D. 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 small entities do not accrue PRB costs for Government contract costing purposes.

E. 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. chapter 35, *et seq.*

List of Subjects in 48 CFR Part 31

Government procurement.

Dated: November 30, 2009.

Al Matera,

Director, Acquisition 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: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

■ 2. Amend section 31.001 by adding, in alphabetical order, the definition ''welfare benefit fund'' to read as follows:

31.001 Definitions.

* * * * *

Welfare benefit fund means a trust or organization which receives and accumulates assets to be used either for the payment of postretirement benefits, or for the purchase of such benefits, provided such accumulated assets form a part of a postretirement benefit plan.

■ 3. Amend section 31.205–6 by revising paragraph (o)(2)(iii) to read as follows:

31.205–6 Compensation for personal services.

* * * * *

(o) * * *

(2) * * *

(iii) *Accrual basis.* PRB costs are accrued during the working lives of employees. Accrued PRB costs shall comply with the following:

(A) Be measured and assigned in accordance with one of the following two methods:

(*1*) Generally accepted accounting principles, provided the portion of PRB costs attributable to the transition obligation assigned to the current year that is in excess of the amount assignable under the delayed recognition methodology described in paragraphs 112 and 113 of Financial Accounting Standards Board Statement 106 is unallowable. The transition obligation is defined in Statement 106, paragraph 110; or

(*2*) Contributions to a welfare benefit fund determined in accordance with applicable Internal Revenue Code. Allowable PRB costs based on such contributions shall—

(*i*) Be measured using reasonable actuarial assumptions, which shall include a healthcare inflation assumption unless prohibited by the Internal Revenue Code provisions governing welfare benefit funds;

(*ii*) Be assigned to accounting periods on the basis of the average working lives of active employees covered by the PRB plan or a 15 year period, whichever period is longer. However, if the plan is comprised of inactive participants only, the cost shall be spread over the average future life expectancy of the participants; and

(*iii*) Exclude Federal income taxes, whether incurred by the fund or the contractor (including any increase in PRB costs associated with such taxes), unless the fund holding the plan assets is tax-exempt under the provisions of 26 USC § 501(c).

(B) Be paid to an insurer or trustee to establish and maintain a fund or reserve for the sole purpose of providing PRB to retirees. The assets shall be segregated in the trust, or otherwise effectively restricted, so that they cannot be used by the employer for other purposes.

(C) Be calculated in accordance with generally accepted actuarial principles and practices as promulgated by the Actuarial Standards Board.

(D) Eliminate from costs of current and future periods the accumulated value of any prior period costs that were unallowable in accordance with paragraph (o)(3) of this section, adjusted for interest under paragraph (o)(4) of this section.

(E) Calculate the unfunded actuarial liability (unfunded accumulated postretirement benefit obligation) using the market (fair) value of assets that have been accumulated by funding costs assigned to prior periods for contract accounting purposes.

(F) Recognize as a prepayment credit the market (fair) value of assets that were accumulated by deposits or contributions that were not used to fund costs assigned to previous periods for contract accounting purposes.

(G) Comply with the following when changing from one accrual accounting method to another: the contractor shall—

(*1*) Treat the change in the unfunded actuarial liability (unfunded accumulated postretirement benefit obligation) as a gain or loss; and

(*2*) Present an analysis demonstrating that all costs assigned to prior periods have been accounted for in accordance with paragraphs (o)(2)(iii)(D), (E), and (F) of this section to ensure that no duplicate recovery of costs exists. Any duplicate recovery of costs due to the change from one method to another is unallowable. The analysis and new accrual accounting method may be a subject appropriate for an advance agreement in accordance with 31.109.

* * * * *

[FR Doc. E9–28934 Filed 12–9–09; 8:45 am]

BILLING CODE 6820–EP–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 31

[FAC 2005–38; FAR Case 2006–024; Item VI; Docket 2009–0044, Sequence 1]

RIN 9000–AK86

Federal Acquisition Regulation; FAR Case 2006–024, Travel Costs

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) are issuing a final rule amending the Federal Acquisition Regulation (FAR) to change the travel cost principle to ensure a consistent application of the limitation on allowable contractor airfare costs.

DATES: *Effective Date*: January 11, 2010.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Mr. Edward N. Chambers, Procurement Analyst, at (202) 501–3221. For information pertaining to status or publication schedules, contact the Regulatory Secretariat at (202) 501–4755. Please cite FAC 2005–38, FAR case 2006–024.

SUPPLEMENTARY INFORMATION:

A. Background

The travel cost principle at FAR 31.205–46(b) currently limits allowable contractor airfare costs to ''the lowest customary standard, coach, or equivalent airfare offered during normal business hours.'' The Councils are aware that this limitation is being interpreted inconsistently, either as *lowest coach fare available to the contractor or lowest coach fare available to the general public*, and these inconsistent interpretations can lead to confusion regarding what costs are allowable.

