enhancing their capabilities to satisfy DoD and other contract and subcontract requirements. Under the Mentor-Protégé Program, eligible companies approved as mentor firms will enter into mentor-protégé agreements with eligible protégé firms to provide appropriate developmental assistance to enhance the capabilities of the protégé firms to perform as subcontractors and suppliers. DoD may provide the mentor firm with either cost reimbursement or credit against applicable subcontracting goals established under contracts with DoD or other Federal agencies.

The Department of Defense, in an effort to streamline and transform itself in order to more effectively achieve its mission and in recognition that the Military Departments have the necessary expertise to manage programs efficiently, is transferring the management of the Mentor Protégé program to the Military Departments and Defense Agencies. The Office of the Secretary of Defense will maintain oversight and policy development responsibilities.

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 69 FR 18244, April 6, 2004, with request for comments. One respondent submitted a comment that was outside the scope of the rule and no action was taken. The Councils agreed to convert the proposed rule to a final rule.

Accordingly, the FAR is amended to state that the Director, Small and Disadvantaged Business Utilization of the cognizant DoD Military Department or Defense Agency, will be the approval authority for mentor-protégé agreements.

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 the rule removes a restriction, thus allowing DoD to make a minor policy change.

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 19

Government procurement.

Dated: December 9, 2004.

Laura Auletta,

Director, Contract Policy Division.

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

■ 1. The authority citation for 48 CFR part 19 is revised to read as follows:

PART 19—SMALL BUSINESS PROGRAMS

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

■ 2. Amend section 19.702 by revising paragraph (d) to read as follows:

19.702 Statutory requirements.

* * * * *

(d) As authorized by 15 U.S.C. 637(d)(11), certain costs incurred by a mentor firm in providing developmental assistance to a protégé firm under the Department of DefensePilot Mentor-Protégé Program, may be credited as if they were subcontract awards to a protégé firm for the purpose of determining whether the mentor firm attains the applicable goals under any subcontracting plan entered into with any executive agency. However, the mentor-protégé agreement must have been approved by the Director, Small and Disadvantaged Business Utilization of the cognizant DoD military department or defense agency, before developmental assistance costs may be credited against subcontract goals. A list of approved agreements may be obtained at *http://www.acq.osd.mil/sadbu/mentor__protege/* or by calling (703) 588–8631.

[FR Doc. 04–27637 Filed 12–17–04; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 42

[FAC 2001–26; FAR Case 2001–018; Item VI]

RIN 9000–AJ77

Federal Acquisition Regulation; Applicability of the Cost Principles and Penalties 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 increasing the contract dollar threshold for assessing a penalty if the contractor includes expressly unallowable costs in its claim for reimbursement.

DATES: Effective Date: January 19, 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. Richard C. Loeb at (202) 208–3810. Please cite FAC 2001–26, FAR case 2001–018.

SUPPLEMENTARY INFORMATION:

A. Background

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 68 FR 66988 on November 28, 2003, with request for comments. The Councils proposed to amend the FAR to: (1) remove the requirement to apply the cost principles and procedures at FAR Part 31 when pricing a contract if cost or pricing data are not obtained; (2) add a definition to FAR Part 31 for fixed-price contracts, subcontracts, and modifications; and (3) increase the contract dollar threshold for assessing a penalty if the contractor includes expressly unallowable costs in its claim for reimbursement (FAR Part 42). Three respondents submitted comments on the proposed FAR rule; a discussion of the comments are provided below. The Councils considered all comments and decided not to adopt the proposed revisions to FAR Parts 15 and 31, and to convert the proposed rule at FAR Part 42 to a final rule. Differences between

the proposed rule and final rule are discussed in comments 1, 2, and 3, below.

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.

Public Comments:

Applicability of FAR Part 31

1. *Comment:* Two of the three respondents believe the change should not be made.

