penalty provisions at 42.709, the amount projected to the sampling universe from that sampled cost is also subject to the same penalty provisions.

(4) Use of statistical sampling methods for identifying and segregating unallowable costs should be the subject of an advance agreement under the provisions of 31.109 between the contractor and the cognizant administrative contracting officer or Federal official. The advance agreement should specify the basic characteristics of the sampling process. The cognizant administrative contracting officer or Federal official shall request input from the cognizant auditor before entering into any such agreements.

(5) In the absence of an advance agreement, if an initial review of the facts results in a challenge of the statistical sampling methods by the contracting officer or the contracting officer's representative, the burden of proof shall be on the contractor to establish that such a method meets the criteria in paragraph (c)(2) of this subsection.

* * * * *

(e)(1) * * *

(3) When a selected item of cost under 31.205 provides that directly associated costs be unallowable, such directly associated costs are unallowable only if determined to be material in amount in accordance with the criteria provided in paragraphs (e)(1) and (e)(2) of this subsection, except in those situations where allowance of any of the directly associated costs involved would be considered to be contrary to public policy.

[FR Doc. 05–19476 Filed 9–29–05; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 31

[FAC 2005–06; FAR Case 2003–002; Item X]

RIN 9000–AJ81

Federal Acquisition Regulation; Reimbursement of Relocation Costs on a Lump-Sum Basis

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 (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) by revising the relocation cost principle to permit contractors the option of being reimbursed on a lump-sum basis for three types of employee relocation costs: costs of finding a new home; costs of travel to the new location; and costs of temporary lodging. These three types of costs are in addition to the miscellaneous relocation costs for which lump-sum reimbursements are already permitted.

DATES: *Effective Date:* October 31, 2005.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Mr. Jeremy Olson, Procurement Analyst, at (202) 501–3221. Please cite FAC 2005–06, FAR case 2003–002.

SUPPLEMENTARY INFORMATION:

A. Background

The Councils originally considered expanding the reimbursement of relocation costs on a lump-sum basis under FAR case 1997–032, Relocation Costs. However, the Councils decided to study this issue further under a separate case and published a final rule on the remainder of FAR case 1997–032 in the **Federal Register** at 67 FR 43516, June 27, 2002. On October 24, 2002, the Councils published a Notice of Request for Comments in the **Federal Register** (67 FR 65468) with a list of questions regarding the use of a lump-sum approach for reimbursing employee relocation expenses. After reviewing the public comments that were submitted in response to that **Federal Register** notice, the Councils held a public meeting on February 6, 2003, to further explore the views of interested parties on this issue.

Public comments and the discussions at the public meeting revealed that, in addition to the miscellaneous relocation costs for which lump-sum reimbursements are already permitted by FAR 31.205–35(b)(4), it is common commercial practice to reimburse relocating employees on a lump-sum basis for their house-hunting, final move, and temporary lodging expenses. A FAR case was opened to expand the relocation cost principle to permit lump-sum reimbursements for these three types of costs.

The Councils published a proposed FAR rule in the **Federal Register** at 68 FR 69264, December 11, 2003, with a request for comments by February 9, 2004. Seven respondents submitted comments on the proposed FAR rule. Two respondents supported the proposed rule, four respondents opposed it, and one respondent requested clarification. A discussion of the comments is provided below. The Councils considered all comments and concluded that the proposed rule should be converted to a final rule, with changes to the proposed rule. Differences between the proposed rule and final rule are discussed in Section B, Comment 1, and Section C below.

B. Public Comments

No standard for measuring reasonableness

1. *Comment:* Four respondents opposed the proposed rule and expressed the concern that with contractors spending significant amounts on employee relocations, the Government would have no objective standard for evaluating the reasonableness of the new lump-sum amounts being claimed.

After conducting surveys that suggest ''contractors are incurring hundreds of millions of dollars of relocation costs annually,'' the first respondent expressed ''significant concern as to where an auditor, contracting officer, or contractor could turn to gather adequate data to make a determination as to the appropriateness and reasonableness of the lump-sum method or resulting amount.'' The respondent concluded its letter by stating it ''believes that paying a lump-sum for such significant amounts places an unacceptable risk on the Government and creates an excessive audit task to establish allowability of relocation costs.''

