increase in income taxes resulting from foreign assignment. Instead, contractors must employ an alternative, less accurate approach. This prohibition was intended to prevent a conflict with the policy at 31.205–41(b)(1) that Federal income taxes are unallowable costs. However, FAR 31.205–6(e)(1) explicitly states that contractors may properly consider increased Federal income taxes in the allowable foreign differential pay provided to overseas employees.

B. Regulatory Flexibility Act

The interim rule is 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 the simplified acquisition procedures, or are awarded on a competitive, fixed-price basis, and do not require application of the FAR cost principles. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected FAR subpart also will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite 5 U.S.C. 601, *et seq.* (FAC 90–44, FAR case 96–012) in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the interim rule does not impose any reporting or recordkeeping requirements which require Office of Management and Budget approval under 44 U.S.C. 3501, *et seq.*

D. Determination to Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DOD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that, pursuant to 41 U.S.C. 418b, urgent and compelling reasons exist to publish an interim rule prior to affording the public an opportunity to comment. The rule is necessary because the cost principle at FAR 31.205–6 imposes unnecessary administrative and accounting requirements, since it prohibits contractors from calculating differential pay on the basis of an employee's specific increase in income taxes resulting from foreign assignment. Instead, contractors must employ an alternative, less accurate approach that may result in an employee being undercompensated (or overcompensated). It is necessary that an interim rule be published to eliminate expeditiously this unnecessarily burdensome requirement that results in unnecessary administrative costs to contractors and may cause financial hardship on certain individuals. However, pursuant to Public Law 98–577 and FAR 1.501, public comments received in response to this interim rule will be considered in the formation of the final rule.

List of Subjects in 48 CFR Part 31

Government procurement.

Dated: December 19, 1996.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR part 31 is amended 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. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 31.205–6 is amended by revising paragraph (e)(2) to read as follows:

31.205–6 Compensation for personal services.

* * * * *

(e) * * *

(2) Differential allowances for additional Federal, State, or local income taxes resulting from domestic assignments are unallowable.

* * * * *

[FR Doc. 96–32810 Filed 12–30–96; 8:45 am]

BILLING CODE 6820–EP–M

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48 CFR Parts 42 and 52

[FAC 90–44; FAR Case 95–018; Item VII]

RIN 9000–AG88

Federal Acquisition Regulation; Final Indirect Cost Rates

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 amending the Federal Acquisition Regulation (FAR) concerning the procedures relating to final indirect cost rates to permit, with certain restrictions, increased interim payments to contractors under certain circumstances. 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.

EFFECTIVE DATE: March 3, 1997.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Klein at (202) 501–3775 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 90–44, FAR case 95–018.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule amends FAR Subpart 42.7 and Part 52 to improve procedures for providing payments to contractors under cost-type contracts by (1) permitting, with certain restrictions, contractor use of billing rates contained in certified final indirect cost rate proposals; (2) providing for Government release of 75 to 90 percent of all fee withholds under physically completed contracts, after receipt of the contractor's certified final indirect cost rate proposal; and (3) establishing a timeframe for contractor submission of final invoices or vouchers.

A proposed rule was published in the Federal Register at 61 FR 26766, May 28, 1996. One source submitted comments which were considered in the development of the final rule.

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 merely provides for earlier payments to contractors under cost-type contracts.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the 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 42 and 52

Government procurement.

Dated: December 19, 1996.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

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

1. The authority citation for 48 CFR Parts 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).

PART 42—CONTRACT ADMINISTRATION

2. Section 42.704 is amended by adding paragraph (e) to read as follows:

42.704 Billing rates.

* * * * *

(e) When the contractor provides to the cognizant contracting officer the certified final indirect cost rate proposal in accordance with 42.705–(b) or 42.705–(b), the contractor and the Government may mutually agree to revise billing rates to reflect the proposed indirect cost rates, as approved by the Government to reflect historically disallowed amounts from prior years' audits, until the proposal has been audited and settled. The historical decrement will be determined by either the cognizant contracting officer (42.705–1(b)) or the cognizant auditor (42.705–2(b)).

3. Section 42.705 is revised to read as follows:

42.705 Final indirect cost rates.

(a) Final indirect cost rates shall be established on the basis of—

(1) Contracting officer determination procedure (see 42.705–1) or

(2) Auditor determination procedure (see 42.705–2).

(b) Within 120 days after settlement of the final indirect cost rates (or longer, if approved in writing by the contracting officer), the contractor shall submit a completion invoice or voucher reflecting the settled amounts and rates on all contracts physically completed in the year covered by the proposal.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Section 52.216–7 is amended by revising the clause date; redesignating paragraph (d)(4) as (d)(5) and adding a new (d)(4); and by revising paragraph (h)(1) to read as follows:

52.216–7 Allowable Cost and Payment.

