

the contractor used a compliant practice; and

(6) Calculate the increased cost to the Government in the aggregate.

(i) *Remedies.* If the contractor does not correct the noncompliance or submit the proposal required in paragraph (d) or (f) of this section within the specified time, or any extension granted by the CFAO, the CFAO shall follow the procedures at 30.604(i).

30.606 Resolving cost impacts.

(a) *General.* (1) The CFAO shall coordinate with the affected contracting officers before negotiating and resolving the cost impact when the estimated cost impact on any of their contracts is at least \$100,000. However, the CFAO has the sole authority for negotiating and resolving the cost impact.

(2) The CFAO may resolve a cost impact attributed to a change in cost accounting practice or a noncompliance by adjusting a single contract, several but not all contracts, all contracts, or any other suitable method.

(3) In resolving the cost impact, the CFAO—

(i) Shall not combine the cost impacts of any of the following:

(A) A required change and a unilateral change.

(B) A required change and a noncompliance.

(C) A desirable change and a unilateral change.

(D) A desirable change and a noncompliance.

(ii) Shall not combine the cost impacts of any of the following unless all of the cost impacts are increased costs to Government:

(A) One or more unilateral changes.

(B) One or more noncompliances.

(C) Unilateral changes and noncompliances; and

(iii) May consider the cost impacts of a unilateral change affecting two or more segments to be a single change if—

(A) The change affects the flow of costs between segments; or

(B) Implements a common cost accounting practice for two or more segments.

(4) For desirable changes, the CFAO should consider the estimated cost impact of associated management actions

on contract costs in resolving the cost impact.

(b) *Negotiations.* The CFAO shall—

(1) Negotiate and resolve the cost impact on behalf of all Government agencies; and

(2) At the conclusion of negotiations, prepare a negotiation memorandum and send copies to the auditor and affected contracting officers.

(c) *Contract adjustments.* (1) The CFAO may adjust some or all contracts with a material cost impact, subject to the provisions in paragraphs (c)(2) through (c)(6) of this section.

(2) In selecting the contract or contracts to be adjusted, the CFAO should assure, to the maximum extent practical and subject to the provisions in paragraphs (c)(3) through (c)(6) of this section, that the adjustments reflect a *pro rata* share of the cost impact based on the ratio of the cost impact of each Executive agency to the total cost impact.

(3) For unilateral changes and noncompliances, the CFAO shall—

(i) To the maximum extent practical, not adjust the price upward for fixed-price contracts;

(ii) If contract adjustments are made, preclude payment of aggregate increased costs by taking one or both of the following actions:

(A) Reduce the contract price on fixed-price contracts.

(B) Disallow costs on flexibly-priced contracts; and

(iii) The CFAO may, in consultation with the affected contracting officers, increase or decrease individual contract prices, including contract cost ceilings or target costs on flexibly-priced contracts. In such cases, the CFAO shall limit any upward contract price adjustments on affected contracts to the amount of downward price adjustments to other affected contracts, *i.e.*, the aggregate price of all contracts affected by a unilateral change shall not be increased (48 CFR 9903.201-6(b)).

(4) For noncompliances that involve estimating costs, the CFAO—

(i) Shall, to the extent practical, not adjust the price upward for fixed-price contracts;

(ii) Shall, if contract adjustments are made, preclude payment of aggregate

increased costs by reducing the contract price on fixed-price contracts;

(iii) May, in consultation with the affected contracting officers, increase or decrease individual contract prices, including costs ceilings or target costs on flexibly-priced contracts. In such cases, the CFAO shall limit any upward contract price adjustments to affected contracts to the amount of downward price adjustments to other affected contracts, *i.e.*, the aggregate price of all contracts affected by a noncompliance that involves estimating costs shall not be increased (48 CFR 9903.201-6(d));

(iv) Shall require the contractor to correct the noncompliance, *i.e.*, ensure that compliant cost accounting practices will now be utilized to estimate proposed contract costs; and

(v) Shall require the contractor to adjust any invoices that were paid based on noncompliant contract prices to reflect the adjusted contract prices, after any contract price adjustments are made to resolve the noncompliance.

(5) For noncompliances that involve cost accumulation, the CFAO—

(i) Shall require the contractor to—

(A) Correct noncompliant contract cost accumulations in the contractor's cost accounting records for affected contracts to reflect compliant contract cost accumulations; and

(B) Adjust interim payment requests (public vouchers and/or progress payments) and final vouchers to reflect the difference between the costs paid using the noncompliant practice and the costs that should have been paid using the compliant practice; or

(ii) Shall adjust contract prices. In adjusting contract prices, the CFAO shall preclude payment of aggregate increased costs by disallowing costs on flexibly-priced contracts.

(A) The CFAO may, in consultation with the affected contracting officers, increase or decrease individual contract prices, including costs ceilings or target costs on flexibly-priced contracts. In such cases, the CFAO shall limit any upward contract price adjustments to affected contracts to the amount of downward price adjustments to other affected contracts, *i.e.*, the aggregate price of all contracts affected

by a noncompliance that involves cost accumulation shall not be increased (48 CFR 9903.201-6(d)).

(B) Shall require the contractor to—

(1) Correct contract cost accumulations in the contractor's cost accounting records to reflect the contract price adjustments; and

(2) Adjust interim payment requests (public vouchers and/or progress payments) and final vouchers to reflect the contract price adjustments.

