DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 31

[FAR Case 97–032]

RIN 9000–AH96

Federal Acquisition Regulation; Relocation 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 ceilings imposed on certain types of relocation costs; to remove specific references to mortgage interest differential and rental differential payments; to permit reimbursement of relocation costs on a lump-sum basis in certain situations; and to make allowable payments for spouse employment assistance and for increased employee income and Federal Insurance Contributions Act (FICA) taxes incident to allowable reimbursed relocation costs.

DATES: Comments should be submitted on or before July 26, 1999, to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, Washington, DC 20405.

E-mail comments submitted over Internet should be addressed to: farcase.97–032@gsa.gov.

Please cite FAR case 97–032 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 97–032.

SUPPLEMENTARY INFORMATION:

A. Background

The proposed FAR rule revises the cost principle at FAR 31.205–35, Relocation costs, to remove the numerous ceilings imposed on specific relocation costs; remove specific references to mortgage interest differential and rental differential payments; recognize the growing commercial practice of reimbursing relocation costs on a lump-sum basis in certain situations; and make allowable payments for employment assistance for spouses and for increased employee income and FICA taxes incident to allowable reimbursed relocation costs.

The councils are proposing these revisions for the following reasons:

Removal of ceilings on individual relocation cost elements. Over the years, the relocation cost principle has been criticized as being overly detailed particularly for the many allowability ceilings it places on individual relocation cost elements (*e.g.*, the 14% limitation at FAR 31.205–35(a) (3) and (4) for closing cost and continuing costs of ownership of a former residence and the 5% limitation at FAR 31.205–35(a)(6)(ii) on costs of purchasing a new residence). These ceilings represent unnecessary micromanagement of contractor business practices. Consistent with the move towards increased reliance on commercial practices, the councils propose that the Government rely on contractors' individual corporate relocation policies to limit such costs to reasonable amounts.

Removal of specific references to mortgage interest differential and rental differential payments. The rule removes the specific references to these types of payments from the list of allowable costs at 31.205–35(a). The specific guidance at 31.205–35(a) (7) and (8) is no longer deemed necessary. However, allowability of these types of costs will still be governed by the reasonableness criteria at FAR 31.201–3.

Reimbursement on a lump-sum basis. The rule allows contractors the option of claiming employee relocation costs on an actual cost basis, an appropriate lump-sum basis, or a combination of the two methodologies. However, the rule permits reimbursement on a lump-sum basis only if a contractor has an advance agreement with the Government. This change would recognize the widespread commercial practice of utilizing a lump-sum approach in compensating employees for their relocation expenses. Many contractors have adopted the lump-sum methodology for its administrative ease, and because it results in cheaper and faster relocations, with greater employee satisfaction, than the actual cost approach. While individual receipts are not required with the lump-sum approach, contractors must still demonstrate that amounts paid are reasonable and appropriate for the circumstances.

Two new categories of allowable relocation costs. The rule makes allowable two categories of expenses that are currently unallowable: payments for increased employee income and FICA taxes incident to allowable reimbursed relocations costs; and payments for spouse employee assistance. Since contractors incur these type of costs in a good faith effort to keep transferred employees from being adversely affected by the relocation, it appears equitable to reimburse contractors for these types of costs. In addition, this revision is consistent with a change to the Federal employee travel regulations that now permits recovery of both of these types of costs.

The councils anticipate that these changes to the relocation cost principle will generate savings by reducing administrative costs for both the contractor and the Government. The Government expects the administrative cost savings to lessen any increased costs resulting from this rule change. For example, the removal of the ceilings should lead to a reduction of the Government's auditing and contract administrative effort. In addition, the use of advance agreements for the lump-sum payment methodology should lessen the incidence of post-award disallowances and disputes. Another example of savings would be that contractors would no longer need to monitor individual relocation cost elements to ensure that amounts claimed do not exceed the numerous ceilings.

