NOV 29 2004

GSA Office of the Chief Acquisition Officer

MEMORANDUM FOR RONALD POUSSARD
DIRECTOR
DEFENSE ACQUISITION REGULATIONS COUNCIL

FROM: RALPH J. DESTEFANO, DIRECTOR
REGULATORY AND FEDERAL ASSISTANCE
PUBLICATIONS DIVISION

SUBJECT: FAR Case 2004-006, Accounting for Unallowable Costs

Attached are comments received on the subject FAR case published at 69 FR 58014; September 28, 2004. The comment closing date was November 29, 2004.

Response Number	Date Received	Comment Date	Commenter
2004-006-1	10/08/04	10/08/04	AIA
2004-006-2	11/03/04	10/27/04	Smith, Patcher, McWhorter & Allen
2004-006-3	11/24/04	11/24/04	Lockheed Martin
2004-006-4	11/24/04	11/24/04	DOD/IG
2004-006-5	11/30/04	11/29/04	Raytheon

Attachments

U.S. General Services Administration
1800 F Street, NW
Washington, DC 20405-0002
www.gsa.gov

2004-006-1

AEROSPACE INDUSTRIES ASSOCIATION
NATIONAL DEFENSE INDUSTRIAL ASSOCIATION

November 29, 2004

General Services Administration
Regulatory Secretariat (V)
Attn: Laurie Duarte
1800 F Street, NW, Room 4035
Washington, DC 20405

Re: FAR Case 2004-006

Dear Ms. Duarte:

The Aerospace Industries Association (AIA) and the National Defense Industrial Association are pleased to have the opportunity to comment on the proposed FAR revisions to FAR 31.201-6, Accounting for unallowable costs. With respect to the proposed changes, we offer the following comments and recommendations:

1) We feel strongly that proposed paragraph (c)(3) will cause more confusion than it is intended to preclude. We understand that the government wishes to ensure the penalty provisions of FAR 42.709 can be invoked in the event the contractor chooses to use statistical sampling as a method to identify and segregate unallowable costs in the preparation of its final and forward pricing indirect cost proposals. We believe that can be accomplished with a much simpler paragraph that would read: (c)(3) For any cost in the selected sample that is subject to the penalty provisions at FAR 42.709, the amount projected to the sampling universe from that sampled cost is also subject to the same penalty provisions.

2) Section (c)(4) introduces language that is written in such a way as to suggest there is a requirement for an advance agreement. The cost principles related to the 16 examples of costs in FAR 31.109(h) for which an advance agreement may be particularly important do not suggest the need for an advance agreement using potentially prescriptive language such as that proposed in (c)(4). Therefore for format consistency alone, we recommend the elimination of (c)(4). However, if it is determined that this advance agreement reference must remain, we feel the following text would be more acceptable to the contracting parties: (c)(4) an advance agreement (see 31.109) with respect to compliance with subparagraph (c)(3) of this subsection may be useful and desirable.

If you have any questions or would like to meet to discuss our comments and recommendations, please contact Dick Powers of AIA (703-358-1042) or Ruth Franklin of NDIA (703-247-2598).

Sincerely,

Robert T. Marlow
Vice President, Government Division
Aerospace Industries Association

Peter M. Steffes
Vice President, Government Policy
National Defense Industrial Association

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October 27, 2004

General Services Administration
Regulatory Secretariat (V)
Attn: Ms. Laurie Duarte
1800 F Street, N.W., Room 4035
Washington, D.C. 20405

Re: FAR Case 2004-006

Dear Ms. Duarte:

These comments on the proposed revision of FAR 31.201-6, Accounting for Unallowable Costs, are submitted by the law firm of Smith, Pachter, McWhorter & Allen. These comments relate specifically to FAR 31.201-6(e), with particular reference to salary cost of indirect charged personnel.

A. Summary

As currently written and as proposed in the revision under consideration, FAR 31.201-6(e) violates CAS 405, and is subject to legal challenge by any government contractor to which a procuring or administering agency might seek to apply it. Most importantly, in contradiction to CAS 405, FAR 31.201-6(e) sends a message to the government contracting community that contracting agencies follow CAS only where its suits them to do so, and may disregard CAS where it does not suit their interests.[1] Because contracting agencies apply CAS rigorously and inflexibly against contractors,

[1] Twenty-seven years ago the ASPR Committee faced a similar quandary when the CAS Board issued CAS 415. The ASPR Committee showed both candor and courage in taking the issue on directly, and determining that CAS must prevail. ASPR Case 76-400-3, March 29, 1977, Memorandum from the Section XV, Part 2 Subcommittee to the ASPR Committee, "CAS – Accounting for Cost of Deferred Compensation (CAS 415)."

