

modify contracts without requiring consideration to incorporate changes authorized by FASA amendments into existing contracts. Contracting officers are encouraged, if appropriate, to modify contracts without requiring consideration to incorporate these new policies. The contract modification should be accomplished by inserting into the contract, as a minimum, the current version of the applicable FAR clauses.

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## 48 CFR Parts 1, 30, 42, and 52

[FAC 90-38; FAR Case 95-002; Item II]

RIN 9000-AG71

### Federal Acquisition Regulation; Application of Cost Accounting Standards Board Regulations to Educational Institutions

**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 have agreed on a final rule to amend the Federal Acquisition Regulation (FAR) to implement changes made to the Cost Accounting Standards (CAS). The final rule applies to educational institutions receiving a negotiated Federal contract or subcontract award in excess of \$500,000 (excluding contracts awarded for the operation of Federally Funded Research and Development Centers (FFRDCs) which are already subject to CAS Board regulations), and requires that such educational institutions comply with certain specified CAS Board rules, regulations and standards. The revisions to the FAR are based on the CAS Board's amendments to 48 CFR Chapter 99. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. It is not a major rule under 5 U.S.C. 804.

**EFFECTIVE DATE:** April 29, 1996.

**FOR FURTHER INFORMATION CONTACT:** Mr. Jeremy Olson at (202) 501-3221 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 90-38, FAR case 95-002.

### SUPPLEMENTARY INFORMATION:

#### A. Background

The Office of Federal Procurement Policy, Cost Accounting Standards Board (CASB), has amended the regulatory provisions contained at 48 CFR Chapter 99. The amendments apply to educational institutions receiving a negotiated Federal contract or subcontract award in excess of \$500,000 (excluding contracts awarded for the operation of Federally Funded Research and Development Centers (FFRDCs) which are already subject to CASB regulations) and require that such educational institutions comply with certain specified CASB rules, regulations, and Cost Accounting Standards (CAS). The CAS final rule was published in the Federal Register on November 8, 1994, at 59 FR 55746, and became effective on January 9, 1995, and is authorized pursuant to section 26 of the Office of Federal Procurement Policy Act. The Board has taken action on this topic in order to promote uniformity and consistency in educational institutions' cost accounting practices.

#### B. Regulatory Flexibility Act

The final rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Public Law 98-577 and publication for public comment is not required because the requirements for the regulation were published by the CASB and codified at 48 CFR Chapter 99. Therefore, the Regulatory Flexibility Act does not apply. However, comments from small entities concerning the affected FAR subparts will be considered in accordance with Section 610 of the Act. Such comments must be submitted separately and cite 5 U.S.C. 601, *et seq.*, (FAC 90-38, FAR Case 95-002).

#### C. Paperwork Reduction Act

The information collection aspects of this rule have been approved by the Office of Management and Budget and assigned Control Number 0348-0055.

#### D. Public Comments

Public comments are not necessary because the policies and procedures contained in this regulation have already been publicized in the Federal Register by the Office of Federal Procurement Policy Cost Accounting Standards Board's Notice of Proposed Rulemaking made available for public comment in the Federal Register, at 57 FR 60503, on December 21, 1992.

List of Subjects in 48 CFR Parts 1, 30, 42, and 52

Government procurement.

Dated: April 18, 1996.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Parts 1, 30, 42, and 52 are amended as set forth below:

### PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

1. The authority citation for 48 CFR Parts 1, 30, 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).

#### 1.106 [Amended]

2. Section 1.106 is amended in the FAR segment column by removing "52.230-5" and inserting "52.230-6" in its place.

### PART 30—COST ACCOUNTING STANDARDS ADMINISTRATION

#### 30.000 [Amended]

3. Section 30.000 is amended by removing "(appendix B, FAR loose-leaf edition)" and inserting "(FAR appendix B)" in its place, and by removing "(see 48 CFR chapter 99 (appendix B, FAR loose-leaf edition), Subpart 9903.201-1(b),)" and inserting "(see 48 CFR 9903.201-1(b) (FAR appendix B))" in its place.