However, there is some concern within the Government that removing ceilings on individual relocation cost elements and permitting lump-sum payments in lieu of actual costs may result in an increase in costs. Therefore, to help estimate the potential costs and benefits to the Government from these changes, 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) How will your company ensure that relocation costs charged to the Government are reasonable under the approach set forth in the proposed rule? (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) If your company has little or no commercial business, how will you ensure that relocation costs charged to the Government are reasonable under the approach set forth in the proposed rule? (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) What has been your company's experience in using a lump-sum approach instead of an actual cost method for all or a portion of relocation costs? (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) What are the types of savings that your company would expect if the proposed rule becomes final? (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.)

(e) Does your company now use commercially available data, such as that developed by the Employee Relocation Council, in order to establish limits on relocation costs? If so, what sources of commercially available data do you use, and how do you use it? (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 that you anticipate would result from implementing the proposed rule.

This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. This 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 are invited from small businesses and other interested parties. 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 97–032), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which 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 18, 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).

2. In section 31.205–35, revise paragraphs (a), (b), and (c) to read as follows:

31.205–35 Relocation costs.

(a) Relocation costs are costs incident to the permanent change of assigned work location (for an indefinite period or for a stated period, but in either event for not less than 12 months) of an existing employee or upon recruitment of a new employee. The following types of relocation costs are allowable as noted, subject to the limitations in paragraphs (b) and (f) of this subsection:

(1) Costs of travel of the employee and members of the employee's immediate family (see 31.205–46) and transportation of the household and personal effects to the new location.

(2) Costs of finding a new home, such as advance trips by the employee and spouse to locate living quarters, and temporary lodging during the transition period for the employee and members of the employee's immediate family.

(3) Closing costs (*i.e.*, brokerage fees, legal fees, appraisal fees, points, finance charges, etc.) incident to the disposition of the actual residence owned by the employee when notified of the transfer.

(4) Continuing costs of ownership of the vacant former actual residence being sold, such as maintenance of building and grounds (exclusive of fixing up expenses), utilities, taxes, property insurance, mortgage interest, after the settlement date or lease date of a new permanent residence.

(5) Other necessary and reasonable expenses normally incident to relocation, such as disconnecting and connecting household appliances; automobile registration; driver's license and use taxes; cutting and fitting rugs, draperies, and curtains; forfeited utility fees and deposits; and purchase of insurance against damage to or loss of personal property while in transit.

(6) Costs incident to acquiring a home in the new work location, except that these costs will not be allowable for existing employees or newly recruited employees who, before the relocation, were not homeowners.

(7) Costs of canceling an unexpired lease.

(8) Payments for increased employee income or Federal Insurance Contributions Act taxes incident to allowable reimbursed relocation costs.

(9) Payments for spouse employment assistance.

(b) The costs described in paragraph (a) of this section must also meet the following criteria to be considered allowable:

(1) The move must be for the benefit of the employer.

(2) Reimbursement must be in accordance with an established policy or practice that is consistently followed by the employer and is designed to motivate employees to relocate promptly and economically. Reimbursement may be on an actual cost or appropriate lump-sum basis, or combination thereof. However, use of a lump-sum basis in lieu of an actual cost basis is limited to those situations in which a contractor has an advance agreement with the Government.

(3) The costs must not be otherwise unallowable under Subpart 31.2.

(c) The following types of costs are unallowable:

(1) Loss on the sale of a home.

(2) Costs incident to acquiring a home in the new location as follows:

(i) Real estate brokers fees and commissions.

(ii) Costs of litigation.

(iii) Real and personal property insurance against damage or loss of property.

(iv) Mortgage life insurance.

(v) Owner's title policy insurance when such insurance was not previously carried by the employee on the old residence. (However, the cost of a mortgage title policy is allowable.)

(vi) Property taxes and operating or maintenance costs.

(3) Continuing mortgage principal payments on a residence being sold.

(4) Costs incident to furnishing equity or nonequity loans to employees or making arrangements with lenders for employees to obtain lower-than-market rate mortgage loans.

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