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such a message may proclaim a double standard that is destructive of the integrity of the entire government contracting process.

B. Directly Associated Cost Is A Creature Of CAS

The Cost Accounting Standards Board is the exclusive authority for the identification, recognition, measurement and allocation of cost.[2] Congress in the 1988 CAS Board re-authorization explicitly cautioned procuring agencies not to tread in or even near the area of cost measurement and allocation where the CAS Board has acted.[3]

"Directly associated cost" refers to a cost that is ordinarily a necessary and allowable contractor cost, such as utilities, rent or management salaries, but that acquires a new status by virtue of its relationship to another cost that is unallowable, such as lobbying or entertainment.[4] Such an otherwise allowable cost becomes unallowable by virtue of this relationship.

Prior to CAS 405, government contract cost accounting did not include the concept of "directly associated cost." CAS 405 created the concept.[5] The CAS Board's action in promulgating CAS 405 was an act of cost identification and allocation that had

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[2] 41 U.S.C. 422(f)(1).

[3] 41 U.S.C. § 422(f)(2)(A) and (j)(3).

[4] Richard Johnson, CAS 405 and Directly Associated Labor Costs: An Historic Clash Between DoD and the CAS Board, 31 Pub. Contr. L. J. 480, 485-87 (2001). The unallowable costs at issue are themselves costs that are in indirect cost. Otherwise, the issue does not arise, since all direct allowable and unallowable costs bear their fair share of indirect loadings. CAS 405-409(e).

[5] 31 Pub. Contr. L. J., supra, at 485.

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the effect of associating one cost with another and making an otherwise allowable cost unallowable.[6]

C. The CAS Board Promulgated The "But For" Test To Identify A Directly Associated Cost

Before the CAS Board could allocate a directly associated cost to another unallowable cost, it had to define what it meant by directly associated cost. The CAS Board specifically defined that cost in the "but for" test. CAS 405-30(a)(1) provides the definition:

> *Directly associated cost* means any cost which is generated solely as a result of the incurrence of another cost, and which would not have been incurred had the other cost not been incurred.

Because the CAS Board acted within the bounds of its exclusive jurisdiction over cost identification and allocation, this definition is binding on all government procurement agencies.[7]

D. How FAR 31.201-6(e) Violates The CAS Definition Of Directly Associated Cost With Particular Reference To Salaries

FAR 31.201-6(a) repeats verbatim the CAS 405 definition of a directly associated cost. However, in subparagraph (e) the FAR departs from the CAS 405 definition and substitutes a "materiality" test for the "but for" test and further extends the materiality test

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[6] CAS 405-60(e) refers explicitly to directly associated cost as the identification of a cost.
[7] 41 U.S.C. § 422(f)(1) and (2)(A).

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to encompass even more factors that are unrelated to the CAS definition. While a suitable materiality test could itself be reconcilable with the CAS but-for test,[8] the FAR has gone well beyond this point to encompass additional factors that directly contradict the CAS 405 definition. The FAR materiality test thus has three components: (1) dollar amount of the cost at issue, (2) cumulative effect of all such costs in a cost pool, and (3) ultimate effect on the cost of government contracts. In the particular case of salary expense, the FAR materiality test violates CAS 405 in the following respects:

1. Actual dollar amount is not a component of the "but for" test except to the extent that the percentage of an individual's time (translated into salary dollars) might be so significant as to raise a presumption that "but for" the unallowable activities, the individual's salary would have been lower. The CAS Board directly addressed this situation in CAS 405-60, Illustration (e):

> . . . [U]nless this type of activity constituted a significant part of the official's regular duties and responsibilities on which his salary was based, no part of the official's salary would be required to be identified as a directly associated cost of the unallowable . . . expense.

In the past, DoD implemented this CAS guidance by suggesting specific salary percentages that would be presumed to be sufficiently "material" as to justify the

[8] This was the compromise that DoD initially effected with the CAS Board in 1975-76, following DoD's abortive attempt to repudiate the CAS 405 provisions on directly associated cost altogether. See 31 Pub. Contr. L. J., supra, at 491-97.

