

DEPARTMENT OF DEFENSE**GENERAL SERVICES
ADMINISTRATION****NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION****48 CFR Parts 2, 31, 47, and 52**

[FAC 2001-14; FAR Case 2001-029; Item II]

RIN 9000-AJ33

**Federal Acquisition Regulation;
Miscellaneous Cost Principles**

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) to delete the cost principle concerning transportation costs and to revise the cost principles concerning cost of money, other business expenses, and deferred research and development costs.

DATES: *Effective Date:* June 23, 2003.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501-4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Edward Loeb at (202) 501-1224. Please cite FAC 2001-14, FAR case 2001-029.

SUPPLEMENTARY INFORMATION:**A. Background**

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 67 FR 13072, March 20, 2002, with request for comments. Two respondents submitted public comments. The Councils considered all comments and concluded that the proposed rule should be converted to a final rule with the following changes to the proposed rule:

1. Revise the language at FAR 31.205-10(b)(1) to state that cost of money "is measured, assigned, and allocated to contracts in accordance with 48 CFR 9904.414 or measured and added to the cost of capital assets under construction in accordance with 48 CFR 9904.417, as applicable."

2. Change the word "cost" in paragraph 31.205-10(b)(3) to "cost of money" to maintain clarity and consistency at FAR 31.205-10. A

discussion of the comments is provided below:

Comment: Respondent recommends that paragraph (a)(2) of FAR 31.205-10 be revised to state that cost of money "shall be treated like an incurred cost for cost-reimbursement purposes."

Councils' response: Do not concur. The Councils believe FAR 31.205-10(a)(1) of the proposed rule clearly specifies that cost of money is an imputed cost (as opposed to an incurred cost). Paragraph (a)(2) further states that, for cost-reimbursement purposes, this imputed cost is an "incurred cost." The Councils do not believe this language would permit a contractor to argue that cost of money is not an imputed cost. In fact, the cost principle at FAR 31.205-10 has referred to cost of money as being, for cost-reimbursement purposes, an "incurred cost" since at least as early as 1984, but has also always specifically stated that it is actually an "imputed cost."

Comment: Respondent recommends revising the language in the proposed rule at FAR 31.205-10(b)(1) for cost of money that states "it is measured, assigned, and allocated to contracts in accordance with 48 CFR 9904.414 or 48 CFR 9904.417, as applicable." Respondent notes that 48 CFR 9904.417—Cost of Money as an Element of the Cost of Capital Assets under Construction (CAS 417), addresses the measurement of cost of money attributable to assets being constructed rather than contract costs.

Councils' response: Concur. The Councils revised the rule at paragraph (b)(1) to state that cost of money "is measured, assigned, and allocated to contracts in accordance with 48 CFR 9904.414 or measured and added to the cost of capital assets under construction in accordance with 48 CFR 9904.417, as applicable."

Comment: Respondent recommends revising FAR 31.205-10(b)(1) by changing the word "cost" to "imputed cost" or "cost of money," to make it consistent with the other language in the cost principle.

Councils' response: Concur. The Councils changed the word "cost" in paragraph (b)(3) to "cost of money."

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 principles 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 Parts 2, 31, 47, and 52

Government procurement.

Dated: May 13, 2003.

Laura G. Smith,

Director, Acquisition Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 2, 31, 47, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 2, 31, 47, and 52 is revised to read as follows:

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

**PART 2—DEFINITIONS OF WORDS
AND TERMS**

■ 2. In section 2.101, add the definition "Facilities capital cost of money", in alphabetical order, to read as follows:

2.101 Definitions.

* * * * *

Facilities capital cost of money means "cost of money as an element of the cost of facilities capital" as used at 48 CFR 9904.414—Cost Accounting Standard—Cost of Money as an Element of the Cost of Facilities Capital.

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**PART 31—CONTRACT COST
PRINCIPLES AND PROCEDURES****31.001 [Amended]**

■ 3. In section 31.001, remove the definitions "Cost of capital committed to facilities" and "Facilities capital."

■ 4. Revise section 31.205-10 to read as follows:

31.205-10 Cost of money.

(a) *General.* Cost of money—

(1) Is an imputed cost that is not a form of interest on borrowings (see 31.205-20);

(2) Is an "incurred cost" for cost-reimbursement purposes under applicable cost-reimbursement contracts and for progress payment purposes under fixed-price contracts; and

(3) Refers to—

(i) Facilities capital cost of money (48 CFR 9904.414); and

(ii) Cost of money as an element of the cost of capital assets under construction (48 CFR 9904.417).