Also citing the above mentioned survey of the large amounts of relocation costs allocated to cost reimbursement contracts each year, the second respondent stated that ''allowing lump-sum reimbursement of these costs without supporting documentation is not in the best interests of the Government'' because ''the proposed revision would subject millions of dollars to a subjective test of reasonableness requiring Government auditors, contracting officials, attorneys, and others to expend significantly more resources to determine the reasonableness of the claimed costs, review the determination, and resolve disputes between the Government and the contractor involving disallowed costs.'' The respondent went on to suggest ''contractors will also incur additional expenses in excess of any administrative costs saved supporting the reasonableness of the relocation costs.''

The third respondent based its opposition to the proposed rule on ''the millions of taxpayer dollars that will be wasted on this special interest giveaway'' and suggested that the Government's motivation in pursuing it was ''not wanting to disappoint contractors.'' The respondent argued further that ''contractors favor this approach, not because of any administrative burden reduction, but rather because it leads to higher levels of reimbursement without any need to justify costs.'' Finally, the respondent expressed its opinion that ''with few exceptions, these (relocation) costs should only be reimbursed on an 'actual cost' basis.''

The fourth respondent did not submit any original comments, but simply forwarded the third respondent's comments with an accompanying statement that it ''fully concurs in the substantive objections expressed'' therein.

Councils' response: The Councils believe that a provision permitting the expanded use of lump-sum reimbursements should be added to the relocation cost principle. Such a provision is expected to reduce the accounting and administrative burden of that cost principle on contractors and lead to faster relocations.

The Councils are very receptive to the important concerns expressed by the respondents. The Councils believe that the words ''on an appropriate lump-sum basis to the individual employee'' in the proposed rule were intended to condition the allowability of the new lump-sum reimbursements on contractors by providing sufficient visibility into the component cost projections used in developing the lump-sum amounts to permit an audit determination of their reasonableness. However, the comments make it abundantly clear that such a requirement needs to be more explicit. The Councils certainly want to eliminate any possible public perception of this proposed rule change as a ''blank check'' for contractors and to ensure that the Government only reimburses *reasonable* costs. Accordingly, the Councils have added language at FAR 31.205–35(b)(6)(i) that makes the costs of lump-sum payments to relocating employees for house-hunting, final move, and temporary lodging expenses allowable only when ''adequately supported by data on the individual elements (*e.g.*, transportation, lodging, and meals) comprising the build-up of the lump-sum amount to be paid based on the circumstances of the particular employee's relocation.'' This requirement should provide essentially the same audit visibility into the reasonableness of lump-sum payments as currently exists for actual relocation costs.

Relocation lump-sums as a common commercial practice

2. *Comment:* In opposing the proposed rule, one respondent also asserted that the use of lump-sum payments for travel and temporary lodging related relocation costs ''is not a predominant industry practice at this time.'' The respondent explained that it recently reviewed the current relocation policies in place at four large contractor locations and found that three of these four contractors use a single corporate-wide policy for their employee relocation reimbursement programs. Even though one of these three companies claims it is a predominantly commercial company and the other two companies also have a substantial commercial business base, the respondent pointed out that none of the three has established a lump-sum option for its commercial business segments.

In addition, the respondent cited an August 2003 news release from a relocation management firm which stated that only 30 percent of the companies it had recently surveyed said they were using lump-sums to cover travel and temporary lodging expenses. Finally, the respondent pointed out that it had recently been advised by a relocation management firm that, shortly before Dr. John Hamre left the Department of Defense, he ''shut down'' an effort by the relocation management firm and the Defense Integrated Travel and Relocation Solutions (DITRS) office to put together a plan for using lump-sums for DoD civilian relocations.