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conclusion that the but-for test was met.[9] This was considered to be a workable approach at the time, and was apparently satisfactory to the CAS Board, which had bristled at DoD's initial decision to ignore this part of CAS 405 altogether.[10] While there might be good arguments why a fixed percentage rule is inflexible and would not suffice in all cases, it remains correct that the only permissible function of the materiality test under CAS 405 is to interpret and apply the but-for test.

2. The second element in the FAR 31.201-6(e) test -- cumulative effect on the cost pool -- abandons the but-for test altogether. It extends the definition of directly associated cost to situations in which multiple individuals whose salary cost is charged to a particular cost pool spend some time (however miniscule) on unallowable activities, and provides that the amounts for all such individuals in the cost pool should be aggregated to assess their "cumulative effect." CAS 405, which applies cost-by-cost (and in the case of salaries, individual-by-individual) provides no support for this departure.[11]

3. The third element of "ultimate effect on the cost of Government contracts" is similarly repugnant to the CAS 405 definition. Here as well the FAR requires an aggregation of the time (and cost) of salaried personnel, instead of limiting the analysis to

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[9] 31 Pub. Contr. L. J., supra, at 496-97.

[10] Id. at 489-91.

[11] The CAS 405 test can only be applied on an individual basis, since the unallowable activity of Individual A manifestly has no bearing on the salary of Individual B. The but-for test must be applied separately to Individuals A and B.

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the individual, as CAS 405 requires. Moreover, the words "ultimate effect on the cost of Government contracts" could refer to the effect on a particular contract of the particular contractor, the effect on all the government contracts of that contractor, or the effect on government contracts of all government contractors. The regulation does not say.

It is thus clear beyond the point of argument that FAR 31.201-6(e) violates the CAS 405 but-for test.

E. The FAR Council's Response To Similar Comments During The 2003 Round Of Comments

During an earlier round of comments on FAR 31.201-6, initiated by the FAR Council on May 22, 2003,[12] two commentators, Wackenhut Corrections Corporation, and the ABA Section of Public Contract Law, called the FAR Council's attention to this issue. The Council's response was merely to state that: "This language [in subparagraph (e)], which was promulgated over twenty years ago, provides contracting personnel and contractors with specific information on when to treat salaries and expenses as directly associated cost."[13] This is, of course, a non-answer. It deflects the issue instead of confronting it. Specifically, it does not matter whether the FAR Council initiated unlawful regulatory action one year ago, twenty-five years ago, or a century ago. It remains unlawful. The FAR Council's evasion is transparent and unworthy of that organization.

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[12] 68 F.R. 28108, May 22, 2003.
[13] 69 F.R. 58016, September 28, 2004.

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Most seriously, the act of the FAR in promulgating cost identification and allocation rules in defiance of CAS sends a strong signal that the Government follows CAS when it is in its interest to do so and in such cases relentlessly imposes it on contractors, but ignores or defies CAS when it dislikes the result.[14] The CAS Board staff itself pointed this out twenty-nine years ago, when it commented on DoD's apparent inability to face up to the clear requirements of CAS 405 with respect to directly associated costs:

> The publication in Defense Procurement Circular No. 74-3 of two informational paragraphs dealing respectively with Cost Accounting Standards Number 405 and Number 406 may result in Department of Defense contractors and subcontractors questioning the fairness of the ASPR Committee's action…
>
> Those paragraphs lend considerable credence to the argument, which we have heard expressed on behalf of contractors, that the Government rigidly requires contractors to follow Standards but will not do so itself whenever doing so may seem incompatible with the Government's short-term interest in a particular case…
>
> In Cost Accounting Standard Number 405 the Board defined, for identification purposes, those costs which are "directly associated" with unallowable costs. Directly associated costs are defined as those which are generated solely as a result of the incurrence of another cost and which would not have been incurred had the other cost not been incurred. Thus, the salary of an employee only occasionally engaged in activities which in themselves are

[14] This identical pattern is seen in the 2002 decision in Hercules v. United States, 292 F.3d 1378 (Fed. Cir. 2002), where the Government argued strenuously and successfully that CAS 406 does not apply to refunds contractors receive that relate to prior taxes accounted for in indirect cost.