#### 30.201 [Amended]

4. Section 30.201 is amended in the first sentence by removing "48 CFR chapter 99 (appendix B, FAR loose-leaf edition), Subpart 9903.201-1," and inserting "48 CFR 9903.201-1 (FAR appendix B)" in its place, in the second sentence by removing "subpart" and inserting "48 CFR" in its place, and in the last sentence by removing "48 CFR chapter 99 (appendix B, FAR loose-leaf edition), Subpart 9903.201-2." and inserting "48 CFR 9903.201-2 (FAR appendix B)." in its place.

5. Section 30.201-1 is revised to read as follows:

#### 30.201-1 CAS applicability.

See 48 CFR 9903.201-1 (FAR appendix B).

6. Section 30.201-2 is revised to read as follows:

#### 30.201-2 Types of CAS coverage.

See 48 CFR 9903.201-2 (FAR appendix B).

7. Section 30.201-3 is revised to read as follows:

**30.201-3 Solicitation provisions.**

(a) The contracting officer shall insert the provision at 52.230-1, Cost Accounting Standards Notices and Certification, in solicitations for proposed contracts subject to CAS as specified in 48 CFR 9903.201 (FAR appendix B).

(b) If an award to an educational institution is contemplated prior to July 1, 1997, the contracting officer shall insert the basic provision set forth at 52.230-1 with its Alternate I, unless the contract is to be performed by a Federally Funded Research and Development Center (FFRDC) (see 48 CFR 9903.201-2(c)(5) (FAR appendix B)), or the provision at 48 CFR 9903.201-2(c)(6) (FAR appendix B) applies.

8. Section 30.201-4 is revised to read as follows:

**30.201-4 Contract clauses.**

(a) *Cost Accounting Standards.* (1) The contracting officer shall insert the clause at FAR 52.230-2, Cost Accounting Standards, in negotiated contracts, unless the contract is exempted (see 48 CFR 9903.201-1 (FAR appendix B)), the contract is subject to modified coverage (see 48 CFR 9903.201-2 (FAR appendix B)), or the clause prescribed in paragraph (c) of this subsection is used.

(2) The clause at FAR 52.230-2 requires the contractor to comply with all CAS specified in 48 CFR part 9904 (FAR appendix B), to disclose actual cost accounting practices (applicable to CAS-covered contracts only), and to follow disclosed and established cost accounting practices consistently.

(b) *Disclosure and Consistency of Cost Accounting Practices.* (1) The contracting officer shall insert the clause at FAR 52.230-3, Disclosure and Consistency of Cost Accounting Practices, in negotiated contracts when the contract amount is over \$500,000, but less than \$25 million, and the offeror certifies it is eligible for and elects to use modified CAS coverage (see 48 CFR 9903.201-2 (FAR appendix B)), unless the clause prescribed in paragraph (c) of this subsection is used).

(2) The clause at FAR 52.230-3 requires the contractor to comply with 48 CFR 9904.401, 9904.402, 9904.405, and 9904.406 (FAR appendix B) to disclose (if it meets certain requirements) actual cost accounting practices, and to follow consistently its established cost accounting practices.

(c) *Consistency in Cost Accounting Practices.* The contracting officer shall insert the clause at FAR 52.230-4, Consistency in Cost Accounting Practices, in negotiated contracts that

are exempt from CAS requirements solely on the basis of the fact that the contract is to be awarded to a United Kingdom contractor and is to be performed substantially in the United Kingdom (see 48 CFR 9903.201-1(b)(12) (FAR appendix B)).

(d) *Administration of Cost Accounting Standards.* (1) The contracting officer shall insert the clause at FAR 52.230-6, Administration of Cost Accounting Standards, in contracts containing any of the clauses prescribed in paragraphs (a), (b), or (e) of this subsection.

(2) The clause at FAR 52.230-6 specifies rules for administering CAS requirements and procedures to be followed in cases of failure to comply.

