

23.406 Solicitation provision and contract clause.

(a) Insert the provision at 52.223-4, Recovered Material Certification, in solicitations that are for, or specify the use of, EPA-designated products containing recovered materials.

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[FR Doc. 03-18534 Filed 7-23-03; 8:45 am]

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DEPARTMENT OF DEFENSE**GENERAL SERVICES
ADMINISTRATION****NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION****48 CFR Parts 5, 7, and 10**

[FAC 2001-15; FAR Case 2001-030; Item III]

RIN 9000-AJ30

**Federal Acquisition Regulation;
Electronic Listing of Acquisition
Vehicles Available for Use by More
Than One Agency**

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

ACTION: Final rule.

SUMMARY: The Federal Acquisition Regulatory Council (Council) has agreed on a final rule amending the Federal Acquisition Regulation (FAR) to require contracting activities to input information in an online contract directory for Governmentwide acquisition contracts (GWACs), multi-agency contracts, Federal Supply Schedule contracts, and other procurement instruments intended for multiple agency use, including blanket purchase agreements (BPAs) under Federal Supply Schedule contracts. The directory is located at <http://www.contractdirectory.gov>; and encourage consideration of the online contract directory during acquisition planning and market research.

The Office of Federal Procurement Policy (OFPP) seeks to improve application of acquisition basics generally and use of interagency contracts in particular. The contract directory furthers both of these objectives by providing easier access to information that will support more informed acquisition planning and market research. The contract directory also furthers the Administration's efforts to create a more efficient, effective, and citizen-centric government. See OFPP's

May 6, 2003, memorandum to the Federal Acquisition Council and Agency Senior Procurement Executives, "Roll-Out of the Inter-Agency Contract Directory" available at <http://www.acqnet.gov>.

DATES: This rule is effective July 24, 2003. This rule applies July 24, 2003 for the following procurement instruments, except for those expiring on or before June 1, 2004: GWACs, multi-agency contracts, Federal Supply Schedule contracts, and other procurement instruments intended for multiple agency use, including blanket purchase agreements (BPAs) under Federal Supply Schedule contracts.

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. Gerald Zaffos, Procurement Analyst, at (202) 208-6091. Please cite FAC 2001-15, FAR case 2001-030.

SUPPLEMENTARY INFORMATION:**A. Background****1. The Proposed and Final Rules**

The Council published a proposed rule in the **Federal Register** on February 15, 2002 (67 FR 7255). The proposed rule would add a new FAR Subpart 5.6, Publicizing Multi-Agency Use Contracts, to—

- Make contracting officers and program managers aware of an online database of information about GWACs, multi-agency contracts, Federal Supply Schedule contracts, and other procurement instruments intended for multiple agency use, including BPAs under Federal Supply Schedule contracts;

- Require contracting activities, within ten days of award of a procurement instrument intended for use by multiple agencies, to enter into the database general information about the instrument, as specified on the Web site hosting the database; and

- Require contracting activities to enter information into the database on all existing contracts and other procurement instruments intended for multiple agency use by a date to be established in the final rule.

The final rule generally adopts the proposed rule with certain changes. In particular, the final rule amends—

- FAR 7.105(b)(1) to add a requirement that contracting officers and program managers consider the sources contained in the database of interagency contracts, to be known as the "contract directory", as prospective sources of supplies and services; and

- FAR 10.002(b)(2)(iv) to encourage querying the database during market research for information relevant to agency acquisitions.

Consistent with the proposed rule, agencies will have ten days after contract award to input information on new awards. See FAR 5.601(b)(1). In addition, as set forth at FAR 5.601(b)(2), agencies will be required to enter information on existing contracts by October 31, 2003. Agencies may, but are not required to, input information on contracts that would expire on or before June 1, 2004.

While the Council intends for the contract directory to provide increased visibility regarding the opportunities agencies are creating through interagency vehicles, it also recognizes that contracts relatively close to expiration may be nearing or at ceiling limits. Accordingly, in deciding whether to input such contracts, agencies may consider the administrative burden to input such contracts in light of the likely amount of customer usage prior to expiration.

2. Data Fields

The data elements that will populate the contract directory will not be prescribed in the FAR. As noted in the preamble to the proposed rule, specific elements will be listed on the Web site that hosts the database. The address for the Web site is <http://www.contractdirectory.gov>.