After reviewing the responses to the October 24, 2002, **Federal Register** Notice of Request for Comments (67 FR 65468), a respondent questioned ''whether the FAR Council has obtained sufficient information to support its assertion that it is now common commercial practice to reimburse relocating employees on a lump-sum basis for their house-hunting, final move, and temporary lodging expenses.'' The respondent observed that of the eight respondents who responded to that notice, one respondent's letter gave no specifics on the number of companies using lump-sum reimbursements, and another respondent stated that its 2001 survey showed that 55 companies out of 109 contacted were using lump-sum reimbursements.

In supporting the proposed rule, one respondent agreed ''with the Councils' statement that the use of lump-sum payments is a common commercial practice'' and expressed the belief ''that the proposed rule will help align relocation cost reimbursement policies with commercial best practices.'' Another respondent also agreed that the proposed changes ''are in keeping with current commercial business practice'' and explained that ''beginning in 1993 with the Revenue Reconciliation Act, many companies moved to lump-sum allowances for what became taxable reimbursements to the home-finding, temporary living, and final move portions of relocation policy.'' The respondent concluded with its opinion that ''the recommended revision will enable Government contractors to implement this best practice and take advantage of a tested and proven process efficiency that has been an accepted part of the commercial sector's relocation programs for over a decade.''

Councils' response: While the use of lump-sum reimbursements for selected relocation expenses may not be the predominant commercial practice at this time, the Councils believe there is ample evidence that the use of such payments is a common and growing commercial practice. The survey data cited by the respondents support this assessment. In addition, a relocation management firm that has been in business for more than 70 years stated at the February 6, 2003, public meeting and in its subsequent public comments that lump-sum reimbursement is now a common commercial practice for house-hunting, final move, and temporary lodging costs.

The Councils do not find it surprising that contractors who wish to maintain a single, corporate-wide policy for reimbursing relocation costs continue to apply a policy which parallels the current cost principle, even though they may have significant commercial business. The revised relocation cost principle will give such firms an additional option for the first time on Government contracts that could well become their corporate-wide standard in the future.

Finally, it is the Councils' understanding that DoD terminated its two-year initiative to reengineer relocation policies and procedures and disbanded the DITRS office which oversaw that effort due to a lack of funds and interest from the military departments. And while the relocation management firm stated during its presentation at the February 6, 2003, public meeting that the Federal Deposit Insurance Corporation is currently using lump-sum reimbursements for its employees' relocation costs, this appears to be an exception within the

Federal Government. However, even if lump-sum reimbursements for Federal employee relocation expenses are relatively rare, the purpose of this case is to recognize a common and growing commercial best practice in the relocation cost principle that should benefit both contractors and the Government.

Allowability of lump-sum payments

3. *Comment:* While supporting the effort to expand the use of lump-sum reimbursements for contractor employee relocation costs, one respondent suggested that the revised paragraph (b)(4) needs to include ''a clear affirmative statement that the lump-sum payments are allowable costs'' to avoid any possible confusion. In addition, the respondent recommended that the words ''to the individual employee'' be deleted from the revised paragraph (b)(4) because ''contractors should not have to demonstrate on an individual basis that the lump-sum payments are reasonable and appropriate for each relocating employee.'' Finally, the respondent recommended that the Councils eliminate the current ceilings on allowable home sale and purchase costs of 14 percent and 5 percent, respectively.

Councils' response: Nonconcur. The Councils do not agree that any additional language is necessary to avoid confusion regarding the allowability of the specified lump-sum payments. The Councils believe it is very clear from the language at FAR 31.205–35(b)(6)(i) that lump-sum payments to employees for any of these three types of relocation costs will be allowable if the requisite criteria are met. The Councils also believe that the data provided by the contractor on the component cost projections used in developing its lump-sum amounts must be ''based on the circumstances of the particular employee's relocation,'' such as family size, city, and number of vehicles. Otherwise, the lump-sum amount paid could be excessive, and therefore unreasonable, for a given relocation. Finally, the current ceilings on allowable home sale and purchase costs are outside the scope of this case. (Incidentally, the relocation management firm indicated at the February 6, 2003, public meeting that such costs are seldom included in lump-sum relocation payments.)