(6) When contract adjustments are made, the CFAO shall—

(i) Execute the bilateral modifications if the CFAO and contractor agree on the amount of the cost impact and the adjustments (see 42.302(a)(11)(iv)); or

(ii) When the CFAO and contractor do not agree on the amount of the cost impact or the contract adjustments, issue a final decision in accordance with 33.211 and unilaterally adjust the contract(s).

(d) *Alternate methods.* (1) The CFAO may use an alternate method instead of adjusting contracts to resolve the cost impact, provided the Government will not pay more, in the aggregate, than would be paid if the CFAO did not use the alternate method and the contracting parties agree on the use of that alternate method.

(2) The CFAO may not use an alternate method for contracts when application of the alternate method to contracts would result in—

(i) An under recovery of monies by the Government (*e.g.*, due to cost overruns); or

(ii) Distortions of incentive provisions and relationships between target costs, ceiling costs, and actual costs for incentive type contracts.

(3) When using an alternate method that excludes the costs from an indirect cost pool, the CFAO shall—

(i) Apply such exclusion only to the determination of final indirect cost rates (*see* 42.705); and

(ii) Adjust the exclusion to reflect the Government participation rate for flexibly-priced contracts and subcontracts. For example, if there are aggregate increased costs to the Government of \$100,000, and the indirect cost pool where the adjustment is to be effected has a Government participation

rate of 50 percent for flexibly-priced contracts and subcontracts, the contractor shall exclude \$200,000 from the indirect cost pool ($\$100,000/50\% = \$200,000$).

30.607 Subcontract administration.

When a negotiated CAS price adjustment or a determination of noncompliance is required at the subcontract level, the CFAO for the subcontractor shall furnish a copy of the negotiation memorandum or the determination to the CFAO for the contractor of the next higher-tier subcontractor. The CFAO of the contractor or the next higher-tier subcontractor shall not change the determination of the CFAO for the lower-tier subcontractor. If the subcontractor refuses to submit a GDM or DCI proposal, remedies are made at the prime contractor level.

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

Sec.

- 31.000 Scope of part.
- 31.001 Definitions.
- 31.002 Availability of accounting guide.

Subpart 31.1—Applicability

- 31.100 Scope of subpart.
- 31.101 Objectives.
- 31.102 Fixed-price contracts.
- 31.103 Contracts with commercial organizations.
- 31.104 Contracts with educational institutions.
- 31.105 Construction and architect-engineer contracts.
- 31.106 Facilities contracts.
 - 31.106-1 Applicable cost principles.
 - 31.106-2 Exceptions to general rules on allowability and allocability.
 - 31.106-3 Contractor's commercial items.
- 31.107 Contracts with State, local, and federally recognized Indian tribal governments.
- 31.108 Contracts with nonprofit organizations.
- 31.109 Advance agreements.
- 31.110 Indirect cost rate certification and penalties on unallowable costs.

Subpart 31.2—Contracts With Commercial Organizations

- 31.201 General.
 - 31.201-1 Composition of total cost.
 - 31.201-2 Determining allowability.
 - 31.201-3 Determining reasonableness.

- 31.201-4 Determining allocability.
- 31.201-5 Credits.
- 31.201-6 Accounting for unallowable costs.
- 31.201-7 Construction and architect-engineer contracts.
- 31.202 Direct costs.
- 31.203 Indirect costs.
- 31.204 Application of principles and procedures.
- 31.205 Selected costs.
 - 31.205-1 Public relations and advertising costs.
 - 31.205-2 [Reserved]
 - 31.205-3 Bad debts.
 - 31.205-4 Bonding costs.
 - 31.205-5 [Reserved]
 - 31.205-6 Compensation for personal services.
 - 31.205-7 Contingencies.
 - 31.205-8 Contributions or donations.
 - 31.205-9 [Reserved]
 - 31.205-10 Cost of money.
 - 31.205-11 Depreciation.
 - 31.205-12 Economic planning costs.
 - 31.205-13 Employee morale, health, welfare, food service, and dormitory costs and credits.
 - 31.205-14 Entertainment costs.
 - 31.205-15 Fines, penalties, and mischarging costs.
 - 31.205-16 Gains and losses on disposition or impairment of depreciable property or other capital assets.
 - 31.205-17 Idle facilities and idle capacity costs.
 - 31.205-18 Independent research and development and bid and proposal costs.
 - 31.205-19 Insurance and indemnification.
 - 31.205-20 Interest and other financial costs.
 - 31.205-21 Labor relations costs.
 - 31.205-22 Lobbying and political activity costs.
 - 31.205-23 Losses on other contracts.
 - 31.205-24 Maintenance and repair costs.
 - 31.205-25 Manufacturing and production engineering costs.
 - 31.205-26 Material costs.
 - 31.205-27 Organization costs.
 - 31.205-28 Other business expenses.
 - 31.205-29 Plant protection costs.
 - 31.205-30 Patent costs.
 - 31.205-31 Plant reconversion costs.
 - 31.205-32 Precontract costs.
 - 31.205-33 Professional and consultant service costs.
 - 31.205-34 Recruitment costs.
 - 31.205-35 Relocation costs.
 - 31.205-36 Rental costs.
 - 31.205-37 Royalties and other costs for use of patents.
 - 31.205-38 Selling costs.
 - 31.205-39 Service and warranty costs.
 - 31.205-40 Special tooling and special test equipment costs.
 - 31.205-41 Taxes.
 - 31.205-42 Termination costs.
 - 31.205-43 Trade, business, technical, and professional activity costs.