After consideration of public comments (discussed below), the following data fields have been selected for use in the initial population of the contract directory. The fields fall within one of three categories: (1) General information about the procurement instrument, (2) information about placing orders, and (3) information about the servicing agency. (The numbering of the data fields below is provided for easy reference in this preamble and may differ on the contract directory Web site.) The list has been annotated to identify which fields will be searchable as well as those that will have "drop-down" boxes with more detailed information.

**Description of Initial Data Fields for
Contract Directory**

Information about the procurement instrument.

(1) Program name and acronym (searchable).

(2) Procurement instrument number (searchable).

(3) Type of procurement instrument (searchable) with drop down box that includes GWAC, multi-agency contract, Federal Supply Schedule contract, BPA under Federal Supply Schedule contract, other.

- (4) Contractor.
 - (5) Data Universal Numbering System (DUNS) Number of the contractor.
 - (6) North American Industrial Classification (NAICS) code (searchable).
 - (7) Principal Product or Service Code (searchable).
 - (8) Brief description of supplies and services (searchable).
 - (9) Applicable socio-economic information (searchable) with drop down box to identify from the following status categories those that apply to the contractor: Small Business, Emerging Small Business, Small Disadvantaged Business, 8(a), Very Small Business, Woman-Owned Business, HUBZone, Veteran-Owned Small Business, Service-Disabled Veteran-Owned Small Business, Historically Black Colleges and Universities, Minority Institution, Javits-Wagner-O'Day Participating Nonprofit Agency, Large Business, Other.
 - (10) Government Web site address where contract or program information is located, if available.
- Information about placing orders.*
- (11) Agencies that may place orders (searchable).
 - (12) Date through which agencies may place orders.
 - (13) Statutory authority for placing orders with a drop down box to include—
 - (a) Clinger-Cohen GWAC authority (40 U.S.C. 11302(e));
 - (b) Economy Act (31 U.S.C. 1535), including Clinger Cohen multi-agency contract authority (40 U.S.C. 11314(a)(2));
 - (c) The Federal Property and Administrative Services Act authority for the Multiple Award Schedules Program (41 U.S.C. 259(b)(3)); and
 - (d) Other statutory authority not subject to the Economy Act (to be specified).
 - (14) Ordering procedures, unless addressed at the Web site identified in data field (10), above.
 - (15) List of administrative fees, unless addressed at the Web site identified in data field (10), above.

Information about the servicing agency.

- (16) Agency or activity that awarded the procurement instrument (searchable).
- (17) Activity point of contact/telephone number/e-mail address.

The fields described above include the following changes from the fields that were described in the preamble to the proposed rule:

- *Increased search capabilities.* More fields will be searchable. For example, agencies will be able to search the field that identifies who may place orders. This will make it easier for agencies to identify vehicles that are available for their own use. The “type of procurement instrument” field (*i.e.*, field no. 3) is also being made searchable so that agencies may view offerings available through a particular type of procurement vehicle.

To improve the visibility of the small business community, data captured in the socio-economic information field will be made searchable. This field will

be further refined so that directory users can identify products offered by a Javits-Wagner-O'Day participating nonprofit agency.

The contract directory will not allow users to search for product and service offerings by contractor. The FAR Council seeks for the directory to be used, in general, to consider a range of sources. Broader searching will help agencies get a better sense of marketplace capabilities as they consider whether their needs are best met through an interagency contract or an open market new procurement action.

- *New field.* A field will be added to identify the contractor's Data Universal Numbering System (DUNS) number. DUNS numbers serve as a common link among Government databases. For example, DUNS numbers are required for contractors that register to do business with the Government in the Central Contractor Registration (CCR) database. Although DUNS numbers function as a useful business identifier, the directory will not provide for searches by DUNS number for the same reason that searches by contractor will not be enabled.

- *Easier entry and maintenance of data.* Data entry of the socio-economic field of the directory has been modified so that population of this information for woman-owned businesses matches the formats for forms DD 350 and SF 279. To aid agencies in maintaining the currency of their data, the directory will identify the last date information on a given entry was submitted or edited. In addition, at the point where agencies may no longer place orders, as identified by the agency, the directory will move the information to an inactive file.