(e) *Cost Accounting Standards—Educational Institutions.* (1) The contracting officer shall insert the clause at FAR 52.230-5, Cost Accounting Standards—Educational Institution, in negotiated contracts awarded to educational institutions, unless the contract is exempted (see 48 CFR 9903.201-1 (FAR appendix B)), the contract is to be performed by an FFRDC (see 48 CFR 9903.201-2(c)(5) (FAR appendix B)), or the provision at 48 CFR 9903.201-2(c)(6) (FAR appendix B) applies.

(2) The clause at FAR 52.230-5 requires the educational institution to comply with all CAS specified in 48 CFR part 9905 (FAR appendix B), to disclose actual cost accounting practices as required by 48 CFR 9903.202-1(f) (FAR appendix B), and to follow disclosed and established cost accounting practices consistently.

9. Section 30.201-5 is revised to read as follows:

**30.201-5 Waiver.**

In some instances, contractors or subcontractors may refuse to accept all or part of the requirements of the CAS clauses (FAR 52.230-2, Cost Accounting Standards, FAR 52.230-3, Disclosure and Consistency of Cost Accounting Practices, and FAR 52.230-5, Cost Accounting Standards—Educational Institution). If the contracting officer determines that it is impractical to obtain the materials, supplies, or services from any other source, the contracting officer shall prepare a request for waiver in accordance with 48 CFR 9903.201-5 (FAR appendix B).

10. Sections 30.201-6 and 30.201-7 are added to read as follows:

**30.201-6 Findings.**

See 48 CFR 9903.201-6 (FAR appendix B).

**30.201-7 Cognizant Federal agency responsibilities.**

See 48 CFR 9903.201-7 (FAR appendix B).

11. Section 30.202-1 is revised to read as follows:

**30.202-1 General requirements.**

See 48 CFR 9903.202-1 (FAR appendix B).

12. Section 30.202-2 is revised to read as follows:

**30.202-2 Impracticality of submission.**

See 48 CFR 9903.202-2 (FAR appendix B).

13. Section 30.202-3 is revised to read as follows:

**30.202-3 Amendments and revisions.**

See 48 CFR 9903.202-3 (FAR appendix B).

14. Section 30.202-4 is revised to read as follows:

**30.202-4 Privileged and confidential information.**

See 48 CFR 9903.202-4 (FAR appendix B).

15. Section 52.202-5 is revised to read as follows:

**30.202-5 Filing Disclosure Statements.**

See 48 CFR 9903.202-5 (FAR appendix B).

**30.202-6 [Amended]**

16. Section 30.202-6(a) is amended by removing "48 CFR chapter 99 (appendix B, FAR loose-leaf edition), Subparts 9903.201-3 and 9903.202." and inserting "48 CFR 9903.201-3 and 9903.202 (FAR appendix B)." in its place.

17. Section 30.202-7 is amended in paragraph (a) by revising the first and third sentences; and in the first sentence of (b) by inserting the word "cognizant" before the word "auditor", and removing the word "determine" and inserting "ascertain" in its place. The revised text reads as follows:

**30.202-7 Determinations.**

(a) *Adequacy determination.* As prescribed by 48 CFR 9903.202-6 (FAR appendix B), the cognizant auditor shall conduct a review of the Disclosure Statement to ascertain whether it is current, accurate, and complete and shall report the results to the cognizant ACO, who shall determine whether or not it adequately describes the offeror's cost accounting practices. \* \* \* If the Disclosure Statement is adequate, the ACO shall notify the offeror in writing, with copies to the cognizant auditor and contracting officer. \* \* \*

\* \* \* \* \*

18. Section 30.202-8 is amended in the second sentence of paragraph (a) by removing "ACO's" and inserting in its place "The ACO"; and by revising (b) to read as follows:

**30.202-8 Subcontractor Disclosure Statements.**

\* \* \* \* \*

(b) Any determination that it is impractical to secure a subcontractor's Disclosure Statement must be made in accordance with 48 CFR 9903.202-2 (FAR appendix B).

