

# Subpart 31.1 - Applicability

**Parent topic:** [Part 31 - Contract Cost Principles and Procedures](#)

## 31.100 Scope of subpart.

This subpart describes the applicability of the cost principles and procedures in succeeding subparts of this part to various types of contracts and subcontracts. It also describes the need for advance agreements.

## 31.101 Objectives.

In recognition of differing organizational characteristics, the cost principles and procedures in the succeeding subparts are grouped basically by organizational type; *e.g.*, commercial concerns and educational institutions. The overall objective is to provide that, to the extent practicable, all organizations of similar types doing similar work will follow the same cost principles and procedures. To achieve this uniformity, individual deviations concerning cost principles require advance approval of the *agency head* or designee. Class deviations for the civilian agencies require advance approval of the Civilian Agency *Acquisition* Council. Class deviations for the National Aeronautics and Space Administration require advance approval of the Deputy *Chief Acquisition Officer*. Class deviations for the Department of Defense require advance approval of the Principal Director, Defense *Pricing and Contracting*, Office of the Under Secretary of Defense for *Acquisition* and Sustainment.

## 31.102 Fixed-price contracts.

The applicable subparts of [part 31](#) *shall* be used in the *pricing* of fixed-price contracts, subcontracts, and modifications to contracts and subcontracts whenever (a) cost analysis is performed, or (b) a fixed-price *contract clause* requires the determination or negotiation of costs. However, application of cost principles to fixed-price contracts and subcontracts *shall* not be construed as a requirement to negotiate agreements on individual elements of cost in arriving at agreement on the total price. The final price accepted by the parties reflects agreement only on the total price. Further, notwithstanding the mandatory use of cost principles, the objective will continue to be to negotiate prices that are fair and reasonable, cost and other factors considered.

## 31.103 Contracts with commercial organizations.

This category includes all contracts and *contract modifications* for *supplies*, services, or experimental, developmental, or research work negotiated with organizations other than educational institutions (see [31.104](#)), *construction* and architect-engineer contracts (see [31.105](#)), State and local governments (see [31.107](#)) and nonprofit organizations (see [31.108](#)) on the basis of cost.

(a) The cost principles and procedures in [subpart 31.2](#) and agency supplements *shall* be used in

*pricing* negotiated supply, service, experimental, developmental, and research contracts and *contract modifications* with commercial organizations whenever cost analysis is performed as required by [15.404-1\(c\)](#).

(b) In addition, the *contracting officer shall* incorporate the cost principles and procedures in [subpart 31.2](#) and agency supplements by reference in contracts with commercial organizations as the basis for-

(1) Determining reimbursable costs under-

(i) Cost-reimbursement contracts and cost-reimbursement subcontracts under these contracts performed by commercial organizations and

(ii) The cost-reimbursement portion of time-and-materials contracts except when material is priced on a basis other than at cost (see [16.601\(c\)\(3\)](#));

(2) Negotiating *indirect cost rates* (see [subpart 42.7](#));

(3) Proposing, negotiating, or determining costs under terminated contracts (see [49.103](#) and [49.113](#));

(4) Price revision of fixed-price incentive contracts (see [16.204](#) and [16.403](#));

(5) Price redetermination of price redetermination contracts (see [16.205](#) and [16.206](#)); and

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

## **31.104 Contracts with educational institutions.**

This category includes all contracts and *contract modifications* for research and development, training, and other work performed by educational institutions (defined as institutions of higher education in the OMB Uniform Guidance at 2 CFR part 200, subpart A, and [20 U.S.C. 1001](#)).

(a) The *contracting officer shall* incorporate the cost principles and procedures in [subpart 31.3](#) by reference in cost-reimbursement contracts with educational institutions as the basis for-

(1) Determining reimbursable costs under the contracts and cost-reimbursement subcontracts thereunder performed by educational institutions;

(2) Negotiating *indirect cost rates*; and

(3) Settling costs of cost-reimbursement terminated contracts (see [subpart 49.3](#) and [49.109-7](#)).

(b) The cost principles in this subpart are to be used as a guide in evaluating costs in connection with negotiating fixed-price contracts and termination settlements.

## **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.

## **31.106 [Reserved]**

## **31.107 Contracts with State, local, and federally recognized Indian tribal governments.**

(a) [subpart 31.6](#) provides principles and standards for determining costs applicable to contracts with State, local, and federally recognized Indian tribal governments. They provide the basis for a uniform approach to the problem of determining costs and to promote efficiency and better

relationships between State, local, and federally recognized Indian tribal governments, and Federal Government entities. They apply to all programs that involve contracts with State, local, and federally recognized Indian tribal governments, except contracts with-

(1) Publicly financed educational institutions subject to [subpart 31.3](#); or

(2) Publicly owned hospitals and other providers of medical care subject to requirements promulgated by the sponsoring Government agencies.

(b) The Office of Management and Budget will approve any other exceptions in particular cases when adequate justification is presented.

