

**DEPARTMENT OF DEFENSE****GENERAL SERVICES  
ADMINISTRATION****NATIONAL AERONAUTICS AND  
SPACE ADMINISTRATION****48 CFR Part 31**

[FAC 97-11; FAR Case 98-001; Item VII]

RIN 9000-A106

**Federal Acquisition Regulation;  
Recruitment Costs Principle**

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

**ACTION:** Final rule.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to revise the "recruitment costs" and the "public relations and advertising cost" cost principles for streamlining purposes.

**EFFECTIVE DATE:** May 3, 1999.

**FOR FURTHER INFORMATION CONTACT:** The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501-4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Nelson, Procurement Analyst, at (202) 501-1900. Please cite FAC 97-11, FAR case 98-001.

**SUPPLEMENTARY INFORMATION:****A. Background**

A proposed FAR rule was published in the *Federal Register* on August 12, 1998 (63 FR 43238). The final rule differs from the proposed rule by deleting the following phrase from FAR 31.205-34(a): "and provided that the size of the staff recruited and maintained is in keeping with the workload requirements." This phrase is unnecessary as the criteria, including reasonableness, discussed in FAR part 31 are sufficient to govern the acceptability of this type of cost.

Public comments were received from six sources. All comments were considered in developing the final rule.

This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

**B. Regulatory Flexibility Act**

The Department of Defense, the General Services Administration, and

the National Aeronautics and Space Administration 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 most contracts awarded to small entities use simplified acquisition procedures or are awarded on a competitive, fixed-price basis, and do not require application of the cost principles contained in this rule.

**C. Paperwork Reduction Act**

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

**List of Subjects in 48 CFR Part 31**

Government procurement.

Dated: February 25, 1999.

**Edward C. Loeb,**

*Director, Federal Acquisition Policy Division.*

Therefore, 48 CFR Part 31 is amended 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. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 31.205-1 is amended by revising paragraph (d) to read as follows:

**31.205-1 Public relations and advertising costs.**

\* \* \* \* \*

(d) The only allowable advertising costs are those that are—

(1) Specifically required by contract, or that arise from requirements of Government contracts, and that are exclusively for—

(i) Acquiring scarce items for contract performance; or

(ii) Disposing of scrap or surplus materials acquired for contract performance;

(2) Costs of activities to promote sales of products normally sold to the U.S. Government, including trade shows, which contain a significant effort to promote exports from the United States. Such costs are allowable, notwithstanding paragraphs (f)(1), (f)(3), (f)(4)(ii), and (f)(5) of this subsection. However, such costs do not include the costs of memorabilia (*e.g.*, models, gifts, and souvenirs), alcoholic beverages, entertainment, and physical facilities

that are used primarily for entertainment rather than product promotion; or

(3) Allowable in accordance with 31.205-34.

\* \* \* \* \*

3. Section 31.205-34 is amended by revising paragraph (a) introductory text; by revising paragraph (b); and by removing paragraph (c) to read as follows:

**31.205-34 Recruitment costs.**

(a) Subject to paragraph (b) of this subsection, the following costs are allowable:

\* \* \* \* \*

(b) Help-wanted advertising costs are unallowable if the advertising—

(1) Does not describe specific positions or classes of positions; or

(2) Includes material that is not relevant for recruitment purposes, such as extensive illustrations or descriptions of the company's products or capabilities.

[FR Doc. 99-5209 Filed 3-3-99; 8:45 am]

BILLING CODE 6820-EP-P

**DEPARTMENT OF DEFENSE****GENERAL SERVICES  
ADMINISTRATION****NATIONAL AERONAUTICS AND  
SPACE ADMINISTRATION****48 CFR Part 31**

[FAC 97-11; FAR Case 98-301; Item VIII]

RIN 9000-A132

**Federal Acquisition Regulation;  
Compensation for Senior Executives**

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

**ACTION:** Interim rule with request for comments.

**SUMMARY:** The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council have agreed on an interim rule amending the Federal Acquisition Regulation (FAR) to implement Section 804 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Pub. L. 105-261). Section 804 revises the definition of "senior executive" at 10 U.S.C. 2324(1)(5) and at 41 U.S.C. 256(m)(2).

**EFFECTIVE DATE:** March 4, 1999.

*Applicability Date:* This policy applies to costs of compensation incurred under Government contracts

after January 1, 1999, regardless of the date of contract award.