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> unallowable would not become a "directly associated cost" of the unallowable activities. The Board expected that its definition of directly associated costs would bring a measure of consistency and predictability into an area which has been a subject of frequent disagreement between contractors and the Government; the Board believed that reliance on its definition of directly associated costs to describe costs related to unallowable costs might in some instances be more advantageous to contractors than has been the situation under ASPR...
>
> Spokesmen for the Cost Accounting Standards Board have on a great number of occasions stated that the Board's purpose is to promulgate Cost Accounting Standards which are fair and equitable both to industry and to the Government. It is therefore distressing to the Board to find that the Department of Defense has not accepted the benefits to contractors which may stem from provisions of Standards 405 and 406, but instead has issued the informational paragraphs in question....

ASPR Case 72-400-7, February 13, 1975 Letter from the Executive Secretary, Cost Accounting Standards Board to the Assistant Secretary of Defense (I&L).

It is vitally important to the integrity of the procurement process that the Government hold itself to the same standard of honesty and candor that it demands of contractors. There should be no double standard.

F. <u>What Could The FAR Do To Bring Itself Into Compliance With CAS 405</u>

The drafters of the FAR could easily revise FAR 31.201-6(e) to bring it into compliance with CAS 405, not only with respect to salary expense but for all directly associated costs. A point clearly comes at which a particular cost becomes so significant

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that common sense tells us the "but for" test is satisfied. Thus, a test seeking to establish that point using the term "materiality" would be a valid implementation of CAS 405.[15]

The FAR Council responded to the 2003 comments suggesting just such a test[16] that promulgation of a materiality criterion would involve the exercise of judgment and could "potentially cause significant increases in the number of disputes." In this, the FAR Council is clearly in error. It ignores the fact that the regulation already includes a type of subjective materiality test in 31.201-6(e)(i) ("the actual dollar amount"), and that the two additional (and illicit) criteria currently part of the subparagraph likewise involve subjective judgment and could just as readily lead to disputes. Indeed, three subjective judgmental criteria should logically lead to more disputes than a single such criterion. The absence of such disputes, even under the current subparagraph (e) in effect as the FAR Council suggests for more than 20 years, suggests that the FAR Council's fear is unfounded.

The FAR Council would serve the public interest by bringing clarity in response to this suggestion.

In conclusion, the FAR Council should bring FAR 31.201-6 into compliance with CAS 405 by specifying a sensible materiality test and deleting the other two current criteria of 31.201-6(e), which bear no relationship to the but-for test.

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[15] See CAS 405-60(e).
[16] 69 F.R. 58016.

In recognition of the importance of this issue to the integrity of federal procurement, we are sending copies of these comments to the Administrator of Federal Procurement Policy and to the Cost Accounting Standards Board. [17] We are, further, suggesting to the Board that it review the conflict between CAS and FAR in the identification and allocation of directly associated cost and take what steps it may consider appropriate to defend its exclusive jurisdiction in this area.

Sincerely,

SMITH PACHTER McWHORTER & ALLEN, P.L.C.

Richard C. Johnson

[17] See 41 U.S.C. § 422(j)(3): "The Administrator . . . shall ensure that no regulation or proposed regulation of an executive agency is inconsistent with a cost accounting standard . . . by rescinding or denying the promulgation of any such inconsistent regulation or proposed regulation . . . ."

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2004-006-3

LOCKHEED MARTIN

Anthony M. DiPasquale
Vice President
Government Financial Management

November 24, 2004

General Services Administration
Regulatory Secretariat (V)
Attn: Laurie Duarte
1800 F Street, NW, Room 4035
Washington, DC 20405

Re: FAR Case 2004-006

Dear Ms. Duarte:

Lockheed Martin Corporation (LMC) appreciates the opportunity to submit comments concerning proposed revisions to FAR 31.201-6, Accounting for unallowable costs. LMC has used sampling to identify and account for unallowable costs in certain cost elements for several years. Therefore, we are pleased to offer our experience and comments on the proposed revisions, as follows:

1) LMC believes that the proposed requirement in FAR 31.201-6(c)(2)(ii) that "all large dollar and high risk transactions are separately reviewed for unallowable costs and excluded from the sampling process" is overly restrictive. Based on experience, we have found that sampling for unallowable costs is most efficient and effective for high volume accounts with low dollar, low risk transactions. Therefore, for a given universe there is often no need or benefit to set aside transactions for 100% review. Further, the identification of any transactions requiring 100% review and the establishment of sampling strata or clusters as necessary are all inherent requirements of developing a sampling plan that provides a "*reasonable representation of the sampling universe*" as required in FAR 31.201-6(c)(2)(i). Consequently, LMC recommends that the language in subsection (c)(2)(ii) be deleted.