The contract directory project is linked to a broader e-Government initiative to create an “integrated acquisition environment” (IAE). The goal of the IAE is to facilitate the migration and leveraging of information technology investments to modernized infrastructures. Once this transformation occurs, agencies will be able to effectively integrate the many functions critical to the successful operation of the acquisition process. Among other things, this effort will help to eliminate redundant processes. As efforts progress to modernize and integrate contract-writing systems, agencies will be able to populate fields in the contract directory without re-keying of information. In the meantime, electronic data submission is an option.

Like other IAE initiatives, the contract directory will be subject to a governance structure and its operations will be

overseen by a configuration management board. Currently, a Federal interagency users group, the “E-Catalogs Group,” under the aegis of GSA in its capacity as managing partner of the IAE, meets periodically to discuss how the contract directory will operate. The group has sought to minimize burden while ensuring the site supports acquisition planning and market research efforts.

3. Public Comments

Twelve respondents submitted public comments on the proposed rule and the planned fields for the contract directory (as described in the preamble to the proposed rule). The comments primarily focused on: (1) The purpose of FAR coverage, (2) the burden associated with populating and maintaining the contract directory, (3) the functionality of the directory, and (4) impact on small business. All comments were considered in developing the final rule and first generation of data elements. A summary of the more significant comments and their disposition is provided below.

- a. *Purpose of FAR coverage.* One commenter recommended that the coverage proposed for FAR Subpart 5.6 establishing the requirement to enter interagency contracts into the database be moved to FAR Part 4, where administrative matters, including contract reporting, are covered. Another commenter supported finalizing the coverage in its proposed location in FAR Part 5.

The FAR Council recognizes that other data reporting requirements, such as that for the Federal Procurement Data System (FPDS), are addressed in FAR Part 4. However, the Council believes that the primary purpose of the contract directory, *i.e.*, to advertise existing contracts available for multiple agency use, is better aligned with the policies of FAR Part 5, which focus on publicizing contract actions.

One commenter suggested that FAR Parts 7 and 10 be revised to identify the database's usefulness in acquisition planning and market research. The FAR Council agrees with this suggestion and, as described above, has amended Parts 7 and 10 to ensure contracting officers and program managers consider information in the contract directory during these important early stages of the acquisition cycle.

- b. *Burden.* A number of comments focused on the potential burden the rule and associated Web site instructions would place on agencies required to input information about their interagency contracts into the contract directory. The comments focused on

overall administrative burden, the mandatory nature of individual data fields, and the time for entering data.

i. *Overall administrative burden.* Several commenters suggested that entering the data described in the preamble to the proposed rule would create an administrative strain. As an alternative, they recommended that the desired information be collected through existing data sources, such as the FPDS.

The FAR Council agrees, in concept, that the functionalities of acquisition systems need to be integrated so that duplication of effort and associated burden is minimized. As stated above, this is a key goal of the ongoing IAE effort, the main acquisition initiative towards the creation of a more efficient, effective, and citizen-centric e-Government. Unfortunately, current information systems do not collect the information needed to populate the contract directory. The FPDS, for example, does not break out activity by multiple award contract vehicle. As a result, it is not possible to easily identify the multiple contractors who make up any given multi-agency contract.

The contract directory is designed to overcome these limitations and enable agencies to gauge the number and nature of inter-agency contracts currently in effect. This functionality will help senior managers better understand their own agency's use of these vehicles. Equally important, as noted above, the contract directory will help customers during acquisition planning and market research to identify whether there may be a suitable existing Federal contract that can satisfy their needs.

For these reasons, the Council believes the insight to be gained by the directory, by both customers and servicing agencies, will be worth the effort required to make it fully operational. In addition, the Council expects that the cost of input will be offset by the interagency activity and associated administrative fees servicing agencies will collect to cover costs.

ii. *Mandatory vs. non-mandatory data fields.* One commenter sought clarification as to whether inputs for all of the data fields are mandatory. Agencies will be expected to complete each of the 17 data fields described above, except that, in providing point of contact information (data field no. 17), an agency is not required to furnish an individual point of contact and may rely just on an e-mail address and/or phone number. Also, an agency is not required to create a Web site with program information (*i.e.*, data field no. 10); it is

only required to identify the address of the Web site, if one already exists.

The contract directory, like other IAE projects, is designed to minimize redundant effort. If information is already accessible elsewhere on the Web, agencies generally will be able to simply provide a Web address where users may access that information. For example, if ordering procedures (field no. 14) and administrative fees (field no. 15) are already discussed on an agency's Web site, the contracting officer need only provide the Web site address or URL to satisfy those fields.

