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

[FAC 2001-18; FAR Case 2001-026; Item II]

RIN 9000-AJ56

**Federal Acquisition Regulation;
Depreciation 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 depreciation cost principle to improve clarity and structure, and remove unnecessary and duplicative language.

DATES: *Effective Date:* January 12, 2004.

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. Edward Loeb, Policy Advisor, at (202) 501-0650. Please cite FAC 2001-18, FAR case 2001-026.

SUPPLEMENTARY INFORMATION:**A. Background**

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 68 FR 4876, January 30, 2003, with request for comments. Two respondents submitted public comments; a discussion of the major comments is provided below. The Councils considered all comments and concluded that the proposed rule should be converted to a final rule with changes. Differences between the proposed rule and final rule are discussed below.

B. Public Comments*FAR 31.205-11, Depreciation**FAR 31.205-11(a)*

Comment 1: Both respondents suggested that the cost principle should allow flexibility in the use of residual values less than 10 percent and,

therefore, the word “shall” in the second sentence of proposed FAR 31.205-11(a) should be changed.

Councils’ response: Concur. The Councils changed the word “shall” in sentence two of FAR 31.205-11(a) to “need,” which conforms with the wording of Cost Accounting Standard (CAS) 409-50(h).

Comment 2: Respondent believes that for clarification and consistency purposes in this area, language in CAS 409-50(h) should be added to the cost principle. Respondent recommended adding the statement regarding the recognition of residual values when certain depreciation methods are used, and the term “significantly” when referring to the allowability of depreciation costs that reduce assets below their residual value.

Councils’ response: Concur. The Councils believe the FAR should not be more restrictive than the CAS in this area. Therefore, the Councils added the following sentence as the third sentence of proposed FAR 31.205-11(a): “Where either the declining balance method of depreciation or the class life asset depreciation range system is used, the residual value need not be deducted from capitalized cost to determine depreciable costs.” In addition, the Councils added the term “significantly” to the last sentence of proposed FAR 31.205-11(a).

Comment 3: Respondent suggested deleting the last sentence of FAR 31.205-11(a) since it appears to be contradictory to the previous sentence and this requirement is already covered in the definition of “depreciation.”

Councils’ response: Do not concur. The Councils believe that the sentence does not contradict the previous sentence, and the definition of “depreciation” does not adequately cover this requirement.

FAR 31.205-11(d)

Comment 4: Both respondents suggested deleting the entire proposed paragraph 31.205-11(d). One respondent stated, “Depreciation, by definition, requires a ‘cost.’ If there is no cost, there is no depreciation. Comments on rental or use charges are already covered in Part 45 and should be covered under 31.205-36, Rental Costs, if considered necessary, and not under the Depreciation Cost Principle.”

Councils’ response: Do not concur. The Councils believe that in those instances where contractors might put an asset on their books without incurring a cost, *i.e.*, a donated asset, it must be clear that any costs associated with that asset are unallowable.

FAR 31.205-11(f)

Comment 5: Both respondents suggested deleting the third sentence of the proposed FAR 31.205-11(f). They believe the requirements in the sentence are overly prescriptive and instructional. One respondent stated, “FAR 31.109 already provides guidance on how to arrive at advance agreements.”

Councils’ response: Do not concur. The Councils believe that while FAR 31.109 provides information on advance agreements, it does not address items that should be considered in determining a reasonable amount for a use charge. The Councils believe the guidance is helpful in determining a reasonable charge. However, the last sentence of proposed FAR 31.205-11(f) inappropriately limited the scope of this provision with the words, “the contractor shall consider * * *.” Therefore, the Councils have replaced this language with broader guidance, “consideration shall be given to * * *.”

FAR 31.205-11(g)

Comment 6: Both respondents recommended revising proposed FAR 31.205-11(g) to more closely reflect the requirements of FAR 31.205-52, Asset valuations resulting from business combinations. They maintain that FAR 31.205-52 does not necessarily “limit” allowability as stated in the proposed words.

Councils’ response: Partially concur. It is not necessary to characterize FAR 31.205-52 here as limiting allowability. Therefore, the Councils deleted the words “which limit the allowability of depreciation” from FAR 31.205-11(g). However, the proposed rule inappropriately limited the scope of this provision with the words, “the contractor shall comply with the requirements of 31.205-52.” Therefore, the Councils replaced this language with broader guidance, “the requirements of 31.205-52 shall be observed.”

FAR 31.205-11(i)

Comment 7: Both respondents recommended deleting the third sentence of FAR 31.205-11(i) as redundant. They also recommended deleting the fourth sentence, as well as paragraph (i)(1), because operating leases and sale and lease back arrangements are already covered under FAR 31.205-36, Rental costs, and need not be repeated in the depreciation cost principle. Finally, they recommended deleting the fifth sentence as repetitive of the first two sentences.

