in the table below.

List of Rules in FAC 2005–06

Item	Subject	FAR case	Analyst
*I	Information Technology Security (Interim)	2004–018	Davis.
II	Improvements in Contracting for Architect-EngineerServices	2004–001	Davis.
III	Title 40 of United States Code Reference Corrections	2005–010	Zaffos.
*IV	Implementation of the Anti-Lobbying Statute	1989–093	Woodson.
V	Increased Justification and Approval Threshold forDOD, NASA, and Coast Guard	2004–037	Jackson.
*VI	Addition of Landscaping and Pest Control Services to theSmall Business Competitiveness Demonstration Program.	2004–036	Marshall.
*VII	Powers of Attorney for Bid Bonds	2003–029	Davis.
*VIII	Expiration of the Price Evaluation Adjustment(Interim)	2005–002	Cundiff.
IX	Accounting for Unallowable Costs	2004–006	Olson.
X	Reimbursement of Relocation Costs on a Lump-Sum Basis	2003–002	Olson.
XI	Training and Education Cost Principle	2001–021	Olson.

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 2005–06 amends the FAR as specified below:

*Item I—Information Technology Security (FAR Case 2004–018)

This interim rule amends the FAR to implement the Information Technology (IT) Security provisions of the Federal Information Security Management Act of 2002 (FISMA) (Title III of the E-Government Act of 2002 (E-Gov Act)).

This interim rule focuses on the importance of system and data security by contracting officials and other members of the acquisition team. The intent of adding specific guidance in the FAR is to provide clear, consistent guidance to acquisition officials and program managers; and to encourage and strengthen communication with IT security officials, chief information officers, and other affected parties.

Item II—Improvements in Contracting for Architect-Engineer Services (FAR Case 2004–001)

This final rule implements Section 1427(b) of the Services Acquisition Reform Act of 2003, which prohibits architect-engineering services from being offered under GSA multiple-award schedule contracts or under Governmentwide task and delivery order contracts unless they are awarded using the procedures of the Brooks Architect-Engineer Act and the services are performed under the direct supervision of a professional architect or engineer licensed, registered, or certified in the State, Federal district or outlying area, in which the services are to be performed. This rule is of interest to agencies and contracting officers that use GSA schedules and Governmentwide task and delivery order contracts.

Item III—Title 40 of United States Code Reference Corrections (FAR Case 2005–010)

This final rule amends the FAR to reflect the most recent codification of Title 40 of the United States Code. No substantive changes are being made to the FAR.

*Item IV—Implementation of the Anti-Lobbying Statute (FAR Case 1989–093)

This final rule converts the interim rule published in the **Federal Register** at 55 FR 3190, January 30, 1990 to a final rule with minor changes amends the FAR to implement section 319 of the Department of the Interior and Related Agencies Appropriations Act, Public Law 101–121, which added a new section 1352 to Title 31 of the United States Code, entitled ''Limitations on the use of funds to influence certain Federal contracting and financial transactions.'' Section 319 generally prohibits recipients of Federal contracts, grants, and loans from using appropriated funds for lobbying the executive or legislative branches of the