

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

[FAR Case 94-753]

RIN 9000-AG27

**Federal Acquisition Regulations;
Travel Costs**

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

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are proposing to amend the Federal Acquisition Regulation (FAR) to remove the limitation that costs incurred by contractor personnel for lodging, meals, and incidental expenses be considered reasonable and allowable only to the extent that they do not exceed the maximum per diem rates set forth in the Federal Travel Regulation (FTR), the Joint Travel Regulations (JTR), or the Standardized Regulations (SR).

DATES: Comments should be submitted on or before July 19, 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), Attn: Laurie Duarte, 1800 F Street, NW, Room 4035, Washington, DC 20405.

E-mail comments submitted over Internet should be addressed to: farcase.94-753@gsa.gov.

Please cite FAR case 94-753 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 FAR case 94-753.

SUPPLEMENTARY INFORMATION:**A. Background**

Section 24 of the Office of Federal Procurement Policy (OFPP) Act (41 U.S.C. 420) previously required that travel costs incurred by contractor personnel be considered reasonable and

allowable only to the extent that they did not exceed the maximum per diem rates for Federal employees set by subchapter I of 5 U.S.C. 57, the Administrator of General Services, or the President (or his designee). FAR 31.205-46, Travel costs, implemented Section 24 of the OFPP Act by limiting allowable contractor costs for lodging, meals, and incidental expenses to the maximum per diem rates set forth in the FTR, JTR, or SR. However, Section 2191 of the Federal Acquisition Streamlining Act (FASA) of 1994 (Pub. L. 103-355) repealed Section 24 of the OFPP Act.

A proposed FAR rule was published in the **Federal Register** at 59 FR 64542, December 14, 1994. That rule proposed revising FAR 31.205-46(a) to stipulate that the FTR, JTR, or SR rates should be used as a baseline, but allowed contractors to propose alternative maximum per diem rates, and contracting officers to approve the alternative rates if certain conditions were met. Public comments were received from 63 sources. Based on a review of those public comments, the FASA Cost Principles Team preliminarily decided to recommend withdrawal of the proposed rule and retention of the current cost principle language at FAR 31.205-46 without change.

The notice published in the **Federal Register** at 60 FR 27471, May 24, 1995, announced a public meeting, that was subsequently held on June 14, 1995. The purpose of this meeting was to permit the public to present its views concerning the recommendation to withdraw the proposed rule. At the public meeting, industry representatives expressed concern that contractors may be unable to obtain the discounted lodging rates afforded to Government personnel, that the current process was burdensome and costly to both contractors and the Government, and that the standard should be revised to one of reasonableness. Subsequent to the public meeting, the issue was discussed at length but no agreement was reached on publication of a final rule.

As a result of further analysis of this issue, the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are now proposing a rule that differs significantly from the proposed rule that was published on December 14, 1994. This second proposed rule deletes in its entirety the per diem rate limitation at FAR 31.205-46(a)(2) through (6).

The councils are proposing this change for a number of reasons. First, GSA promulgates FTR per diem rates for the purpose of providing sufficient

allowance for Government travelers while on official business for the Government. Section 24 of the OFPP Act applied the FTR rates to reimburse Government contractor employees travel costs. Since Section 2191 of FASA repealed Section 24 of the OFPP Act, it is no longer necessary to apply rates designed for Government employee travel to Government contractors. Generally, FTR rates appear to be lower than the actual corporate rates available to contractors.

Second, it is anticipated that removal of the per diem limitation will generate savings by reducing administrative costs for both contractors and the Government. The Government expects the administrative cost savings to lessen any increased costs resulting from this rule change. For example, removal of the per diem rate limitation will lead to a reduction of the Government's auditing and contract administration effort. Another example of the administrative cost savings is that contractors would no longer need to maintain two travel systems—their own and the FTR/JTR/SR systems. Also, contractors would no longer need to continuously monitor changes to the JTR, FTR, and SR, and adjust their accounting systems accordingly.

The third reason for removing the per diem rate limitation is to permit the Government to adopt an allowability standard that is more consistent with the commercial marketplace. Many contractors already have detailed travel reimbursement systems, rooted in commercially generated survey data, to manage their costs.

However, there is some concern within the Government about the potential for increased costs as a result of this proposed change. Therefore, to help estimate the potential costs and benefits to the Government, the councils invite respondents to provide the following information together with their comments. Note that public comments provided in response to this notice will be available in their entirety to any requester, including any requester under the Freedom of Information Act (5 U.S.C. 552).

Therefore, we caution respondents not to provide proprietary or other business sensitive information. Under no circumstances should respondents provide any information unless they do so with a clear understanding that it will be made available to the public.

1. For industry respondents—

(a) Provide a description of how you will treat lodging, meals, and incidental expenses if the councils eliminate the FTR/JTR/SR limits (*i.e.*, how will you ensure the costs charged to the

Government are reasonable?) For example, does your policy address the classes of hotels or the average costs of lodging in a city, *etc.*? (Under no circumstances should respondents provide any information unless they do so with a clear understanding that it will be made available to the public.)

(b) Provide data on the percentage of total costs for lodging, meals, and incidental expenses that were unallowable in the most recent fiscal year. (Under no circumstances should respondents provide any information unless they do so with a clear understanding that it will be made available to the public.)

(c) That have both Government and commercial business, provide the percentage differential in the average cost per day for lodging, meals, and incidental expenses between the two types of business. If you had charged the commercial business average cost per day to the Government, by what percentage would the costs charged to the Government have changed. (Under no circumstances should respondents provide any information unless they do so with a clear understanding that it will be made available to the public.)

(d) Identify the types of savings that would result for your firm if the councils eliminate the FTR/JTR/SR limits. To what extent would the savings offset any increased costs to the Government? (Under no circumstances should respondents provide any information unless they do so with a clear understanding that it will be made available to the public.)

2. For Government respondents, identify the types and amounts of costs, savings, advantages or disadvantages to your agency if the councils eliminate the FTR/JTR/SR limits.

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

This proposed 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 of the Act. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 94-753), 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 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: May 17, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, it is proposed that 48 CFR Part 31 be 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).

31.205-6 [Amended]

2. Section 31.205-6 is amended in paragraph (m)(2) by revising the reference “(see 31.205-46(f))” to read as “(see 31.205-46(g))”.

31.205-46 [Amended]

3. Section 31.205-46 is amended in paragraph (a) by removing paragraphs (a)(2) through (a)(6) and by redesignating paragraphs (a)(1) as (a), (a)(7) as (b), and (b) through (f) as (c) through (g), respectively; in the newly designated (a) by removing the paragraph heading; and in the newly designated paragraph (f)(2) by revising “paragraph (d)” to read “paragraph (e)” both times it appears, and “paragraph (e)(3)” to read “subparagraph (f)(3)”.

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