(b) Cost of money is allowable, provided—

(1) It is measured, assigned, and allocated to contracts in accordance with 48 CFR 9904.414 or measured and added to the cost of capital assets under construction in accordance with 48 CFR 9904.417, as applicable;

(2) The requirements of 31.205–52, which limit the allowability of cost of money, are followed; and

(3) The estimated facilities capital cost of money is specifically identified and proposed in cost proposals relating to the contract under which the cost is to be claimed.

(c) Actual interest cost in lieu of the calculated imputed cost of money is unallowable.

■ 5. In section 31.205–28, revise the introductory text to read as follows:

31.205–28 Other business expenses.

The following types of recurring costs are allowable:

* * * * *

31.205–45 [Reserved]

■ 6. Remove and reserve section 31.205–45.

31.205–48 Research and development costs.

■ 7. Amend section 31.205–48 by revising the section heading to read as set forth above; and in the first sentence by removing the word "section" and adding "subsection" in its place.

PART 47—TRANSPORTATION

47.300 [Amended]

■ 8. Amend section 47.300 in the introductory text of paragraph (b) by removing "(see 31.205–45)".

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 9. Amend section 52.215–16 by revising the date of the provision and paragraph (a) to read as follows:

52.215–16 Facilities Capital Cost of Money.

* * * * *

Facilities Capital Cost of Money (June 2003)

(a) Facilities capital cost of money will be an allowable cost under the contemplated

contract, if the criteria for allowability in FAR 31.205–10(b) are met. One of the allowability criteria requires the prospective Contractor to propose facilities capital cost of money in its offer.

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DEPARTMENT OF DEFENSE

**GENERAL SERVICES
ADMINISTRATION**

**NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION**

48 CFR Parts 2, 32, and 52

[FAC 2001–14; FAR Case 2000–308; Item III]

RIN 9000–AJ17

**Federal Acquisition Regulation;
Prompt Payment Under Cost-
Reimbursement Contracts for Services**

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) to adopt, as final, the interim rule published at 66 FR 53485, October 22, 2001. This rule requires an agency to pay an interest penalty whenever it makes an interim payment under a cost reimbursement contract for services more than 30 days after the agency receives a proper invoice from the contractor.

DATES: *Effective Date:* May 23, 2003.

Applicability Date: This final rule applies to cost-reimbursement contracts for services, irrespective of award date, if interim payments requests under such contracts are due on or after December 15, 2000. In no event may agencies pay late payment penalty interest for any delay in payment that occurred prior to December 15, 2000.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Edward Loeb at (202) 501–0650. Please cite FAC 2001–14, FAR case 2000–308.

SUPPLEMENTARY INFORMATION:

A. Background

DoD, GSA, and NASA published an interim rule in the **Federal Register** at 66 FR 53485, October 22, 2001, with request for comments. This FAR amendment eliminated the prior policy and contract clause prohibition on payment of late payment penalty interest for late interim finance payments under cost-reimbursement contracts for services. It added new policy and a contract clause, Alternate I to the FAR clause at 52.232–25, to provide for those penalty payments.

The interim FAR rule implemented section 1010 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (Pub. L. 106–398). Section 1010 requires an agency to pay an interest penalty, in accordance with regulations issued by the Office of Management and Budget (OMB), whenever an interim payment under a cost reimbursement contract for services is paid more than 30 days after the agency receives a proper invoice from the contractor. The Act does not permit payment of late payment interest penalty for any period prior to December 15, 2000. OMB published an interim rule in the **Federal Register** at 65 FR 78403, December 15, 2000, and a final rule at 67 FR 79515, December 30, 2002. OMB's rule revised the prompt payment regulations at 5 CFR part 1315 to implement section 1010 of Public Law 106–398.

The Councils received no public comments to the interim FAR rule and have agreed to convert the interim rule to a final rule without change. The applicability date, however, has changed as explained below. The **Federal Register** notice published in conjunction with the FAR interim rule stated that "The policy and clause apply to all covered contracts awarded on or after December 15, 2000 * * * agencies may apply the FAR changes made by this rule to contracts awarded prior to December 15, 2000, at their discretion * * *." (66 FR 53485, October 22, 2001.) This was consistent with OMB regulations. Subsequently, as a result of enactment of the National Defense Authorization Act for Fiscal Year 2002 (Pub. L. 107–107) on December 28, 2001, agencies no longer have this discretion. Section 1007 of Public Law 107–107 states that this policy applies to cost-reimbursement contracts for services awarded before, on, or after December 15, 2000. Section 1007 retains the prohibition against payment of late payment interest penalty for any period prior to December 15, 2000. For this reason, the applicability of the rule has been revised to reflect this change.