19. Subpart 30.3 is revised to read as follows:

**Subpart 30.3—CAS Rules and Regulations [Reserved]**

Note: See 48 CFR 9903.3 (FAR appendix B).

20. Subpart 30.4 is revised to read as follows:

**Subpart 30.4—Cost Accounting Standards [Reserved]**

Note: See 48 CFR part 9904 (FAR appendix B).

21. Subpart 30.5 is revised to read as follows:

**Subpart 30.5—Cost Accounting Standards for Educational Institutions [Reserved]**

Note: See 48 CFR part 9905 (FAR appendix B).

**30.602 [Amended]**

22. Section 30.602 is amended in the introductory text by removing "48 CFR chapter 99 (appendix B, FAR loose-leaf edition), subpart 9903.305." and inserting "48 CFR 9903.305 (FAR appendix B)." in its place.

**30.602-1 [Amended]**

23. Section 30.602-1 is amended in the first sentence of paragraph (a)(2) by inserting after the word "Standards," the phrase "or FAR 52.230-5, Cost Accounting Standards—Educational Institution,"; in the third sentence of (a)(2) by inserting after "52.230-2" the phrase "or 52.230-5"; in paragraph (b)(1) by revising the citation "52.230-5" to read "FAR 52.230-6"; in the first sentence of (b)(2) by inserting after the word "ACO" the phrase ", with the assistance of the auditor,".

**30.602-2 [Amended]**

24. Section 30.602-2 is amended as follows:

a. In paragraph (a)(1) and the first sentence of paragraph (d)(1) by inserting the word "cognizant" before the word "auditor" the first time it appears;

b. In paragraphs (a)(3), (b)(1), and (c)(1), by revising the citation "52.230-5" to read "FAR 52.230-6";

c. In the second sentence of paragraph (c)(2) by inserting after the word "Standards," the phrase "or FAR 52.230-5, Cost Accounting Standards—Educational Institution,"; and

d. In paragraph (d)(3) by inserting after the word "Standards," the phrase "52.230-5, Cost Accounting Standards—Educational Institution,".

**30.602-3 [Amended]**

25. Section 30.602-3 is amended in paragraph (b)(1) by revising the citation "52.230-5" to read "FAR 52.230-6"; in the first sentence of (b)(2) by adding after the word "ACO" the phrase ", with the assistance of the cognizant auditor,"; and in the first sentence of (d)(1) by adding before the word "auditor" the word "cognizant".

**30.603 [Amended]**

26. Section 30.603 is amended in the first sentence by removing the word "his" and inserting "the" in its place; and in the second sentence by removing "ACO's" and inserting "The ACOs" in its place.

**PART 42—CONTRACT ADMINISTRATION**

**42.302 [Amended]**

27. Section 42.302 is amended in paragraph (a)(11) by removing "48 CFR chapter 99)" and inserting "48 CFR chapter 99 (FAR appendix B))" in its place, and in (a)(11)(iv) by removing "and 52.230-5" and inserting in its place "52.230-5 and 52.230-6."

**PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

28. Section 52.230-1 is amended by:

(a) Revising the clause date;

(b) Adding a third paragraph following the NOTE under the clause heading;

(c) Removing from paragraph (a)(2) the phrase "48 CFR parts 9903 and 9904" and inserting "the Cost Accounting Standards Board (48 CFR Chapter 99)" in its place, and removing the phrase "48 CFR, Subpart" and inserting "48 CFR" in its place;

(d) Removing in the first sentence of paragraph (b) the phrase ", parts 9903 and 9904" and inserting "Chapter 99" in its place, and removing the phrase "48 CFR, Subpart" and inserting "48 CFR" in its place; and in the second sentence by removing "The" and inserting "When required, the" in its place;

(e) Capitalizing all letters in the word "Caution:" in the CAUTION paragraph

following paragraphs (b), (c)(4), and in Part II;