* * * * *

Allowable Cost and Payment (Feb 1997)

* * * * *

(d) * * *

(4) Within 120 days after settlement of the final indirect cost rates covering the year in which this contract is physically complete (or longer, if approved in writing by the Contracting Officer), the Contractor shall submit a completion invoice or voucher to reflect the settled amounts and rates.

* * * * *

(h) *Final payment.* (1) Upon approval of a completion invoice or voucher submitted by the Contractor in accordance with paragraph (d)(4) of this clause, and upon the Contractor's compliance with all terms of this contract, the Government shall promptly pay any balance of allowable costs and that part of the fee (if any) not previously paid.

* * * * *

5. Section 52.216–8 is amended by revising the clause date and paragraph (b) to read as follows:

52.216–8 Fixed Fee.

* * * * *

Fixed Fee (Feb 1997)

* * * * *

(b) Payment of the fixed fee shall be made as specified in the Schedule; provided that after payment of 85 percent of the fixed fee, the Contracting Officer may withhold further payment of fee until a reserve is set aside in an amount that the Contracting Officer considers necessary to protect the Government's interest. This reserve shall not exceed 15 percent of the total fixed fee or $100,000, whichever is less. The Contracting Officer shall release 75 percent of all fee withholds under this contract after receipt of the certified final indirect cost rate proposal covering the year of physical completion of this contract, provided the Contractor has satisfied all other contract terms and conditions, including the submission of the final patent and royalty reports, and is not delinquent in submitting final vouchers on prior years' settlements. The Contracting Officer may release up to 90 percent of the fee withholds under this contract based on the Contractor's past performance related to the submission and settlement of final indirect cost rate proposals.

(End of clause)

6. Section 52.216–9 is amended by revising the clause date and paragraph (c) to read as follows:

52.216–9 Fixed Fee—Construction.

* * * * *

Fixed Fee—Construction (Feb 1997)

* * * * *

(c) After the payment of 85 percent of the fixed fee, the Contracting Officer may withhold further payment of fee until a reserve is set aside in an amount that the Contracting Officer considers necessary to protect the Government's interest. This reserve shall not exceed 15 percent of the total fixed fee or $100,000, whichever is less. The Contracting Officer shall release 75 percent of all fee withholds under this contract after receipt of the certified final indirect cost rate proposal covering the year of physical completion of this contract, provided the Contractor has satisifed all other contract terms and conditions, including the submission of the final patent and royalty reports, and is not delinquent in submitting final vouchers on prior years' settlements. The Contracting Officer may release up to 90 percent of the fee withholds under this contract based on the Contractor's past performance related to the submission and settlement of final indirect cost rate proposals.

(End of clause)

7. Section 52.216–10 is amended by revising the clause date and paragraph (c) to read as follows:

52.216–10 Incentive Fee.

* * * * *

Incentive Fee (Feb. 1997)

* * * * *

(c) *Withholding of payment.* Normally, the Government shall pay the fee to the Contractor as specified in the Schedule. However, when the Contracting Officer considers that performance or cost indicates that the Contractor will not achieve target, the Government shall pay on the basis of an appropriate lesser fee. When the Contractor demonstrates that performance or cost clearly indicates that the Contractor will earn a fee significantly above the target fee, the Government may, at the sole discretion of the Contracting Officer, pay on the basis of an appropriate higher fee. After payment of 85 percent of the applicable fee, the Contracting Officer may withhold further payment of fee until a reserve is set aside in an amount that the Contracting Officer considers necessary to protect the Government's interest. This reserve shall not exceed 15 percent of the applicable fee or $100,000, whichever is less. The Contracting Officer shall release 75 percent of all fee withholds under this contract after receipt of the certified final indirect cost rate proposal covering the year of physical completion of this contract, provided the Contractor has satisfied all other contract terms and conditions, including the submission of the final patent and royalty reports, and is not delinquent in submitting final vouchers on prior years' settlements. The Contracting Officer may release up to 90 percent of the fee withholds under this contract based on the Contractor's past performance related to the submission and settlement of final indirect cost rate proposals.

* * * * *

8. Section 52.216–13 is amended by revising the clause date, redesignating paragraph (c)(4) as (c)(5) and adding a new paragraph (c)(4); and by revising the date and paragraph (h) of Alternate I to read as follows:

* * * * *

52.216–13 Allowable Cost and Payment—Facilities.

* * * * *

Allowable Cost and Payment—Facilities (Feb 1997)

* * * * *

(c) * * *

(4) Within 120 days after settlement of the final indirect cost rates covering the year in

which this contract is physically complete (or longer, if approved in writing by the Contracting Officer), the Contractor shall submit a completion invoice or voucher to reflect the settled amounts and rates.

