

**DEPARTMENT OF DEFENSE****GENERAL SERVICES  
ADMINISTRATION****NATIONAL AERONAUTICS AND  
SPACE ADMINISTRATION****48 CFR Parts 31 and 42**

[FAR Case 95-032]

RIN 9000-AH37

**Federal Acquisition Regulation;  
Independent Research and  
Development/Bid and Proposal Costs  
for Fiscal Year 1996 and Beyond**

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

**ACTION:** Proposed rule.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are proposing to revise the Federal Acquisition Regulation (FAR) allowable cost criteria for Independent Research and Development (IR&D)/Bid and Proposal (B&P) costs for Fiscal Year (FY) 1996 and beyond, by removing the requirements to calculate or negotiate a ceiling for IR&D/B&P costs. In addition, the proposed rule clarifies that costs in pursuit of certain cooperative arrangements are allowable, to the extent they are allocable, reasonable, and not otherwise unallowable. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. This is not a major rule under 5 U.S.C. 804.

**DATES:** Comments should be submitted on or before January 13, 1997 to be considered in the formulation of a final rule.

**ADDRESSES:** Interested parties should submit written comments to: General Services Administration, FAR Secretariat (MVRs), 18th & F Streets, NW, Room 4037, Washington, DC 20405.

Please cite FAR case 95-032 in all correspondence related to this case.

**FOR FURTHER INFORMATION CONTACT:** Mr. Jeremy Olson at (202) 501-0692 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 FAR case 95-032.

**SUPPLEMENTARY INFORMATION:****A. Background**

The current FAR IR&D/B&P cost principle covers the limited allowability of IR&D/B&P costs for major contractors through a 3-year transition period (FY93-95) based on the requirements of Section 802 of the FY92-93 National Defense Authorization Act (Pub. L. 102-190). Section 802 does not address the allowability of IR&D/B&P costs after FY95. The proposed rule removes, for FY96 and beyond, requirements to calculate or negotiate a ceiling for IR&D/B&P costs and relies on normal allowability, allocability and reasonableness standards.

The rule deletes certain definitions at FAR 31.205-18(a), major portions of 31.205-18(c), and the entire FAR Subpart 42.10, since (1) there is no requirement for advance agreement negotiations or formal IR&D technical reviews and evaluations after completion of the contractors' FY92, and (2) the transition period of limited allowability for FY93 through FY95 has ended.

In addition, the rule amends FAR 31.205-18(e) to clarify that costs incurred in pursuit of certain cooperative arrangements are allowable to the extent they are allocable, reasonable, and not otherwise unallowable.

**B. Regulatory Flexibility Act**

The proposed changes to FAR Parts 31 and 42 are not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most contracts awarded to small entities use simplified acquisition procedures or are awarded on a competitive fixed-price basis, and do not require application of the FAR cost principles. In addition, this proposed rule applies to only those entities that incur IR&D/B&P costs. It removes certain restrictions, and relies instead on normal allowability, allocability and reasonableness standards. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments are invited from small businesses and interested parties. Comments from small entities concerning the affected FAR subparts also will be considered in accordance with Section 610 of the Act. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 95-032), in correspondence.

**C. Paperwork Reduction Act**

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 31 and 42

Government procurement.

Dated: November 6, 1996.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, it is proposed that 48 CFR Parts 31 and 42 be amended as set forth below:

1. The authority citation for 48 CFR Parts 31 and 42 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

**PART 31—CONTRACT COST  
PRINCIPLES AND PROCEDURES**

2. Section 31.205-18 is amended in paragraph (a) by removing definitions for "Contractor", "Covered contract", "Covered segment", and "Major contractor"; by revising paragraph (c); and adding at the end of paragraph (e) a sentence to read as follows:

**31.205-18 Independent research and  
development and bid and proposal costs.**

\* \* \* \* \*

(c) *Allowability.* Except as provided in paragraphs (d) and (e) of this subsection, or as provided in agency regulations, costs for IR&D and B&P are allowable as indirect expenses on contracts to the extent that those costs are allocable and reasonable.

\* \* \* \* \*

(e) *Cooperative arrangements:* \* \* \* Costs incurred in pursuit of cooperative arrangements are allowable to the extent they are allocable, reasonable, and not otherwise unallowable.

**PART 42—CONTRACT  
ADMINISTRATION****Subpart 42.10 [Reserved]**

3. Subpart 42.10 is removed and reserved.

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