Add the three types of employee relocation costs to current lump-sum cap for miscellaneous expenses

4. *Comment:* One respondent suggested that if the proposed rule is not withdrawn, it ''does not object to adding the three additional types of employee relocation costs, *i.e.*, (1) the costs of finding a new home, (2) costs of travel to the new location, and (3) costs of temporary lodging, in addition to the existing 'miscellaneous expenses' that would be subject to a $5,000 lump-sum reimbursement, per employee move.'' The respondent offered this alternative ''in the interest of promoting greater flexibility within the existing relocation cost principle, but without increasing overall costs to taxpayers.''

Councils' response: Nonconcur. Under its cost-type contracts, the Government is obligated to pay the contractor's allocable and reasonable costs of contract performance. Not only would the respondent's proposal be fundamentally unfair to contractors, but it would also severely undermine the basic rationale for this proposed rule change. The current cap on miscellaneous relocation costs at FAR 31.205–35(b)(4) was increased to $5,000 in June 2002 based on survey data published by the Employee Relocation Council regarding the median amount of such payments in the commercial sector. There is no logical reason to arbitrarily add house-hunting, final travel, and temporary lodging costs to this separate lump-sum cap. The cost principles should ensure that contractors are treated fairly, consistent with sound public policy.

Proposed rule would make Federal employees second class citizens

5. *Comment:* One respondent expressed concern ''that this proposal would make Federal employees second class citizens vis-á-vis their contractor counterparts with respect to relocation expenses.'' The respondent concluded by stating that ''in no case should increases in lump-sum payments beyond $5,000 per contractor employee be considered until ... Federal employees are afforded the same advantages as their contractor counterparts.''

Councils' response: Nonconcur. While the Councils understand that the respondent is particularly sensitive to what it perceives to be preferential treatment of contractor employees, the Councils do not believe the allowability of contractor relocation costs must parallel exactly the treatment afforded Federal employees. It is now a common commercial practice to reimburse relocating employees on a lump-sum basis for their house-hunting, final move, and temporary lodging expenses, and the Councils believe the relocation cost principle should be revised to permit contractors the option of using this methodology. The language added at FAR 31.205–35(b)(6)(i) will ensure that, just as when reimbursement is based on actual expenses, only *reasonable* amounts are allowed for lump-sum reimbursements of these three types of relocation costs. This additional flexibility should help promote increased entry into the Federal marketplace by firms that have previously been hesitant to do so, resulting in increased competition on future purchases.

Clarification of current lump-sum cap for miscellaneous expenses

6. *Comment:* A respondent asked: ''Is the proposed lump-sum amount of $5K applicable to both the continental United States (CONUS) and outside CONUS relocations?''

Councils' response: The $5,000 cap on allowable lump-sum reimbursements for miscellaneous relocation expenses is a current, not proposed, limitation at FAR 31.205–35(b)(4). It applies to all contractor employee relocations, regardless of location.

C. Additional Change—No adjustments

The Councils are concerned that contractors who reimburse employee relocation costs on a lump-sum basis could make additional after-the-fact payments to employees whose actual costs exceeded the lump-sum amount. To address this concern, the Councils added the following limitation at FAR 31.205–35(b)(6)(ii): ''When reimbursement on a lump-sum basis is used, any adjustments to reflect actual costs are unallowable.''

D. Regulatory Planning and Review

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.

E. 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 principle discussed in this rule. For Fiscal Year 2003, only 2.4 percent of all contract actions were cost contracts awarded to small businesses.

F. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 104–13) 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: September 22, 2005.

Julia B. Wise,

Director, Contract Policy Division.

■ 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: Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

■ 2. Amend section 31.205–35 by revising paragraph (b)(4); and adding paragraphs (b)(5) and (b)(6) to read as follows:

31.205–35 Relocation costs.

* * * * *

(b)* * *

(4) Amounts to be reimbursed shall not exceed the employee's actual expenses, except as provided for in paragraphs (b)(5) and (b)(6) of this subsection.