## **31.108 Contracts with nonprofit organizations.**

Subpart [31.7](#) provides principles and standards for determining costs applicable to contracts with nonprofit organizations other than educational institutions (see [subpart 31.3](#)), State and local governments (see [subpart 31.6](#)), and those nonprofit organizations exempted under the OMB Uniform Guidance at 2 CFR part 200, appendix VIII (see [subpart 31.2](#) for the cost principles applicable to nonprofit organizations exempt from the cost principles in the OMB Uniform Guidance at 2 CFR part 200).

## **31.109 Advance agreements.**

(a) The extent of allowability of the costs covered in this part applies broadly to many accounting systems in varying contract situations. Thus, the reasonableness, the allocability and the allowability under the specific cost principles at [subparts 31.2, 31.3, 31.6, and 31.7](#) of certain costs *may* be difficult to determine. To avoid possible subsequent disallowance or dispute based on unreasonableness, unallocability or unallowability under the specific cost principles at [subparts 31.2, 31.3, 31.6, and 31.7](#), *contracting officers* and contractors *should* seek advance agreement on the treatment of special or unusual costs and on statistical sampling methodologies at [31.201-6\(c\)](#). However, an advance agreement is not an absolute requirement and the absence of an advance agreement on any cost will not, in itself, affect the reasonableness, allocability or the allowability under the specific cost principles at [subparts 31.2, 31.3, 31.6, and 31.7](#) of that cost.

(b) Advance agreements *may* be negotiated either before or during a contract but *should* be negotiated before incurrence of the costs involved. The agreements *must* be *in writing*, executed by both *contracting* parties, and incorporated into applicable current and future contracts. An advance agreement *shall* contain a statement of its applicability and duration.

(c) The *contracting officer* is not authorized by this [31.109](#) to agree to a treatment of costs inconsistent with this part. For example, an advance agreement *may* not provide that, notwithstanding [31.205-20](#), interest is allowable.

(d) Advance agreements *may* be negotiated with a particular contractor for a single contract, a group of contracts, or all the contracts of a *contracting office*, an agency, or several agencies.

(e) The cognizant administrative *contracting officer* (ACO), or other *contracting officer* established in [part 42](#), *shall* negotiate advance agreements except that an advance agreement affecting only

one contract, or class of contracts from a single *contracting office*, shall be negotiated by a *contracting officer* in the *contracting office*, or an ACO when delegated by the *contracting officer*. When the negotiation authority is delegated, the ACO shall coordinate the proposed agreement with the *contracting officer* before executing the advance agreement.

(f) Before negotiating an advance agreement, the Government negotiator shall-

(1) Determine if other *contracting offices* inside the agency or in other agencies have a significant unliquidated dollar balance in contracts with the same contractor;

(2) Inform any such office or agency of the matters under consideration for negotiation; and

(3) As appropriate, invite the office or agency and the *responsible audit agency* to participate in prenegotiation discussions and/or in the subsequent negotiations.

(g) Upon completion of the negotiation, the sponsor shall prepare and distribute to other interested agencies and offices, including the audit agency, copies of the executed agreement and a memorandum providing the information specified in 15.406-3, as applicable.

(h) Examples for which advance agreements may be particularly important are-

(1) *Compensation for personal services*, including but not limited to allowances for off-site pay, incentive pay, location allowances, hardship pay, cost of living differential, and termination of defined benefit *pension plans*;

(2) Use charges for fully depreciated assets;

(3) Deferred maintenance costs;

(4) Precontract costs;

(5) Independent research and development and bid and *proposal* costs;

(6) Royalties and other costs for use of patents;

(7) Selling and distribution costs;

(8) Travel and relocation costs, as related to special or mass personnel movements, as related to travel via contractor-owned, -leased, or -chartered aircraft; or as related to maximum per diem rates;

(9) Costs of idle facilities and idle capacity;

(10) Severance pay to employees on support service contracts;

(11) Plant reconversion;

(12) Professional services (*e.g.*, legal, accounting, and engineering);

(13) General and administrative costs (*e.g.*, corporate, division, or branch allocations) attributable to the general management, supervision, and conduct of the contractor's business as a whole. These costs are particularly significant in *construction*, *job-site*, architect-engineer, facilities, and Government-owned contractor operated (GOCO) plant contracts (see 31.203(h));

(14) Costs of *construction* plant and equipment (see 31.105(d));

- (15) Costs of public relations and advertising; and
- (16) Statistical sampling methods (see [31.201-6\(c\)\(4\)](#)).

### **31.110 Indirect cost rate certification and penalties on unallowable costs.**

(a) Certain contracts require certification of the *indirect cost rates* proposed for final payment purposes. See [42.703-2](#) for administrative procedures regarding the certification provisions and the related *contract clause* prescription.

(b) If *unallowable costs* are included in final *indirect cost* settlement *proposals*, penalties *may* be assessed. See [42.709](#) for administrative procedures regarding the penalty assessment provisions and the related *contract clause* prescription.