Recent General Accounting Office (GAO) and agency Inspectors General (IG) reports confirm that customers of task and delivery order contracts need to understand ordering procedures (*e.g.*, fair opportunity processes) and be aware of fees if they are to take effective advantage of competition and make informed decisions. It is especially important in an interagency environment that customers external to the agency be aware of any special management steps a servicing agency has taken to reinforce strategic and accountable use of its vehicle. Accordingly, if information on ordering procedures or administrative fees is not available on an existing Web site, agencies will need to provide this information on the contract directory or otherwise indicate how users may obtain it.

iii. *Time for entering data.* Two commenters raised concerns regarding the time allotted for entering data. One commenter suggested increasing the input period on new contracts from 10 to 45 days. Another commenter proposed an exemption for existing contracts with fewer than twelve months to expiration.

The Council believes that information needs to be entered as close to the time of award as possible to make the directory as current and useful as possible. Hence, the time for input on new contracts will remain at 10 days. However, as discussed above, the FAR Council recognizes that contracts relatively close to expiration may be nearing or at ceiling limits. For this reason, the rule leaves to an agency's discretion the determination as to whether to input data on contracts that will expire on or before June 1, 2004.

c. *Functionality.* Numerous comments addressed the planned functionality for the database. Commenters focused, in particular, on the descriptions to be provided for available products and services, searching by individual contractor, information on order placement, data on limited use vehicles, and information on 8(a) contracting.

i. *Descriptions of products and services.* Several commenters raised concerns that the data field calling for a brief description of supplies or services (*i.e.*, data field no. 8) will not likely collect sufficiently meaningful information for an agency to determine if use of a given contract will meet its needs. They noted that the lack of standard nomenclature may further reduce the utility of information provided.

The FAR Council agrees that information placed in the database needs to provide a general level of insight into contract offerings in order for the contract directory to have a practical utility. As a general matter, the Council expects that agencies will have an incentive to exercise quality control and offer meaningful information because the Web site offers a means for agencies to secure greater visibility for, and use of, their vehicles. To assist agencies, the site will provide guidance to address how best to fill in this, and other, data fields. In addition, some degree of standardization will be provided by asking for principal service and product codes (*i.e.*, data field no. 7). While this type of information should help agencies in performing their front-end analysis, the Council recognizes that the contract directory will not, by itself, provide information sufficient for a complete analysis. At the same time, this is not the contract directory's role. It is intended to be just one tool for market research, and agencies will need to undertake additional efforts commensurate with the size and complexity of the acquisition in order to understand marketplace capabilities.

ii. *Searching by contractor.* A number of commenters requested that the "contractor" data element (*i.e.*, field no. 4) be searchable. The FAR Council acknowledges that there may be some utility in knowing what a contractor has offered through various vehicles with different agencies. At the same time, the Council is concerned that searches by contractor may, too often, conflict with the goal of encouraging thoughtful consideration of the marketplace and capabilities of multiple sources, as agencies consider whether their needs are better met through an interagency contract or through a new procurement action on the open market. Therefore, the contract directory will not provide for searches by contractor.

Notwithstanding whether the data field is searchable, one commenter suggested that contractor names be standardized in the contract directory. The FAR Council agrees with the intent of the comment and anticipates that the contract directory's integration with

other e-acquisition initiatives in the IAE will lead to this result over time.

iii. *Order placement.* One commenter remarked that while the rule provides benefit by laying the foundation for a new market research tool, the overall effort is shortsighted because it fails to capture any information regarding order placement. The commenter states that "procurement goals of transparency and accountability are not served when information about many millions of dollars spent under such vehicles is not readily available to the public."

The FAR Council strongly supports transparency and accountability in Government procurement and anticipates that other IAE initiatives, including the transformation of the FPDS, will facilitate greater insight of the type alluded to by the commenter. However, the Councils do not believe that the benefits of the contract directory should be delayed until this functionality is available.

iv. *Searching limited use vehicles.* Two commenters recommended that the contract directory include contracts available for use only to a single agency, command or even locale. The FAR Council believes the functionality of the directory should, at least initially, focus on contracts that are designed for broad usage. Once the directory is fully functional and is providing the desired insight, the Council may, at a later date, consider expanding the database to accommodate limited use contracts.

v. *8(a) contracting.* One commenter suggested providing a greater level of detail on the actual use and administration of 8(a) contracts. The commenter recommended, for instance, that the contract directory include information on how 8(a) contracting could be accomplished (e.g., sole source), the competitive procedures to be used when the task order exceeds the sole source threshold, agency administrative responsibilities, and procedures regarding limitations on subcontracting and reporting.