2) LMC believes that the current language in FAR 31.201-6(c)(3) should be simplified to improve clarity and eliminate the redundant text from FAR 42.709. It is our understanding that the main point of this subsection is to acknowledge that the penalty provisions of FAR 42.709 still apply when sampling is used to account for and identify unallowable costs and to set a framework for the application of those penalties. However, LMC believes

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that this task could be accomplished with a simpler, more concise paragraph, such as:

"Any unallowable indirect costs that are not excluded from the universe, either as part of the projection of sample results or separate review of transactions, are subject to the penalty provisions at FAR 42.709."

3) LMC also proposes that the language in FAR 31.201-6(c)(4) be revised to state: "See 31.109 regarding advance agreements." We are in agreement that it may be useful and desirable to negotiate an advance agreement with the Government; however, the language in this subsection gives the appearance that an advance agreement is a requirement of the proposed rule. LMC believes that it would be more appropriate and consistent with the verbiage used in other cost principles to simply reference FAR 31.109 (see FAR 31.205-37 for example) and include sampling for unallowable costs as another example in FAR 31.109(h) where advance agreements may be particularly important.

If you have any questions concerning our comments, please contact Ms. Barbara Michael of my staff. Barbara can be reached on (301) 897-6110 or via e-mail at: Barbara.Michael@lmco.com. We appreciate your consideration in this matter.

Sincerely,

2004-006-4

INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
400 ARMY NAVY DRIVE
ARLINGTON, VIRGINIA 22202–4704

November 24, 2004

Ms. Laurie Duarte
General Services Administration
FAR Secretariat (MVA)
1800 F Street, NW, Room 4035
Washington, DC 20405

Dear Ms. Duarte:

We have reviewed the proposed Federal Acquisition Regulation (FAR) Case No. 2004-006, "Accounting for Unallowable Costs," that added specific criteria on the use of sampling as a method to identify unallowable costs.

We disagree with the proposed amendment to FAR 31.201-6, "Accounting for unallowable costs." The proposed use of statistical sampling will result in confusion, inconsistencies, and disputes. Statistical sampling should not replace accounting policies and procedures for properly identifying and segregating unallowable costs. Unallowable costs should be appropriately identified and excluded when they are initially incurred and recorded. This internal control ensures unallowable costs are accounted for and excluded from a contractor's submission. Allowing statistical sampling for identifying unallowable costs weakens this key internal control especially at this time when implementing strong internal controls has been re-emphasized by the passage of the Sarbanes-Oxley Act of 2002.

However, if the proposed rule is enacted, language must be added to specify what an adequate sampling plan entails and these requirements must be added to the advance agreements. In addition, the Government and contractor must develop the expertise in statistical sampling to ensure sampling plans are adequate and executed properly. Enclosed are our specific comments regarding the use of statistical sampling for accounting for unallowable costs.

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Thank you for the opportunity to comment on the proposed rule. If you have any questions, please contact Mr. Ted Van Why at (703) 604-8748.

for Patricia A. Brannin
Assistant Inspector General
Audit Policy and Oversight

Enclosure
cc: DAR Council

006-4

Inspector General of the Department of Defense
Comments on Federal Acquisition Case Number 2004-006
"Accounting for Unallowable Costs"

FAR 31.201-6(c) - Our recommended changes are lined-through for deletions and underlined for additional language as follows:

(4) Use of statistical sampling methods for identifying and segregating unallowable costs should be the subject of an advance agreement under the provisions of FAR 31.109. The advance agreement must be renegotiated annually for consideration of changes in the contractor's accounting system, including account activity and materiality. The advance agreement ~~should specify the basic characteristics of the sampling process.~~ must include a written sampling plan that documents the following:

(i) Objective. Defines what the sampling plan is going to accomplish (i.e. quantifying unallowable costs by type).

(ii) Population. Identifies what will be looked at and the unit of observation (expense account, invoice, line item, etc.).

(iii) Measures. Defines what the measure is in determining what is acceptable and what is not (the FAR definition of unallowable costs).

(iv) Sampling Parameters. The sampling parameters include the following:

(A) Confidence Level. The confidence level should be set at a minimum 95 percent, one-sided.

(B) Precision. Establishes the acceptability of the precision relative to the specific sampling situation.

(C) Sample Design. Specifies what sample design was used (simple random, stratified, etc.).

(v) Decision Rule. Specifies how the results of the sampling plan should be used.