(f) Revising paragraphs (c) (1) and (2); (g) Removing in paragraph (c)(4)(ii) under Part I the phrase "48 CFR, Subpart" and inserting "48 CFR" in its place;

(h) Removing in the first sentences of the first and second paragraphs in Part II the phrase "48 CFR subpart" and inserting "48 CFR" in its place; and

(i) Adding Alternate I. The added and revised text reads as follows:

**52.230-1 Cost Accounting Standards Notices and Certification.**

\* \* \* \* \*

**COST ACCOUNTING STANDARDS NOTICES AND CERTIFICATION (APR 1996)**

\* \* \* \* \*

Note: \* \* \*

If the offeror is an educational institution, Part II does not apply unless the contemplated contract will be subject to full or modified CAS coverage pursuant to 48 CFR 9903.201-2(c)(5) or 9903.201-2(c)(6), respectively.

**I. DISCLOSURE STATEMENT-COST ACCOUNTING PRACTICES AND CERTIFICATION**

\* \* \* \* \*

(c) \* \* \*

**(1) Certificate of Concurrent Submission of Disclosure Statement.**

The offeror hereby certifies that, as a part of the offer, copies of the Disclosure Statement have been submitted as follows: (i) original and one copy to the cognizant Administrative Contracting Officer (ACO) or cognizant Federal agency official authorized to act in that capacity (Federal official), as applicable, and (ii) one copy to the cognizant Federal auditor.

(Disclosure must be on Form No. CASB DS-1 or CASB DS-2, as applicable. Forms may be obtained from the cognizant ACO or Federal official and/or from the loose-leaf version of the Federal Acquisition Regulation.)

Date of Disclosure Statement:

---

Name and Address of Cognizant ACO or Federal Official Where Filed:

---

The offeror further certifies that the practices used in estimating costs in pricing this proposal are consistent with the cost accounting practices disclosed in the Disclosure Statement.

**(2) Certificate of Previously Submitted Disclosure Statement.**

The offeror hereby certifies that the required Disclosure Statement was filed as follows:

Date of Disclosure Statement:

---

Name and Address of Cognizant ACO or Federal Official Where Filed:

---

The offeror further certifies that the practices used in estimating costs in pricing this proposal are consistent with the cost

accounting practices disclosed in the applicable Disclosure Statement.

\* \* \* \* \*

(End of provision)

*Alternate I* (APR 1996). As prescribed in 30.201-3(b), add the following subparagraph (c)(5) to Part I of the basic provision:

□ (5) *Certificate of Disclosure Statement Due Date by Educational Institution.* If the offeror is an educational institution that, under the transition provisions of 48 CFR 9903.202-1(f), is or will be required to submit a Disclosure Statement after receipt of this award, the offeror hereby certifies that (check one and complete):

□ (i) A Disclosure Statement Filing Due Date of \_\_\_\_\_ has been established with the cognizant Federal agency.

□ (ii) The Disclosure Statement will be submitted within the 6-month period ending \_\_\_\_\_ months after receipt of this award.

Name and Address of Cognizant ACO or Federal Official Where Disclosure Statement is to be Filed:

#### 52.230-2 [Amended]

29. Section 52.230-2 is amended by revising the clause date to read "(Apr 1996)", and by removing in paragraph (a) in the introductory text the phrase "48 CFR subparts" and inserting "48 CFR" in its place; in (a)(1) removing the phrase "48 CFR subpart" and inserting "48 CFR" in its place, in (a)(3) removing the phrase "48 CFR part 9904, (appendix B, FAR loose-leaf edition)," and inserting "48 CFR Part 9904," in its place, and in (d)(2) removing the phrase "48 CFR subpart" and inserting "48 CFR" in its place.

