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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 31

[FAC 2005-67; FAR Case 2011-019; Item X; Docket 2011-0019,
Sequence 1]

RIN 9000-AM23

**Federal Acquisition Regulation; Updated Postretirement Benefit
(PRB) References**

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

ACTION: Final rule.

SUMMARY: DoD, GSA and NASA are issuing a final rule amending the Federal Acquisition Regulation (FAR) to remove references to specific paragraphs of an accounting standard that were deleted in the Financial Accounting Standards Board's (FASB's) Accounting Standards Codification (ASC) of Generally Accepted Accounting Principles (GAAP). The references no longer exist in the authoritative GAAP (the ASC). This final rule replaces the current GAAP references in the FAR with explicit criteria that generally replicate the substance of the formerly referenced GAAP methodology so that the substance of the FAR does not change as a result of this final rule.

DATES: Effective Date: [INSERT DATE 30 DAYS AFTER
PUBLICATION IN THE FEDERAL REGISTER.]

FOR FURTHER INFORMATION CONTACT: Mr. Edward N. Chambers,
Procurement Analyst, at 202-501-3221 for clarification of
content. For information pertaining to status or
publication schedules, contact the Regulatory Secretariat at
202-501-4755. Please cite FAC 2005-67, FAR Case 2011-019.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA published a proposed rule in the
Federal Register at 77 FR 29305 on May 17, 2012, to replace
the obsolete references to paragraphs 110, 112, and 113 of
Financial Accounting Standard (FAS) 106 (provisions of GAAP
that no longer exist) in FAR 31.205-6(o)(2)(iii)(A)(1) with
explicit criteria that generally replicate the GAAP
methodology detailed in the deleted paragraphs. This
revision is intended to allow a general continuation for FAR
purposes (for PRB costs for Government contract cost
accounting) of the now-obsolete GAAP delayed recognition
method for contractors that move from a pay-as-you-go method
of accounting to an accrual basis of accounting.

In June of 2009, the FASB announced, in its Statement
Number 168, that effective for financial statements issued
for interim and annual periods ending after September 15,
2009, the ASC would become the source of authoritative U.S.

GAAP recognized by the FASB to be applied by nongovernmental entities. The FASB stated that this codification supersedes existing references in U.S. GAAP.

The now-superseded GAAP provisions in FAR 31.205-6(o)(2)(iii)(A)(1) referenced the description of "transition obligation" in paragraph 110 of FAS 106 and the "delayed recognition methodology" in paragraphs 112 and 113, also of FAS 106.

These references to FAS 106 in the cost principle were added in FAR Case 91-42, published in the Federal Register at 56 FR 41738 on August 22, 1991. At the time, the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) decided not to allow contractors to claim the entire "transition obligation" associated with their initial application of FAS 106 as an allowable cost in accordance with the "immediate recognition" procedure in (the now-superseded) paragraph 111 of FAS 106. (The transition obligation associated with initial application of FAS 106 is referred to hereafter as the "initial application transition obligation.") Therefore, the Councils disallowed costs for the amortization of the initial application transition obligation in excess of the amount amortized using the delayed recognition method procedure in (the now-superseded) paragraphs 112 and 113 of FAS 106.

As a result of the FASB announcement that the ASC is now the source of the authoritative U.S. GAAP, the Councils note that the references to paragraphs 111, 112, and 113, respectively, of FAS 106 (for the immediate and delayed recognition procedures for the initial application transition obligation), are no longer valid because FAS 106 no longer exists in the authoritative GAAP (the ASC). When the FASB recodified FAS 106 into the ASC, paragraphs 111 through 114 were not included because public companies recognized the transition obligation in the first fiscal period beginning after December 15, 1994, or shortly thereafter if exempted from the initial effective date. While the existing provision at FAR 31.205-6(o)(2)(iii)(A)(1) remains in force because the referenced GAAP paragraphs can be found in the historical accounting literature, the passage of time raises concerns that the text of these paragraphs may become less readily available. The Councils conclude, therefore, that explicit criteria that generally replicates the substance of the formerly referenced GAAP methodology are needed for determining the allowability of the transition obligation, when converting from pay-as-you-go accounting for PRBs to an accrual method of accounting for the purposes of Government contract cost accounting, as they do not intend to change the substance of the FAR.

The Councils acknowledge that contractors may continue to propose (as they have in the past) a change to their Government contract cost accounting practice whereby the "pay-as-you-go" method is replaced by the "accrual" method, and this may give rise to a transition obligation that is similar in its nature, but not its amount, to the initial application transition obligation that arose when (now-superseded) FAS 106 first became applicable in the early 1990's for financial reporting purposes.

II. Discussion and Analysis

DoD, GSA, and NASA received no comments on the proposed rule and are therefore issuing the rule as final with minor changes from the proposed rule.

III. Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. 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.

IV. Regulatory Flexibility Act

DoD, GSA, and NASA 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 rule only removes references to specific paragraphs in an accounting standard that were deleted in the Financial Accounting Standards Board's (FASB's) Accounting Standards Codification (ASC) of Generally Accepted Accounting Principles (GAAP) and replaces them with explicit criteria that generally replicate the substance of the formerly referenced GAAP methodology (i.e., the substance of the FAR did not change as a result of this final rule). No comments from small entities were received in response to the Regulatory Flexibility Act request under the proposed rule.

V. Paperwork Reduction Act

The final rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subject in 48 CFR Part 31

Government procurement.

Dated: June 13, 2013

William Clark,
Acting Director,
Office of Governmentwide
Acquisition Policy,
Office of Acquisition Policy,
Office of Governmentwide Policy.

Therefore, DoD, GSA, and NASA amend 48 CFR part 31 as set forth below:

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

1. The authority citation for 48 CFR part 31 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 51 U.S.C. 20113.

2. Amend section 31.205-6 by revising paragraph (o)(2)(iii)(A) to read as follows:

31.205-6 Compensation for personal services.

* * * * *

(o) * * *

(2) * * *

(iii) * * *

(A) Be measured and assigned in accordance with one of the following two methods described under paragraphs (o)(2)(iii)(A)(1) or (o)(2)(iii)(A)(2) of this subsection:

(1) Generally accepted accounting principles. However, transitions from the pay-as-you-go method to the accrual accounting method must be handled according to paragraphs (o)(2)(iii)(A)(1)(i) through (iii) of this subsection.

(i) In the year of transition from the pay-as-you-go method to accrual accounting for purposes of Government contract cost accounting, the transition obligation shall be the excess of the accumulated PRB obligation over the fair value of plan assets determined in accordance with paragraph (o) (2) (iii) (E) of this subsection; the fair value must be reduced by the prepayment credit as determined in accordance with paragraph (o) (2) (iii) (F) of this subsection.

(ii) PRB cost attributable to the transition obligation assigned to the current year that is in excess of the amount assignable to accounting periods on the basis of a straight line amortization of the transition obligation over the average remaining working lives of active employees covered by the PRB plan or a 20-year period, whichever period is longer, is unallowable. However, if the plan is comprised of inactive participants only, the PRB cost attributable to the transition obligation assigned to the current year that is in excess of the amount assignable to accounting periods on a straight line amortization of the transition obligation over the average future life expectancy of the participants is unallowable.

(iii) For a plan that transitioned from pay-as-you-go to accrual accounting for Government contract cost accounting prior to **[Insert date 30 days after**

publication in the Federal Register], the unallowable amount of PRB cost attributable to the transition obligation amortization shall continue to be based on the cost principle in effect at the time of the transition until the original transition obligation schedule is fully amortized.

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