Councils’ response: Partially concur. The Councils agree with the

recommendation to delete the redundant third sentence: "Capital leases under FAR 13 are subject to the requirements of 31.205-11." The Councils also agree that operating leases are covered in FAR 31.205-36, and, therefore, deleted the fourth sentence: "Operating leases are subject to the requirements of 31.205-36." However, the Councils believe a cross-reference in this cost principle is helpful because of the interchange of the two cost principles and, therefore, inserted a cross-reference after sentence one: "(See 31.205-36 for Operating Leases.)" The Councils disagree with deleting the language relative to sale and leaseback in paragraph (i)(1) since this language is closely related to depreciation costs, but changed the first word from "Rental" to "Lease." Finally, the Councils deleted most of the fifth sentence as duplicative, but changed "except as follows:" to "except that:"

FAR 31.205-11(j)

Comment 8: One respondent suggested revising proposed paragraph (j) in FAR 31.205-11, and asserted that the second sentence of the proposed rule would require contractors to change their depreciation method if different. The other respondent recommended deleting the entire paragraph and stated, "It is obsolete in that it only applies to assets acquired before the effective date of this cost principle (*i.e.*, pre-ASPR time frame)."

Councils' response: Partially concur. The Councils deleted paragraph (j) since the grandfather provision benefits industry and it is no longer needed.

FAR 31.205-36, Rental Costs

FAR 31.205-36(a)

Comment 9: Both respondents recommended deleting the second sentence of FAR 31.205-36(a) since depreciation issues are already covered under 31.205-11, Depreciation, and need not be repeated in FAR 31.205-36.

Councils' response: Concur. The Councils agree that the detailed language does not need to be repeated in FAR 31.205-36, but believe a cross-reference is useful to the users of the cost principles because of the interchange of the two cost principles. Therefore, the second sentence of FAR 31.205-36(a) is deleted and a cross-reference, "(See 31.205-11 for Capital Leases.)" is inserted.

FAR 31.205-36(b)(1)(iv)

Comment 9: Respondent recommended retaining the language at FAR 31.205-36(b)(1)(iv). They stated that no explanation was given for deleting the language.

Councils' response: Do not concur. The respondent appears to have misread the changes made. FAR 31.205-36(b)(4) was deleted, not FAR 31.205-36(b)(1)(iv).

C. Regulatory Planning and Review

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.

D. 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 principle discussed in this rule.

E. 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 and 31

Government procurement.

Dated: December 4, 2003.

Laura Auletta,

Director, Acquisition Policy Division.

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

■ 1. The authority citation for 48 CFR parts 2 and 31 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. Amend section 2.101 in paragraph (b) by adding, in alphabetical order, the definition "Depreciation" to read as follows:

2.101 Definitions.

* * * * *

Depreciation means a charge to current operations that distributes the cost of a tangible capital asset, less estimated residual value, over the

estimated useful life of the asset in a systematic and logical manner. It does not involve a process of valuation. Useful life refers to the prospective period of economic usefulness in a particular contractor's operations as distinguished from physical life; it is evidenced by the actual or estimated retirement and replacement practice of the contractor.

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PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

■ 3. Revise section 31.205-11 to read as follows:

31.205-11 Depreciation.

(a) Depreciation on a contractor's plant, equipment, and other capital facilities is an allowable contract cost, subject to the limitations contained in this cost principle. For tangible personal property, only estimated residual values that exceed 10 percent of the capitalized cost of the asset need be used in establishing depreciable costs. Where either the declining balance method of depreciation or the class life asset depreciation range system is used, the residual value need not be deducted from capitalized cost to determine depreciable costs. Depreciation cost that would significantly reduce the book value of a tangible capital asset below its residual value is unallowable.

(b) Contractors having contracts subject to 48 CFR 9904.409, Depreciation of Tangible Capital Assets, shall adhere to the requirement of that standard for all fully CAS-covered contracts and may elect to adopt the standard for all other contracts. All requirements of 48 CFR 9904.409 are applicable if the election is made, and contractors must continue to follow it until notification of final acceptance of all deliverable items on all open negotiated Government contracts.

(c) For contracts to which 48 CFR 9904.409 is not applied, except as indicated in paragraphs (g) and (h) of this subsection, allowable depreciation shall not exceed the amount used for financial accounting purposes, and shall be determined in a manner consistent with the depreciation policies and procedures followed in the same segment on non-Government business.

(d) Depreciation, rental, or use charges are unallowable on property acquired from the Government at no cost by the contractor or by any division, subsidiary, or affiliate of the contractor under common control.

(e) The depreciation on any item which meets the criteria for allowance at price under 31.205-26(e) may be

based on that price, provided the same policies and procedures are used for costing all business of the using division, subsidiary, or organization under common control.