30. Section 52.230-3 is amended by:

(a) Revising the clause date and paragraph (a)(1);

(b) Removing in paragraph (a)(2) the phrase "48 CFR subparts" and inserting "48 CFR" in its place; and

(c) Removing in paragraphs (a)(3)(ii), (d)(1) and (d)(3) the phrase "48 CFR subpart" and inserting "48 CFR" in its place. The revised text reads as follows:

#### 52.230-3 Disclosure and Consistency of Cost Accounting Practices.

\* \* \* \* \*

DISCLOSURE AND CONSISTENCY OF COST ACCOUNTING PRACTICES (APR 1996)

(a) \* \* \*

(1) Comply with the requirements of 48 CFR 9904.401, Consistency in Estimating, Accumulating, and Reporting Costs; 48 CFR 9904.402, Consistency in Allocating Costs Incurred for the Same Purpose; 48 CFR 9904.405, Accounting for Unallowable Costs; and 48 CFR 9904.406, Cost Accounting Standard-Cost Accounting Period, in effect

on the date of award of this contract as indicated in 48 CFR Part 9904.

\* \* \* \* \*

#### 52.230-5 [Redesignated as 52.230-6]

31. Section 52.230-5 is redesignated as 52.230-6 and a new section 52.230-5 is added to read as follows:

#### 52.230-5 Cost Accounting Standards—Educational Institution.

As prescribed in 30.201-4(e), insert the following clause:

COST ACCOUNTING STANDARDS—EDUCATIONAL INSTITUTION (APR 1996)

(a) Unless the contract is exempt under 48 CFR 9903.201-1 and 9903.201-2, the provisions of 48 CFR Part 9903 are incorporated herein by reference and the Contractor, in connection with this contract, shall—

(1) (*CAS-covered contracts only*). If a business unit of an educational institution required to submit a Disclosure Statement, disclose in writing the Contractor's cost accounting practices as required by 48 CFR 9903.202-1 through 9903.202-5, including methods of distinguishing direct costs from indirect costs and the basis used for accumulating and allocating indirect costs. The practices disclosed for this contract shall be the same as the practices currently disclosed and applied on all other contracts and subcontracts being performed by the Contractor and which contain a Cost Accounting Standards (CAS) clause. If the Contractor has notified the Contracting Officer that the Disclosure Statement contains trade secrets, and commercial or financial information which is privileged and confidential, the Disclosure Statement shall be protected and shall not be released outside of the Government.

(2) Follow consistently the Contractor's cost accounting practices in accumulating and reporting contract performance cost data concerning this contract. If any change in cost accounting practices is made for the purposes of any contract or subcontract subject to CAS requirements, the change must be applied prospectively to this contract and the Disclosure Statement, if required, must be amended accordingly. If an accounting principle change mandated under Office of Management and Budget (OMB) Circular A-21, Cost Principles for Educational Institutions, requires that a change in the Contractor's cost accounting practices be made after the date of this contract award, the change must be applied prospectively to this contract and the Disclosure Statement, if required, must be amended accordingly. If the contract price or cost allowance of this contract is affected by such changes, adjustment shall be made in accordance with subparagraph (a)(4) or (a)(5) of this clause, as appropriate.

(3) Comply with all CAS, including any modifications and interpretations indicated thereto contained in 48 CFR Part 9905 in effect on the date of award of this contract or, if the Contractor has submitted cost or pricing data, on the date of final agreement on price as shown on the Contractor's signed certificate of current cost or pricing data. The

Contractor shall also comply with any CAS (or modifications to CAS) which hereafter become applicable to a contract or subcontract of the Contractor. Such compliance shall be required prospectively from the date of applicability to such contract or subcontract.

(4) (i) Agree to an equitable adjustment as provided in the Changes clause of this contract if the contract cost is affected by a change which, pursuant to subparagraph (a)(3) of this clause, the Contractor is required to make to the Contractor's established cost accounting practices.

(ii) Negotiate with the Contracting Officer to determine the terms and conditions under which a change may be made to a cost accounting practice, other than a change made under other provisions of subparagraph (a)(4) of this clause; provided that no agreement may be made under this provision that will increase costs paid by the United States.