As noted above, the contract directory will offer basic socio-economic information, including whether a contractor is an 8(a) small business (see field no. 9). Moreover, information on ordering procedures (provided through field no. 14) should reflect the steps customers will be expected to take in order to make a purchase, including those that may need to be taken to be in compliance with 8(a) contracting procedures. However, additional detail on the specific operation of the 8(a) program (or another socio-economic program) would go beyond the general purpose and scope of the contract directory and is more appropriately

obtained through other means (e.g., from the servicing agency, the Small Business Administration (SBA)).

d. *Impact on small business.* One commenter stated that the rule would have a significant economic impact on a substantial number of small entities. The commenter asserted that FAR 8.404, which sets forth procedures for the use of FSS contracts, has had a "withering effect" on small business awards. The commenter further states that small business set-asides should be incorporated into the FAR 8.404 procedures.

The Council believes this comment is outside of the scope of this rule. The rule focuses on improving access to information about vehicles available for interagency use. This rule does not speak to specific practices for how these vehicles are to be used. However, the Council notes that separate rulemaking efforts have been undertaken to address the consideration of small businesses in order placement under task and delivery order contracts. See 68 FR 5138, January 31, 2003, for notice of proposed FAR changes, and 68 FR 5133, January 31, 2003, for notice of proposed changes to SBA regulations. These separate efforts are intended to address concerns regarding the impact of contract bundling on small business participation for Federal procurements.

B. Executive Order 12866.

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.

C. 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 establishment of an online database as a tool to collect information on acquisition vehicles intended for multiple agency use in order to facilitate its availability to the acquisition community is a matter of internal Government operating procedure. In addition, the rule is not intended to alter existing requirements addressing the use of small businesses.

D. 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 5, 7, and 10

Government procurement.

Dated: July 16, 2003.

Laura Auletta,

Director, Acquisition Policy Division.

■ Therefore, DoD, GSA, and NASA amend 48 CFR parts 5, 7, and 10 as set forth below:

■ 1. The authority citation for 48 CFR parts 5, 7, and 10 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 5—PUBLICIZING CONTRACT ACTIONS

■ 2. Add Subpart 5.6 to read as follows:

Subpart 5.6—Publicizing Multi-Agency Use Contracts

5.601 Governmentwide database of contracts.

(a) A Governmentwide database of contracts and other procurement instruments intended for use by multiple agencies is available via the Internet at <http://www.contractdirectory.gov>. This searchable database is a tool that may be used to identify existing contracts and other procurement instruments that may be used to fulfill Government needs.

(b) The contracting activity shall—
(1) Enter the information specified at <http://www.contractdirectory.gov>, in accordance with the instructions on that Web site, within ten days of award of a Governmentwide acquisition contract (GWAC), multi-agency contract, Federal Supply Schedule contract, or any other procurement instrument intended for use by multiple agencies, including blanket purchase agreements (BPAs) under Federal Supply Schedule contracts.

(2) Enter the information specified at <http://www.contractdirectory.gov> in accordance with the instructions on that Web site by October 31, 2003, for all contracts and other procurement instruments intended for use by multiple agencies that were awarded before July 24, 2003.

PART 7—ACQUISITION PLANNING

■ 3. Amend section 7.105 by revising the second sentence of paragraph (b)(1) to read as follows:

7.105 Contents of written acquisition plans.

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(b) *Plan of action—(1) Sources.* * * *

Consider required sources of supplies or services (see Part 8) and sources identifiable through databases including the Governmentwide database of contracts and other procurement instruments intended for use by multiple agencies available at <http://www.contractdirectory.gov>. * * *

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PART 10—MARKET RESEARCH

■ 4. Amend section 10.002 by revising paragraph (b)(2)(iv) to read as follows:

10.002 Procedures.

* * * * *

(b) * * *

(2) * * *

(iv) Querying the Governmentwide database of contracts and other procurement instruments intended for use by multiple agencies available at <http://www.contractdirectory.gov> and other Government databases that provide information relevant to agency acquisitions.