(f) No depreciation or rental is allowed on property fully depreciated by the contractor or by any division, subsidiary, or affiliate of the contractor under common control. However, a reasonable charge for using fully depreciated property may be agreed upon and allowed (but, see 31.109(h)(2)). In determining the charge, consideration shall be given to cost, total estimated useful life at the time of negotiations, effect of any increased maintenance charges or decreased efficiency due to age, and the amount of depreciation previously charged to Government contracts or subcontracts.

(g) Whether or not the contract is otherwise subject to CAS, the requirements of 31.205–52 shall be observed.

(h) In the event of a write-down from carrying value to fair value as a result of impairments caused by events or changes in circumstances, allowable depreciation of the impaired assets is limited to the amounts that would have been allowed had the assets not been written down (see 31.205–16(g)). However, this does not preclude a change in depreciation resulting from other causes such as permissible changes in estimates of service life, consumption of services, or residual value.

(i) A “capital lease,” as defined in Statement of Financial Accounting Standard No. 13 (FAS–13), Accounting for Leases, is subject to the requirements of this cost principle. (See 31.205–36 for Operating Leases.) FAS–13 requires that capital leases be treated as purchased assets, *i.e.*, be capitalized, and the capitalized value of such assets be distributed over their useful lives as depreciation charges or over the leased life as amortization charges, as appropriate, except that—

(1) Lease costs under a sale and leaseback arrangement are allowable up to the amount that would have been allowed had the contractor retained title to the asset; and

(2) If it is determined that the terms of the capital lease have been significantly affected by the fact that the lessee and lessor are related, depreciation charges are not allowable in excess of those that would have occurred if the lease contained terms consistent with those found in a lease between unrelated parties.

31.205–16 [Amended]

■ 4. Amend section 31.205–16 in the first sentence of paragraph (b) by removing “31.205–11(m)” and adding “31.205–11(i)” in its place.

■ 5. Amend section 31.205–36 by revising paragraph (a); and removing paragraph (b)(4) to read as follows:

31.205–36 Rental costs.

(a) This subsection is applicable to the cost of renting or leasing real or personal property acquired under “operating leases” as defined in Statement of Financial Accounting Standards No. 13 (FAS–13), Accounting for Leases. (See 31.205–11 for Capital Leases.)

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 4 and 53

[FAC 2001–18; FAR Case 2003–019; Item III]

RIN 9000–AJ76

Federal Acquisition Regulation; Federal Procurement Data System

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 reflect changes in contract action reporting to the Federal Procurement Data System—Next Generation (FPDS–NG).

DATES: *Effective Date:* December 11, 2003.

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. Gerald Zaffos, Procurement Analyst, at (202) 208–6091. Please cite FAC 2001–18, FAR case 2003–019.

SUPPLEMENTARY INFORMATION:

A. Background

The Federal Government is modernizing its procurement data collection system, the Federal Procurement Data System (FPDS). The new system, the Federal Procurement Data System—Next Generation (FPDS–NG), became operational on October 1, 2003, for transactions awarded after that date. FPDS captured data on individual contract actions over \$25,000 and summary data on contract actions below \$25,000. FPDS–NG allows the Government to capture data on individual transactions regardless of dollar value. As a result, FPDS–NG provides more information to agencies for managing their programs and to the public for better understanding of how taxpayer funds are spent. The capabilities of FPDS–NG provide an efficient means of satisfying the statutory requirement of 41 U.S.C. 417, that each Executive agency maintain a computer file containing the information at FAR 4.601. Consequently, submitting contract action data to FPDS–NG will be considered compliance with the requirements of FAR 4.601.

Therefore, the FAR is being amended to revise 4.602 to—

- Reflect that the information in FPDS–NG is available to the general public;
- Provide the Web site for FPDS–NG, which must be entered as <https://www.fpds.gov>;
- Delete the physical address for the Federal Procurement Data Center;
- Allow agencies to report all transactions between \$2,500 and \$25,000 to FPDS–NG as either individual contract actions or summary contract actions until September 30, 2004;
- Require all contract actions over \$2,500 be reported to FPDS–NG as individual contract actions after September 30, 2004;
- Require agencies to insert the provision at 52.204–6, Data Universal Numbering System (DUNS) Number, in solicitations when the expected award amount will result in the generation of an individual contract action report and the contract does not include FAR clause 52.204–7, Central Contractor Registration; and
- Eliminate the use of the SF 279, Federal Procurement Data System (FPDS)—Individual Contract Action Report, and the SF 281, Federal Procurement Data System (FPDS)—Summary Contract Action Report (\$25,000 or Less).

This is not a significant regulatory action and, therefore, was not subject to