(iii) When the parties agree to a change to a cost accounting practice, other than a change under subdivision (a)(4)(i) or (a)(4)(iv) of this clause, negotiate an equitable adjustment as provided in the Changes clause of this contract.

(iv) Agree to an equitable adjustment as provided in the Changes clause of this contract, if the contract cost is materially affected by an OMB Circular A-21 accounting principle amendment which, on becoming effective after the date of contract award, requires the Contractor to make a change to the Contractor's established cost accounting practices.

(5) Agree to an adjustment of the contract price or cost allowance, as appropriate, if the Contractor or a subcontractor fails to comply with an applicable Cost Accounting Standard, or to follow any cost accounting practice consistently and such failure results in any increased costs paid by the United States. Such adjustment shall provide for recovery of the increased costs to the United States, together with interest thereon computed at the annual rate established under section 6621 of the Internal Revenue Code of 1986 (26 U.S.C. 6621) for such period, from the time the payment by the United States was made to the time the adjustment is effected. In no case shall the Government recover costs greater than the increased cost to the Government, in the aggregate, on the relevant contracts subject to the price adjustment, unless the Contractor made a change in its cost accounting practices of which it was aware or should have been aware at the time of price negotiations and which it failed to disclose to the Government.

(b) If the parties fail to agree whether the Contractor or a subcontractor has complied with an applicable CAS or a CAS rule or regulation in 48 CFR Part 9903, and as to any cost adjustment demanded by the United States, such failure to agree will constitute a dispute under the Contract Disputes Act (41 U.S.C. 601).

(c) The Contractor shall permit any authorized representatives of the Government to examine and make copies of any documents, papers, or records relating to compliance with the requirements of this clause.

(d) The Contractor shall include in all negotiated subcontracts which the Contractor enters into, the substance of this clause, except paragraph (b), and shall require such inclusion in all other subcontracts, of any tier, including the obligation to comply with all applicable CAS in effect on the subcontractor's award date or, if the subcontractor has submitted cost or pricing data, on the date of final agreement on price as shown on the subcontractor's signed Certificate of Current Cost or Pricing Data, except that—

(1) If the subcontract is awarded to a business unit which pursuant to 48 CFR 9903.201-2 is subject to other types of CAS coverage, the substance of the applicable clause set forth in 48 CFR 9903.201-4 shall be inserted; and

(2) This requirement shall apply only to negotiated subcontracts in excess of \$500,000 where the price negotiated is not based on—

(i) Established catalog or market prices of commercial items sold in substantial quantities to the general public; or

(ii) Prices set by law or regulation, and except that the requirement shall not apply to negotiated subcontracts otherwise exempt from the requirement to include a CAS clause as specified in 48 CFR 9903.201-1.

(End of clause)

32. Newly designated section 52.230-6 is amended:

(a) By revising the date of the clause to read "(APR 1996)";

(b) In paragraph (a)(1) by removing the phrase "to comply with a new or modified CAS"; and removing the comma after the word "Standards" and inserting in its place "; or subparagraph (a)(3) and subdivisions (a)(4)(i) or (a)(4)(iv) of the clause at FAR 52.230-5, Cost Accounting Standards-Educational Institution;";

(c) In paragraph (a)(2) by adding an "s" to the end of the word "clause" the first time it appears; and adding after the word "Standards," the phrase "and FAR 52.230-5, Cost Accounting Standards-Educational Institution;";

(d) In paragraph (a)(3) by adding after the word "Standards," the phrase "and FAR 52.230-5, Cost Accounting Standards-Educational Institution;";

(e) In the introductory text of paragraph (b) by adding after the word "ACO" the phrase ", or cognizant Federal agency official;";

(f) By revising paragraphs (b)(1) and (b)(2);

(g) In paragraph (b)(3) by adding an "s" at the end of the word "clause" the first time it appears; and adding after the word "Standards," the phrase "and FAR 52.230-5, Cost Accounting Standards-Educational Institution;";

(h) In paragraph (d) by removing "CAS clause" and inserting "clauses" in its place; and adding after the citation "52.230-2," the phrase "and 52.230-5;";

(i) By revising the introductory text of paragraph (e) and the first sentence of paragraph (e)(2)(iv); and

(j) In paragraph (g) by removing "CAS clause," and inserting in its place "clauses at FAR 52.230-2 or 52.230-5,".

