

# 31.105 Construction and architect-engineer contracts.

(a) This category includes all contracts and *contract modifications* negotiated on the basis of cost with organizations other than educational institutions (see [31.104](#)), State and local governments (see [31.107](#)), and nonprofit organizations except those exempted under OMB Uniform Guidance at 2 CFR part 200, appendix VIII (see [31.108](#)) for *construction* management or *construction*, alteration or repair of buildings, bridges, roads, or other kinds of real property. It also includes architect-engineer contracts related to *construction* projects. It does not include contracts for vessels, aircraft, or other kinds of *personal property*.

(b) Except as otherwise provided in (d) of this section, the cost principles and procedures in [subpart 31.2](#) shall be used in the *pricing* of contracts and *contract modifications* in this category if cost analysis is performed as required by [15.404-1\(c\)](#).

(c) In addition, the *contracting officer* shall incorporate the cost principles and procedures in [subpart 31.2](#) (as modified by (d) of this section by reference in contracts in this category as the basis for-

(1) Determining reimbursable costs under cost-reimbursement contracts, including cost-reimbursement subcontracts thereunder;

(2) Negotiating *indirect cost rates*;

(3) Proposing, negotiating, or determining costs under terminated contracts;

(4) Price revision of fixed-price incentive contracts; and

(5) *Pricing* changes and other *contract modifications*.

(d) Except as otherwise provided in this paragraph (d), the allowability of costs for *construction* and architect-engineer contracts shall be determined in accordance with [subpart 31.2](#).

(1) Because of widely varying factors such as the nature, size, duration, and location of the *construction* project, advance agreements as set forth in [31.109](#), for such items as *home office* overhead, partners' compensation, employment of consultants, and equipment usage costs, are particularly important in *construction* and architect-engineer contracts. When appropriate, they serve to express the parties' understanding and avoid possible subsequent disputes or disallowances.

(2) "*Construction* equipment," as used in this section, means equipment (including marine equipment) in sound workable condition, either owned or controlled by the contractor or the subcontractor at any tier, or obtained from a commercial rental source, and furnished for use under Government contracts.

(i) Allowable ownership and operating costs shall be determined as follows:

(A) Actual cost data shall be used when such data can be determined for both ownership and operations costs for each piece of equipment, or groups of similar serial or series equipment, from the contractor's accounting records. When such costs cannot be so determined, the *contracting*

agency *may* specify the use of a particular schedule of predetermined rates or any part thereof to determine ownership and operating costs of *construction* equipment (see subdivisions (d)(2)(i)(B) and (C) of this section). However, costs otherwise unallowable under this part *shall* not become allowable through the use of any schedule (see [31.109\(c\)](#)). For example, schedules need to be adjusted for Government contract costing purposes if they are based on replacement cost, include unallowable interest costs, or use improper cost of money rates or computations. *Contracting officers should* review the computations and factors included within the specified schedule and ensure that unallowable or unacceptably computed factors are not allowed in cost submissions.

(B) Predetermined schedules of *construction* equipment use rates (*e.g.*, the *Construction Equipment Ownership and Operating Expense Schedule*, published by the U.S. Army Corps of Engineers, industry sponsored *construction* equipment cost guides, or commercially published schedules of *construction* equipment use cost) provide average ownership and operating rates for *construction* equipment. The allowance for operating costs *may* include costs for such items as fuel, filters, oil, and grease; servicing, repairs, and maintenance; and tire wear and repair. Costs of labor, mobilization, demobilization, overhead, and profit are generally not reflected in schedules, and separate consideration *may* be necessary.

(C) When a schedule of predetermined use rates for *construction* equipment is used to determine *direct costs*, all costs of equipment that are included in the cost allowances provided by the schedule *shall* be identified and eliminated from the contractor's other direct and *indirect costs* charged to the contract. If the contractor's accounting system provides for site or *home office* overhead allocations, all costs which are included in the equipment allowances *may* need to be included in any *cost input* base before computing the contractor's overhead rate. In periods of *suspension* of work pursuant to a *contract clause*, the allowance for equipment ownership *shall* not exceed an amount for standby cost as determined by the schedule or contract provision.

(ii) Reasonable costs of renting *construction* equipment are allowable (but see paragraph (C) of this subsection).

(A) Costs, such as maintenance and minor or running repairs incident to operating such rented equipment, that are not included in the rental rate are allowable.

(B) Costs incident to major repair and overhaul of rental equipment are unallowable.

(C) The allowability of charges for *construction* equipment rented from any division, subsidiary, or organization under common control, will be determined in accordance with [31.205-36\(b\)\(3\)](#).

(3) Costs incurred at the *job* site incident to performing the work, such as the cost of superintendence, timekeeping and clerical work, engineering, utility costs, *supplies*, material handling, restoration and cleanup, etc., are allowable as direct or *indirect costs*, provided the accounting practice used is in accordance with the contractor's established and consistently followed cost accounting practices for all work.

(4) Rental and any other costs, less any applicable credits incurred in acquiring the temporary use of land, structures, and facilities are allowable. Costs, less any applicable credits, incurred in constructing or fabricating structures and facilities of a temporary nature are allowable.

**Parent topic:** [Subpart 31.1 - Applicability](#)