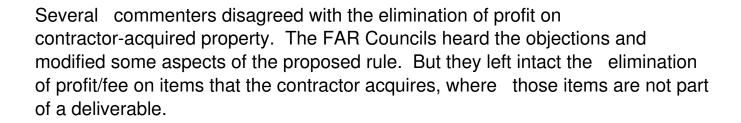


In August, 2009, we <u>reported</u> on a proposed FAR rule that looked very much as if it would have required Contracting Officers—to exclude from profit consideration "all contractor-acquired property,—unless an item is expressly called-out as a contract deliverable," when establishing pre-negotiation profit objectives. Well, the <u>final rule</u> was published on July 2, 2010 and, while it contained some changes from the proposed rule, it still contained some troubling language.

First, as we noted in our article, the location of the proposed profit language seemed illogical. We were pleased to note that the FAR Councils relocated the profit language from 15.404-4(a)(3) to 15.404-4(c)(3).





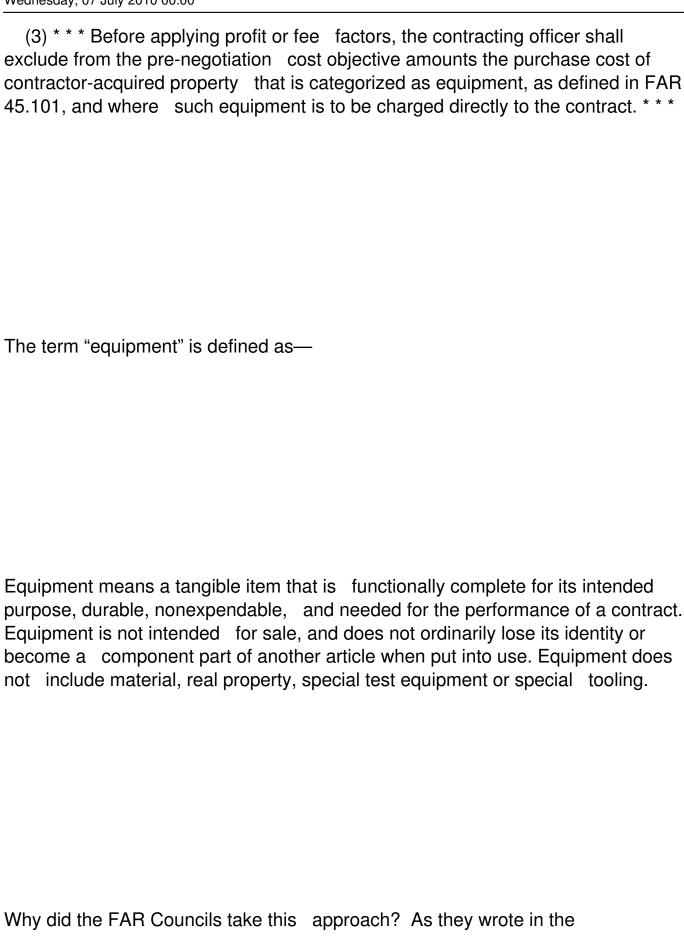
The final rule now states—

15.404-4 Profit.

* * * * *

(c) * * *

Written by Administrator Wednesday, 07 July 2010 00:00 (3) * * * Before applying profit or fee factors, the contracting officer shall



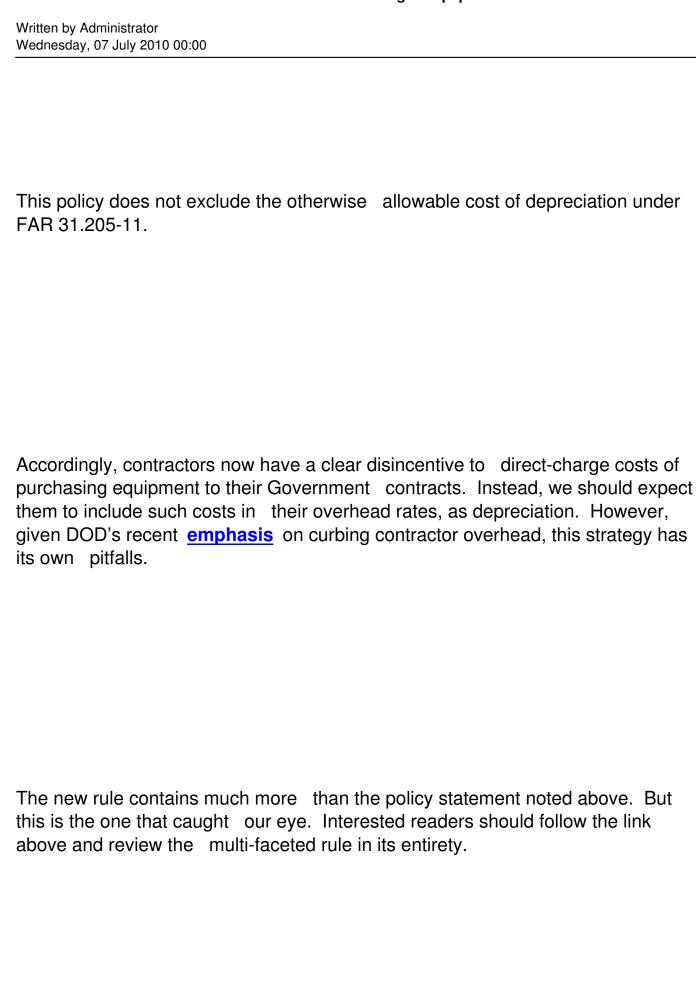
Written by Administrator Wednesday, 07 July 2010 00:00

promulgating comments—

While the application of this policy tended to be obfuscated by the term 'facilities,' the underlying principle was clear--that when the contractor buys equipment or acquires real property on a 'pass through' basis, i.e., when not part of a deliverable, it is the Government--not the contractor--who assumes the risk. Moreover, it is generally held that upon contract award, contractors are required to furnish all property necessary to perform Government contracts (FAR Part 45.102) as well as all the necessary resources needed for contract performance (FAR 9.104-1(f), General standards).

Accordingly, it is not appropriate for the Government to include the cost of contractor acquired property (equipment) when calculating the Government's pre-negotiation profit or fee objective. Including such costs would unduly compensate the contractor for obtaining equipment it should already have; and for risks it did not incur. This is a long held view; however, up until the publication of the proposed rule FAR Case 2008-011, it had not been adequately addressed in the

FAR.



Written by Administrator Wednesday, 07 July 2010 00:00