(5) For miscellaneous costs of the type discussed in paragraph (a)(5) of this subsection, a lump-sum amount, not to exceed $5,000, may be allowed in lieu of actual costs.

(6)(i) Reimbursement on a lump-sum basis may be allowed for any of the following relocation costs when adequately supported by data on the individual elements (e.g., transportation, lodging, and meals) comprising the build-up of the lump-sum amount to be paid based on the circumstances of the particular employee's relocation:

(A) Costs of finding a new home, as discussed in paragraph (a)(2) of this subsection.

(B) Costs of travel to the new location, as discussed in paragraph (a)(1) of this subsection (but not costs for the transportation of household goods).

(C) Costs of temporary lodging, as discussed in paragraph (a)(2) of this subsection.

(ii) When reimbursement on a lump-sum basis is used, any adjustments to reflect actual costs are unallowable.

* * * * *

[FR Doc. 05–19477 Filed 9–29–05; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 31

[FAC 2005–06; FAR Case 2001–021; Item XI]

RIN 9000–AJ38

Federal Acquisition Regulation; Training and Education Cost 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 (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) by revising the ''training and education costs'' contract cost principle. The amendment streamlines the cost principle and increases clarity by eliminating restrictive and confusing language, and by restructuring the rule to list only specifically unallowable costs. The final rule eliminates several specific limitations on the allowability of costs associated with the various categories of education, eliminates the disparate treatment of full-time and part-time undergraduate education costs, and limits allowable costs to training and education related to the field in which the employee is working or may reasonably be expected to work. The rule makes job-related training and education costs generally allowable, except for six public policy exceptions that are retained from the current cost principle. Except for the six expressly unallowable cost exceptions, the reasonableness of specific contractor training and education costs is assessed by reference to the FAR section entitled ''Determining reasonableness.''

DATES: *Effective Date:* October 31, 2005.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Mr. Jerry Olson at (202) 501–3221. Please cite FAC 2005–06, FAR case 2001–021.

SUPPLEMENTARY INFORMATION:

A. Background

The Councils published a proposed FAR rule in the **Federal Register** (67 FR 34810) on May 15, 2002, with a request for comments by July 15, 2002. On June 11, 2002, an amendment was published in the **Federal Register** (67 FR 40136) to correct an error in the Supplementary Information section accompanying the proposed rule. Six respondents submitted public comments. As a result of the comments received, the Councils made significant changes to the proposed FAR rule and published a second proposed FAR rule in the **Federal Register** (69 FR 4436) on January 29, 2004, with a request for comments by March 29, 2004.

Nine respondents submitted comments in response to the second proposed FAR rule. A discussion of these public comments is provided below. The Councils considered all comments and concluded that the proposed rule should be converted to a final rule, with changes to the proposed rule. Differences between the second proposed rule and final rule are discussed in Section B, Comments 1, 2, 4, and 6, below.

B. Public Comments

Proposed paragraph (a): Education for sole purpose to obtain academic degree or qualify for job.

Comment 1: Seven respondents generally supported the proposed rule; however, they strongly recommended that proposed paragraph (a) be deleted before issuing a final rule. Several of the respondents pointed out that paragraph (a) is inconsistent with the Councils' own **Federal Register** comments that they ''support upward mobility, job retraining, and educational advancement.'' In this regard, one respondent stated its concern that paragraph (a) would prevent it from providing ''the educational opportunities that we have provided for decades.'' Some respondents complained that it had ''no idea how one is to discern whether the training and education relates 'solely' to obtaining an academic degree or to a particular position'' and that ''implementation of this provision will be burdensome and lead to contested costs; hardly a simplification that increases the clarity of the cost principle.''

Several respondents challenged the fundamental notion that the allowability of contractor employee training and education costs must parallel exactly the treatment afforded Federal employees. One respondent wrote—

''We believe that utilization of the test of whether the Federal Government is willing to reimburse education costs for Federal employees is an inappropriate basis for determining cost allowability. The