**Comment Date:** Comments should be submitted to the FAR Secretariat at the address shown below on or before May 3, 1999 to be considered in the formulation of a final rule.

**ADDRESSES:** Interested parties should submit written comments to: General Services Administration, FAR Secretariat (MVR), 1800 F Street, NW, Room 4035, Attn: Ms. Laurie Duarte, Washington, DC 20405. E-Mail comments submitted over the Internet should be addressed to: [farcase.98-301@gsa.gov](mailto:farcase.98-301@gsa.gov)

Please cite FAC 97-11, FAR case 98-301 in all correspondence related to this case.

**FOR FURTHER INFORMATION CONTACT:** The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501-4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Linda Nelson, Procurement Analyst, at (202) 501-1900. Please cite FAC 97-11, FAR case 98-301.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

Section 808 of the National Defense Authorization Act for Fiscal Year 1998 (Pub. L. 105-85) revised 10 U.S.C. 2324 and 41 U.S.C. 256 to limit allowable compensation costs for senior executives of contractors for a fiscal year to the benchmark compensation amount determined applicable for each fiscal year by the Administrator for Federal Procurement Policy. Section 808 defined "senior executive" as—

"(A) The chief executive officer of the contractor or any individual acting in a similar capacity for the contractor;

(B) The four most highly compensated employees in management positions of the contractor other than the chief executive officer; and

(C) In the case of a contractor that has components which report directly to the contractor's headquarters, the five most highly compensated employees in management positions at each such components."

Section 804 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Pub. L. 105-261) revises the definition of "senior executive" at 10 U.S.C. 2324(1)(5) and 41 U.S.C. 256(m)(2). Section 804 defines "senior executives" as "the five most highly compensated employees in management positions at each home office and each segment of the contractor" whether or not the home office or segment reports directly to the contractor's headquarters.

This interim rule revises the definition of "senior executive" at FAR 31.205-6(p) to implement Section 804 of Pub. L. 105-261. This change applies to costs of compensation incurred after January 1, 1999, regardless of the date of contract award.

This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

**B. Regulatory Flexibility Act**

The interim rule is not expected to 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 most contracts awarded to small entities use simplified acquisition procedures or are awarded on a competitive, fixed-price basis, and do not require application of the cost principle contained in this rule. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAR Case 98-301), in correspondence.

**C. Paperwork Reduction Act**

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of OMB under 44 U.S.C. 3501, *et seq.*

**D. Determination to Issue an Interim Rule**

A determination has been made under the authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary because this rule implements Section 804 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Pub. L. 105-621) and applies to costs of compensation incurred after January 1, 1999, regardless of the date of contract award. However, pursuant to Public Law 98-577 and FAR 1.501, public comments received in response to this interim rule will be considered in the formation of the final rule.

**List of Subjects in 48 CFR Part 31:**

Government procurement.

Dated: February 25, 1999.

**Edward C. Loeb,**

*Director, Federal Acquisition Policy Division.*

Therefore, 48 CFR Part 31 is amended 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. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 31.205-6 is amended in paragraph (p) introductory text by adding a sentence after the heading; by redesignating paragraphs (p)(2)(ii)(A) through (p)(2)(ii)(C) as (p)(2)(ii)(A)(1) through (p)(2)(ii)(A)(3), respectively; and by adding new paragraphs (p)(2)(ii)(A) introductory text and (p)(2)(ii)(B) to read as follows:

**31.205-6 Compensation for personal services.**

\* \* \* \* \*

(p) \* \* \* (Note that pursuant to Section 804 of Pub. L. 105-261, the definition of "senior executive" in (p)(2)(ii) has been changed for compensation costs incurred after January 1, 1999.)

\* \* \* \* \*

(2) \* \* \*

(ii) \* \* \*

(A) Prior to January 2, 1999—

\* \* \* \* \*

(B) Effective January 2, 1999, the five most highly compensated employees in management positions at each home office and each segment of the contractor, whether or not the home office or segment reports directly to the contractor's headquarters.

\* \* \* \* \*

[FR Doc. 99-5210 Filed 3-3-99; 8:45 am]

BILLING CODE 6820-EP-P

**DEPARTMENT OF DEFENSE**

**GENERAL SERVICES ADMINISTRATION**

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**48 CFR Parts 1, 25, 52, and 53**

[FAC 97-11; Item IX]

**Federal Acquisition Regulation; Technical Amendments**

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

**ACTION:** Technical amendments.