The first respondent urged the withdrawal of the proposed rule and expressed the position that the need for the proposed change was not clearly and fully disclosed. The respondent strongly believes that the Government's prenegotiation objective for cost based fixed-price contracts should continue to be predicated on the consistent application of applicable FAR Part 31 cost principles. Whether a contractor's submitted cost data is ''certified'' or ''uncertified'' should not alter the basis for determining the Government's prenegotiation objective, or a determination on whether the negotiated fixed-price is fair and reasonable.

The respondent noted that FAR Part 31 has more than just unallowable costs within it, *e.g.,* allocability, consistency, direct vs. indirect, and accounting methods. The respondent also made the following points:

- If FAR Subpart 31.2 policies and procedures are not consistently applied to cost-based fixed-price contracts, what are the alternate policies, procedures and principles to be applied when performing a ''cost analysis'' of the ''uncertified'' information other than cost or pricing data?
- What fundamental constructs will the proposing contractor have to comply with?
- What will guide the cost analyst and/or auditor when performing the ''cost analysis'' of the contractor's uncertified data?

After referencing the Councils' stated goal ''...to reduce Government unique regulations when the risk to the Government is low,'' the respondent opined:

When negotiating fixed-price contracts based on a prenegotiation objective that was predicated on a ''cost analysis'' of contractor submitted information other than cost or pricing cost data, the respondent believes that the risk to the Government is higher, not lower, than if ''certified'' cost or pricing data had been obtained. Without certified data, there is less assurance that contractor submitted data are current, complete and accurate.

The respondent concluded that FAR Part 31 contract cost principles should continue to be applied to pricing contracts whenever cost data is submitted to support a contract price, regardless of whether the contract type is fixed-price.

The second respondent believes that the Government's policy objective should be clarified, and that the mention of cost analysis is potentially confusing and unnecessary. The respondent characterized the phrasing of the proposed rule as terribly awkward (due to using the passive voice) and suggested alternative language.

The third respondent was concerned that the proposed coverage at FAR 31.000 appears to restrict in some way the underlying Truth in Negotiations Act (TINA) mandate to obtain cost or pricing data in the first place (as to both negotiated contracts and negotiated modifications).

Councils' response: Concur that the proposed change should not be made. The Councils believe that the Government needs a consistent playing field when dealing with cost data whether ''certified'' or not. The Councils are also concerned that the proposed language could be construed as limiting the Government's use of FAR Part 31 for its prenegotiation positions. This would adversely affect any requests for audit support made by the contracting officer. The General Accepted Government Auditing Standards (GAGAS) under attestation standards AT 101.23, ''Suitability of Criteria,'' require auditors to have objective, measurable, complete, and relevant criteria to apply during their work. The Councils believe that the guidance in FAR Part 31 meets these requirements, as General Accepted Accounting Principles (GAAP) alone does not go to the level necessary to support contract pricing. Therefore, the Councils have withdrawn the proposed revisions to FAR Parts 15 and 31.

Definition of fixed-price contracts

2. *Comment:* Two respondents believe the proposed FAR 31.001 definition of fixed-price contracts, subcontracts and modifications would lead to confusion in the area of Time-and-Material (T&M) type contracting actions.

The first respondent stated that it strongly opposes the proposed ''redefinition'' of fixed-price contracts to include the fixed hourly portion of a T&M and labor-hour (LH) contract, and that it flies in the face of law and common sense. The respondent cited GSBCA decision CACI, Inc.—Federal v. General Services Administration, dated December 13, 2002, to support its position that T&M/LH contracts are not fixed-price. The respondent believes that the Council's attempt to rationalize a portion a T&M/LH contract as ''fixed-price'' is a shameful capitulation to contractors interests, and an abrogation of the Council's duty to taxpayers.