The revised text reads as follows:

#### 52.230-6 Administration of Cost Accounting Standards.

\* \* \* \* \*

#### ADMINISTRATION OF COST ACCOUNTING STANDARDS (APR 1996)

\* \* \* \* \*

(b) \* \* \*

(1) Cost impact proposals submitted for changes in cost accounting practices required in accordance with subparagraph (a)(3) and subdivision (a)(4)(i) of the clause at FAR 52.230-2, Cost Accounting Standards; or subparagraph (a)(3) and subdivisions (a)(4)(i) or (a)(4)(iv) of the clause at FAR 52.230-5, Cost Accounting Standards-Educational Institution; shall identify the applicable standard or cost principle and all contracts and subcontracts containing the clauses entitled Cost Accounting Standards or Cost Accounting Standards-Educational Institution, which have an award date before the effective date of that standard or cost principle.

(2) Cost impact proposals submitted for any change in cost accounting practices proposed in accordance with subdivisions (a)(4) (ii) or (iii) of the clauses at FAR 52.230-2, Cost Accounting Standards, and FAR 52.230-5, Cost Accounting Standards-Educational Institution; or with subparagraph (a)(3) of the clause at FAR 52.230-3, Disclosure and Consistency of Cost Accounting Practices; shall identify all contracts and subcontracts containing the clauses at FAR 52.230-2, Cost Accounting Standards, FAR 52.230-5, Cost Accounting Standards-Educational Institution, and FAR 52.230-3, Disclosure and Consistency of Cost Accounting Practices.

\* \* \* \* \*

(e) For all subcontracts subject to the clauses at FAR 52.230-2, 52.230-3, or 52.230-5—

\* \* \* \* \*

(2) \* \* \*

(iv) Any changes the subcontractor has made or proposes to make to cost accounting practices that affect prime contracts or subcontracts containing the clauses at FAR 52.230-2, 52.230-3, or 52.230-5, unless these changes have already been reported.

\* \* \* \* \*

[FR Doc. 96-10429 Filed 4-26-96; 8:45 am]

BILLING CODE 6820-EP-P

## 48 CFR Part 32

[FAC 90-38; FAR Case 94-767; Item III]

RIN 9000-AG91

### Federal Acquisition Regulation; Assignment of Claims; Presidential Delegation

**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 (Public Law 103-355) (FASA) to reflect the Presidential delegation of authority to make determinations of need and to provide guidance for determinations of need made in accordance with the Presidential delegation dated October 3, 1995. This regulatory action was subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. It is not a major rule under 5 U.S.C. 804.

**EFFECTIVE DATE:** June 28, 1996.

**FOR FURTHER INFORMATION CONTACT:** Mr. John Galbraith, Finance/Payment Team Leader, at (703) 697-6710, in reference to this case. For general information, contact the FAR Secretariat, Room 4037, 18th & F Streets NW., Washington, DC 20405, (202) 501-4755. Please cite FAC 90-38, FAR Case 94-767 in all correspondence related to this case.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

The statutes authorizing assignments of claims under Federal contracts provide authority for the Government to make no-setoff commitments under certain conditions. FASA established a requirement for a determination of need by the President. Implementation was published in the Federal Register, at 60 FR 49729, on September 26, 1995, as FAR Case 94-761. The President, on October 3, 1995, delegated the authority to make determinations of need to the Secretaries of Defense and Energy, the Administrator of General Services, and the heads of all other departments or agencies, subject to such additional guidance as provided by the Administrator of the Office of Federal Procurement Policy. The Administrator of Procurement Policy, in accordance