(vi) Documentation. Information regarding the raw data that was collected so that a Government representative could duplicate and verify the sample calculations.

Justification. The proposed language in FAR 31.201-6(c)(4) does not adequately define the sampling process. The requirements of an adequate written sampling plan should be specified. We have added suggested changes to the sampling plan. In addition, the sampling plan lacked specifics on the sampling parameters. Without specifics, each contracting official will have to establish the (i) confidence level, (ii) precision, (iii) sample design, (iv) decision rule, and (v) documentation. This will result in arbitrary and inconsistent applications.

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Recently the Internal Revenue Service issued Revenue Procedure 2004-29 establishing guidelines for using statistical sampling methods for meals and entertainment expense. This revenue procedure also covers sampling plan standards listing methods and attributes to be used with a sampling plan, sampling documentation standards, and technical formulas. The 95 percent, one-sided confidence level was specified in the IRS guidance. The FAR, at a minimum, should provide guidance, as the IRS has, addressing these areas.

We disagree with the sampling approach and believe it will result in additional time, confusion, inconsistencies, and disputes. However, the revisions to FAR 31.201-6(c)(4) we proposed will aid in mitigating any misinterpretation as to what is required of the sampling plan. The contractor and the Government need clear guidelines to follow when establishing the methodology behind the advance agreement to ensure the adequacy, appropriateness, and integrity of the advance agreement, and adherence to FAR requirements.

2004-006-5

Raytheon

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November 29, 2004

General Services Administration
Regulatory Secretariat (V)
1800 F Street, NW, Room 4035
ATTN: Laurie Duarte
Washington, DC 20405

Subject: FAR Case 2004-006

Dear Ms. Duarte:

Raytheon Company appreciates the opportunity to provide you with comments regarding the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council proposed amendment to FAR Part 31.201-6, *Accounting for unallowable costs*. We are pleased to see the Councils issued a second proposed rule, given the public comments received to the original FAR case (2002-006) and subsequent changes. Except for proposed paragraph (c)(3) as noted below and a minor recommendation to proposed paragraph (c)(2), we are in general agreement with the proposed rule.

Proposed paragraph (c)(2):

To enhance clarity, we believe the intent of this paragraph would be clearer if it was more explicit that this provision refers to contractors, not the government. Therefore, it is recommended that the first sentence say "Statistical sampling is an acceptable practice for contractors to follow in accounting for and presenting unallowable costs provided the following criteria are met:"

Proposed paragraph (c)(3):

While we understand the intent of adding this new language, we found this paragraph to be rather confusing and subject to misinterpretation. We believe that all of (c)(3) could be replaced with the following sentence: "For any cost in the selected sample that is subject to the penalties provisions at FAR 42.709, the associated projected amount to the sampling universe derived from that sampled item is also subject to the same penalties provisions." We further believe that this sentence addresses the concerns in the Public Comments and accomplishes the Councils desired intent, in a more clear and concise manner.

If the Councils disagree and maintain the proposed (c)(3) language, the following items need to be addressed:

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- In proposed paragraph (c)(3)(i), the wording "excluded from any final indirect rate proposal" is technically incorrect. The amounts are not "excluded" from the "proposal" as the proposal would include gross, withdrawn, and claimed/recoverable costs. It is recommended that the first sentence say "The following amounts must be excluded from any proposed final indirect cost rates or ..."
- In proposed paragraph (c)(3)(i)(B), it is not clear what "determined to be unallowable" means. This could relate to paragraph (b) of this cost principle or it could relate to FAR 42.709-3(b) or something else. It would need to be clarified.
- Proposed paragraph (c)(3)(iii) appears redundant and unnecessary. Paragraph (c)(3)(ii) provides "...are subject to the penalties provisions at FAR 42.709." By virtue of this reference that includes contract applicability language at 42.709-6, it does not appear necessary to provide another paragraph with the same type of contract applicability language.

Notwithstanding the above comments, we firmly believe proposed paragraph (c)(3) could be replaced with a clearer and more concise sentence as recommended above.

Raytheon Company also participated in and supports the Aerospace Industry Association (AIA) position regarding this proposed amendment.

We will be pleased to discuss any questions or comments you may have regarding this correspondence. You can contact Jim Pflaumer at (781) 522-3024, as necessary. Thank you for your consideration.

Sincerely,

T J Murphy

Terence J. Murphy
Assistant Controller, Government Accounting

Copy furnished:
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