The second respondent was concerned the proposed definition may impact T&M orders placed under GSA's Multiple Award Schedule (MAS) contracts. The proposed definition would include the fixed hourly rate portion of the T&M and LH contracts and subcontracts in FAR Subpart 16.6. The respondent believes this may suggest that time-and-material orders with a fixed labor hour component are fixed-price in nature for any contracting or FAR purpose. GSA mandates that all T&M orders placed under MAS contracts include the contract clause at FAR 52.232–7, Payments under Time-and-Materials and Labor-Hour Contracts. This clause provides contracting officers with an ability to require more substantiation of hours worked under a time-and-materials order. Because such task orders have fixed labor components, the respondent is concerned that contracting officers may—based on this proposed FAR change—consider such task orders to be fixed price and not invoke the controls attendant with this clause or other necessary safeguards to the use of such vehicles.

Councils' response: Partially concur. The Councils believe there is a limited risk that contracting officers could be confused by the inclusion of the ''fixed rate portion'' of a T&M contracting action in the proposed definition. However, due to the Council's decision not to adopt the proposed revisions discussed at Comment 1, above, this definition is no longer required.

Dollar threshold for assessing penalties—FAR 42.709

3. *Comment:* One respondent stated that it had no objection to the proposed change in the threshold from the current $500,000 to $550,000 to adjust for inflation. The other two respondents did not address the proposed change.

Councils' response: Concur. The Councils agree that the contract dollar threshold for assessing a penalty if the contractor includes expressly unallowable costs in its claim for reimbursement should be increased from $500,000 to $550,000, to adjust for inflation. This increase is authorized by 10 U.S.C. 2324(l) and 41 U.S.C. 256(1). Therefore, the dollar threshold amounts

in FAR 42.709(b) and FAR 42.709–6 are increased from $500,000 to $550,000.

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 Part 42

Government procurement.

Dated: December 9, 2004.

Laura Auletta,

Director, Contract Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR part 42 as set forth below:

PART 42—CONTRACT ADMINISTRATION AND AUDIT SERVICES

■ 1. The authority citation for 48 CFR part 42 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).

42.709 and 42.709–6 [Amended]

■ 2. Amend sections 42.709(b) and 42.709–6 by removing ''$500,000'' and adding ''$550,000'' in its place.

[FR Doc. 04–27638 Filed 12–17–04; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 11, 41, 44, 51, and 52

[FAC 2001-26; Item VII]

Federal Acquisition Regulation; Technical Amendments

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

ACTION: Final rule.

SUMMARY: This document makes amendments to the Federal Acquisition Regulation (FAR) in order to make editorial changes.

DATE: *Effective Date:* December 20, 2004.

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. Please cite FAC 2001-26, Technical Amendments.

List of Subjects in 48 CFR Parts 11, 41, 44, 51, and 52

Government procurement.

Dated: December 9, 2004.

Laura Auletta,

Director, Contract Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 11, 41, 44, 51, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 11, 41, 44, 51, and 52 is revised 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 11—DESCRIBING AGENCY NEEDS

11.201 [Amended]

■ 2. Amend section 11.201 in paragraph (d)(2)(i) by removing *http://assist.daps.mil* and adding *http://assist.daps.dla.mil* in its place.

PART 41—ACQUISITION OF UTILITY SERVICES

■ 3. Amend section 41.301 by revising the second sentence of paragraph (a) to read as follows:

41.301 Requirements.

(a) * * * The names and locations of GSA regional offices are available from the General Services Administration, Energy Center of Expertise, 301 7th Street, SW., Room 4004, Washington, DC 20407.

* * * * *

PART 44—SUBCONTRACTING POLICIES AND PROCEDURES

44.203 [Amended]

■ 4. Amend section 44.203 in paragraph (b)(1) by removing ''16.301-3'' and adding ''15.404-4(c)(4)(i)'' in its place.

PART 51—USE OF GOVERNMENT SOURCES BY CONTRACTORS

51.102 [Amended]

■ 5. Amend section 51.102 by removing ''FCSI'' from paragraph (c)(1) and adding ''FXS'' in its place.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.219–1 [Amended]

■ 6. Amend section 52.219-1 by removing ''19.307(a)(1)'' from the introductory text and adding ''19.308(a)(1)'' in its place.

[FR Doc. 04–27639 Filed 12–17–04; 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) 2001–26 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 2001–26, which precedes this document. These documents are also