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[FR Doc. 03–18535 Filed 7–23–03; 8:45 am]

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DEPARTMENT OF DEFENSE**GENERAL SERVICES
ADMINISTRATION****NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION****48 CFR Parts 22, 31, 37, and 52**

[FAC 2001–15; FAR Case 2001–008; Item IV]

RIN 9000–AJ36

**Federal Acquisition Regulation;
Compensation Cost Principle**

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 revise the “compensation for personal services” cost principle by restructuring the paragraphs, and by removing unnecessary and duplicative language.

DATES: *Effective Date:* August 25, 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, Procurement Analyst, at (202) 501–0650. Please cite FAC 2001–15, FAR case 2001–008.

SUPPLEMENTARY INFORMATION:**A. Background**

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 67 FR 19952, April 23, 2002, with request for comments. Three respondents submitted public comments. A discussion of the comments is provided below. Differences between the proposed and the final rule are discussed in paragraphs 1, 5, 13, 15, and 19 below.

Public Comments:

1. *Comment: Designate FAR 31.205–6(c) as Reserved.* The current paragraph designations, especially paragraph (j) for pensions, have been cited in many court cases, Government contracts, and other documents over the years. All the respondents expressed concerns that the re-designation of paragraphs (d) through (p) within FAR 31.205–6 as paragraphs (c) through (o) would create confusion.

Councils’ response: Concur.

2. *Comment: Move proposed FAR 31.205–6(g)(1) (Backpay) to FAR 31.205–6(a)(1).* The respondent did not provide an explanation for this recommendation.

Councils’ response: Do not concur. The Councils believe there is merit in maintaining a separate paragraph for backpay. See paragraph 16 for further discussion.

3. *Comment: Delete proposed FAR 31.205–6(a)(2) (total compensation).* The language is duplicative of FAR 31.201–3, Reasonableness, and the focus of the cost principle should be on the reasonableness of a contractor’s total compensation plan and not on individual employees or job classes.

Councils’ response: Do not concur. The proposed paragraph makes it clear that, although compensation must conform to FAR 31.201–3, it must also conform to the more specific provisions contained in this cost principle. The Councils do not agree with the concept that the reasonableness of compensation should be based “solely” on the contractor’s total compensation plan, without consideration of the reasonableness of the compensation for individual employees or job classes of employees. See paragraph 9 for further discussion.

4. *Comment: Delete proposed FAR 31.205–6(a)(5) (unallowable cost).* The proposed language states: “Costs that are unallowable under other paragraphs of this Subpart 31.2 are not allowable under this subsection 31.205–6 solely on the basis that they constitute compensation for personal services.” In lieu of the above statement, the respondent suggested adding the following language to FAR 31.204(c): “Cost made specifically unallowable under one cost principle in this subpart are not allowable under any other cost principle.”

Councils’ response: Do not concur. Similar proposals for such a global policy statement were rejected in the past by both industry and the Government. The current language at FAR 31.204(c) was adopted instead, and the “unallowable under other paragraphs” statements in individual cost principles were retained. The Councils agree with the original drafters of the current FAR 31.205–6(a)(5) that this language is needed to avoid a situation in which activity that is specifically designated unallowable in another cost principle becomes allowable merely because it meets the criteria for allowable “compensation.”

5. *Comment: Modify proposed FAR 31.205–6(a)(6)(i) (partners and sole proprietors).* Reinstate the following portion of the current language included in FAR 31.205–6(b)(2)(i): “Compensation in lieu of salary for services rendered by partners and sole proprietors will be allowed to the extent that it is reasonable and does not constitute a distribution of profits.” This insertion would become 31.205–6(a)(6)(i)(C). “Without this reinstatement costs previously allowed could become unallowable since there are instances where these costs are not distribution of profits and the deductible amount is zero.”

Councils’ response: Partially concur. Historically, the tax deductibility limitation on allowable compensation in the cost principle is solely for closely held corporations. The Councils did not intend to change the allowability of costs in this area. However, the proposed rule inadvertently removed the qualifying phrase for “closely held corporations.” In addition, the editorial restructuring unintentionally changed the allowability of costs covered by this subsection. Accordingly, the Councils have revised FAR 31.205–6(a)(6) to clarify and rectify this situation.

6. *Comment: Remove phrase in proposed FAR 31.205–6(a)(6)(ii)(A) (distribution of profits).* Remove the unnecessary phrase “which is not an allowable cost.”