* * * * *

Alternate I (Feb 1997). * * *

* * * * *

(h) *Final Payment.* Upon approval of a completion invoice or voucher submitted by the Contractor in accordance with paragraph (c)(4) of this clause, and upon the Contractor's compliance with all terms of this contract, the Government shall promptly pay any balance of allowable costs not previously paid.

[FR Doc. 96–32811 Filed 12–30–96; 8:45 am]

BILLING CODE 6820–EP–M

48 CFR Part 43

[FAC 90–44; FAR Case 96–606; Item VIII]

RIN 9000–AH44

Federal Acquisition Regulation; Modification of Existing Contracts

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

ACTION: Interim rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed to an interim rule to amend the Federal Acquisition Regulation (FAR) to implement Sections 4402 (d) and (e) of the Clinger-Cohen Act of 1996, which authorizes regulations to provide for modification of existing contracts without requiring consideration, upon request of the contractor, to incorporate changes authorized by the Act. 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. The Federal Acquisition Reform Act of 1996 was subsequently renamed the Clinger-Cohen Act of 1996.

DATES: *Effective Date:* January 1, 1997.

Comments Due: To be considered in the formulation of a final rule, comments should be submitted to the address given below on or before March 3, 1997.

ADDRESSES: Comments should be submitted to: General Services Administration, Ms. Beverly Fayson, FAR Secretariat, 18th & F Streets NW, Room 4037, Washington, DC 20405.

E-Mail comments submitted over the Internet should be addressed to: 96–606@www.ARNet.gov.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph DeStefano at (202) 501–1758 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 90–44, FAR case 96–606.

SUPPLEMENTARY INFORMATION:

A. Background

Section 4402(d) of the Clinger-Cohen Act of 1996 (Pub. L. 104–106) states that regulations implementing the Act may provide for modification of existing contracts without consideration, upon request of the contractor, to incorporate changes authorized by the Act. Section 4402(e)(2) also states that nothing in the Act requires the renegotiation or modification of existing contracts to incorporate changes authorized by the Act. This interim rule adopts the policy of encouraging, but not requiring, appropriate modifications without consideration, upon the request of the contractor. If the contracting officer determines that modification of an existing contract is appropriate to incorporate changes authorized by the Act, the modification should insert the current version of the applicable FAR clauses into the contract.

B. Regulatory Flexibility Act

The changes in this interim rule may 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 it enables industry and the Government to gain significant benefits, including the potential reduction of contract costs, by authorizing the incorporation into existing contracts any of the Clinger-Cohen Act changes that will benefit the contracting parties. An Initial Regulatory Flexibility Analysis (IRFA) has been prepared and will be provided to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the FAR Secretariat. Comments are invited. Comments from small entities concerning the affected FAR subpart also will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite 5 U.S.C. 601, *et seq.* (FAC 90–44, FAR case 96–606), in correspondence. The IRFA is summarized as follows:

This rule will apply to all large and small entities that currently have a Government contract. Most likely, contractors will not request modification of contracts under $25,000, because the usually short period of performance under these contracts will discourage modification. The number of active contracts over $25,000 held by small entities at any point in time is not readily available. However, in Fiscal Year 1995, small entities were awarded 31,421 contracts (number does not include modifications to contracts) over $25,000. Small entities may or may not request modification of those contracts depending on whether they determine that modification of their specific contracts to incorporate Clinger-Cohen Act of 1996 changes will be advantageous. This rule imposes no new reporting, recordkeeping, or other compliance requirements. This rule is the only practical alternative to implement subsections 4402 (d) and (e) of the Act.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the interim rule does not impose any new reporting or recordkeeping requirements which require Office of Management and Budget approval under 44 U.S.C. 3501, *et seq.*

D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DOD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that, pursuant to 41 U.S.C. 418b, urgent and compelling reasons exist to publish an interim rule prior to affording the public an opportunity to comment. The rule is necessary because immediate promulgation of an interim rule will provide significant benefits to industry and the Government. Sections 4402 (d) and (e) of the Clinger-Cohen Act of 1996 authorize contracting officers, if requested by the prime contractor, to modify contracts without requiring consideration to incorporate changes authorized by the Act.

Implementation of Sections 4402 (d) and (e) as an interim rule will enable industry and the Government to gain immediate benefits, including the potential reduction of contract costs. The interim rule authorizes the adoption of any of the rules implementing the Clinger-Cohen Act of 1996 that will benefit the contracting parties. The interim rule should involve no substantial risk to industry, since contractors must affirmatively request adoption of the rules for an existing contract. However, pursuant to Public Law 98–577 and FAR 1.501, public comments received in response to this interim rule will be considered in the formation of the final rule.

List of Subjects in 48 CFR Part 43

Government procurement.