Federal Register

Tuesday,
June 3, 2003

Part V

Department of Defense

General Services Administration

National Aeronautics and Space Administration

48 CFR Parts 31 and 52

Federal Acquisition Regulation; Deferred Compensation and Postretirement Benefits Other Than Pensions; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 31 and 52

[FAR Case 2001–031]

RIN 9000–AJ67

Federal Acquisition Regulation; Deferred Compensation and Postretirement Benefits Other Than Pensions

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 (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) by revising the paragraphs of the ''compensation for personal services'' cost principle relating to deferred compensation and postretirement benefits other than pensions.

DATES: Interested parties should submit comments in writing on or before August 4, 2003, to be considered in the formulation of a final rule.

ADDRESSES: Submit written comments to—General Services Administration, FAR Secretariat (MVA), 1800 F Street, NW., Room 4035, ATTN: Laurie Duarte, Washington, DC 20405.

Submit electronic comments via the Internet to—*farcase.2001–031@gsa.gov.*

Please submit comments only and cite FAR case 2001–031 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Mr. Edward Loeb, Procurement Analyst, at (202) 501-0650. Please cite FAR case 2001–031.

SUPPLEMENTARY INFORMATION:

A. Background

The Councils propose the following changes:

1. FAR 31.205–6, at paragraph (k), Deferred compensation other than pensions, amend the cost principle by—

a. Deleting the first two sentences of paragraph (k)(l) which duplicate the definition of deferred compensation at FAR 31.001, the third sentence of paragraph (k)(l) which duplicates requirements at FAR 31.205–6(a), and paragraph (k)(3) which is obsolete;

b. Moving the fourth sentence of paragraph (k)(l) to (k)(2); and

c. Changing the phrase ''measured, allocated, and accounted for'' in paragraph (k)(2) to ''measured, assigned, and allocated'' to be consistent with the language used in cost accounting standards; and

d. Making related editorial changes.

2. FAR 31.205–6, at paragraph (o), Postretirement benefits other than pensions, amend the cost principle by—

a. Moving (and revising) the language in paragraphs (o)(3) through (o)(5) to paragraph (o)(2)(iii) because these requirements only apply to accrual costing other than terminal funding;

b. Adding language to the current paragraph (o)(6) (new paragraph (o)(3)) specifying how the contractor must handle refunds and credits; and

c. Making related editorial changes.

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 Councils do not expect this proposed rule 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 cost principle discussed in this rule. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. We invite comments from small businesses and other interested parties. The Councils will consider comments from small entities concerning the affected FAR Parts 31 and 52 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 2001–031), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed 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 31 and 52

Government procurement.

Dated: May 28, 2003.

Laura G. Smith,

Director, Acquisition Policy Division.

Therefore, DoD, GSA, and NASA propose amending 48 CFR parts 31 and 52 as set forth below:

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

1. The authority citation for 48 CFR parts 31 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).

2. Amend section 31.205–6 by revising paragraphs (k) and (o) to read as follows:

31.205–6 Compensation for personal services.

* * * * *

(k) *Deferred compensation other than pensions.* The costs of deferred compensation awards are allowable subject to the following limitations:

(1) The costs shall be measured, assigned, and allocated in accordance with 48 CFR 9904.415, Accounting for the Cost of Deferred Compensation.

(2) The costs of deferred compensation awards are unallowable if the awards are made in periods subsequent to the period when the work being remunerated was performed.

* * * * *

(o) *Postretirement benefits other than pensions (PRB).* (1) PRB covers all benefits, other than cash benefits and life insurance benefits paid by pension plans, provided to employees, their beneficiaries, and covered dependents during the period following the employees' retirement. Benefits encompassed include, but are not limited to, postretirement health care; life insurance provided outside a pension plan; and other welfare benefits such as tuition assistance, day care, legal services, and housing subsidies provided after retirement

(2) To be allowable, PRB costs shall be incurred pursuant to law, employer-employee agreement, or an established policy of the contractor, and shall comply with paragraph (o)(2)(i), (ii), or (iii) of this subsection.

(i) *Cash basis.* Costs recognized as benefits when they are actually provided, must be paid to an insurer, provider, or other recipient for current year benefits or premiums.

(ii) *Terminal funding.* If a contractor uses terminal funding the contractor shall—

(A) Accrue and pay the entire PRB liability to an insurer or trustee in a lump sum payment upon the termination of employees (or upon conversion to such a terminal-funded plan) to establish and maintain a fund or reserve for the sole purpose of providing PRB to retirees; and

(B) Amortize the lump sum over a period of 15 years.

(iii) *Accrual basis.* If a contractor uses accrual costing other than terminal funding, the PRB costs shall be—

(A) Measured and assigned in accordance with generally accepted accounting principles. However, the portion of PRB costs attributable to past service (''transition obligation'') as defined in Financial Accounting Standards Board Statement 106, paragraph 110, cannot exceed the amount assignable under the delayed recognition methodology described in paragraphs 112 and 113 of Statement 106;

(B) Paid to an insurer or trustee to establish and maintain a fund or reserve for the sole purpose of providing PRB to retirees;

(C) Calculated in accordance with generally accepted actuarial principles and practices as promulgated by the Actuarial Standards Board; and

(D) Funded by the time set for filing the Federal income tax return or any extension. PRB costs assigned to the current year, but not funded or otherwise liquidated by the tax return time, are not allowable in any subsequent year. Increased PRB costs caused by delay in funding beyond 30 days after each quarter of the year to which they are assignable are unallowable.

(3) The Government shall receive an equitable share of any amount of previously funded PRB costs which revert or inure to the contractor. Such equitable share shall reflect the Government's previous participation in PRB costs through those contracts for which cost or pricing data were required or which were subject to subpart 31.2. The contractor shall credit the equitable share to the Government either as a cost reduction or by cash refund at the option of the Government.

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Revise section 52.215–18 to read as follows:

52.215–18 Reversion or Adjustment of Plans for Postretirement Benefits (PRB) Other Than Pensions.

As prescribed in 15.408(j), insert the following clause:

Reversion or Adjustment of Plans for Postretirement Benefits (PRB) Other Than Pensions (Date)

The Contractor shall promptly notify the Contracting Officer in writing when the Contractor determines that it will terminate or reduce a PRB plan. If PRB fund assets revert or inure to the Contractor, or are constructively received by it under a plan termination or otherwise, the Contractor shall make a refund or give a credit to the Government, at the option of the Government, for its equitable share as required by FAR 31.205–6(o)(3). The Contractor shall insert the substance of this clause in all subcontracts that meet the applicability requirements of FAR 15.408(j). (End of clause)

[FR Doc. 03–13859 Filed 6–2–03; 8:45 am]

BILLING CODE 6820–EP–P