The Councils believe that the reasonable standard to apply in determining the allowability of airfares is the *lowest priced airfare available to the contractor*. It is not prudent to allow the costs of the lowest priced airfares available to the general public when contractors have obtained lower priced airfares as a result of direct negotiation.

Furthermore, the Councils believe that the cost principle should be clarified to omit the term ''standard'' from the description of the classes of allowable airfares since that term does not describe actual classes of airline service. The Councils further believe that the terms ''coach, or equivalent,'' given the great variety of airfares often available, may result in cases where a ''coach, or equivalent'' fare is not the lowest airfare available to contractors, and should thus be omitted.

DoD, GSA, and NASA published a proposed rule in the **Federal Register** at 72 FR 72325, December 20, 2007.

B. Public Comments

The comment period closed on February 19, 2008. Ten comments were received from nine respondents. All comments were reviewed and analyzed.

General Comments.

Since most of the comments submitted were unique and brief, it was decided to address all ten specific comments.

Specific Comments:

1. *Comment*: Does ''lowest priced coach class'' mean the cost of ''non-refundable'' tickets when they are available and their cost is lower than refundable tickets?

Response: If the lowest available airfare is a non-refundable ticket then it is the allowable cost unless one of the exceptions in FAR 31.205–46(b) applies.

2. *Comment*: The requirement for supporting documentation and justification for airfare costs in excess of the ''lowest coach airfare available'' should include documentation justifying purchase of a higher-cost refundable ticket in those instances when a non-refundable ticket is available.

Response: Concur in principle.

3. *Comment*: The proposed change ''clarifies FAR 31.205–46 to the benefit of all contractors'' and is consistent with requiring that all income, rebates, allowances or other credit relating to any allowable cost shall be credited to the Government.

Response: Concur in principle. This change is consistent with FAR 31.201–5, Credits.

4. *Comment*: How will the Government determine the lowest priced coach class airfare available to the contractor versus the lowest priced coach class airfare available to the general public if the contractor does not have a negotiated airfare agreement with air travel providers and, therefore, only has available to it the same airfare that is available to the general public?

Response: In the situations described by this commenter, the lowest priced coach class airfare available to the contractor and the lowest priced coach class airfare available to the general public are the same. In this regard, the revision promulgated in this FAR case has no effect on the contractor. This amendment is intended to prohibit the contractor's practice where it has negotiated airfare agreements with travel providers and uses those agreements to purchase first class or business class seats but does not use the lowest priced airfare available under the agreements to determine the allowable cost baseline for the first class or business class seats, but instead determines the allowable cost based on the lowest airfare available to the general public instead of the lowest airfare available to the contractor under the agreements. This amendment will require the contractor to use the lowest airfare available to the contractor.

5. *Comment*: Please address whether or not costs associated with cancelling or changing restricted tickets will be allowable; alternatively, insert the word ''unrestricted'' into the phrase, *i.e.*, ''lowest priced coach class unrestricted or equivalent airfare available to the contractor.''

Response: The Councils believe that the revision does not impact the allowability of costs associated with cancelling or changing restricted tickets or a forfeiture of air travel tickets purchased in good faith but later determined to be unsuitable to the mission requirements. To answer the Commenter's questions, the costs before and after the revised cost principle should be allowable.

6. *Comment*: The ''standard'' rate for contractors with negotiated airfare agreements should be those same, negotiated airfares, rather than airfares available to the general public. ''This is an issue of common sense.''

Response: This cost principle amendment explicitly identifies the lowest airfares available to the contractor, including its negotiated airfare agreements and those available to the general public, should be the baseline in determining allowable airfare. This amendment should eliminate inconsistent allowable airfare baselines used by various contractors; that is, some contractors do not consider the lowest priced airfare available to them under their negotiated agreements in determining the allowable airfare cost.

7. *Comment*: Does the phrase ''lowest priced coach class, or equivalent, airfare'' imply that the airfare tickets are refundable, as non-refundable tickets are typically lower than refundable tickets?

Response: Same response as response to comment number 1.

8. *Comment*: Airfare pricing is dynamic. Airlines provide for a variety of fares on given flights based upon available seat inventory. Therefore, employees of the same contractor, traveling on the same flight, may have different fares. Documenting and supporting Government inquiries as to why there is variation in the ''lowest fare'' among individuals on the same flight would be unduly burdensome. Under the existing regulation, travel agents provide a standard airfare that is readily available and clearly understood; the proposed amendment will increase costs by requiring additional administration to document the allowable airfare to satisfy Government audit inquiries.

Response: The cost principle currently requires the justification and documentation of airfare costs in excess of the lowest customary, standard coach, or equivalent airfare. In view of the changes in the airline industry, the terms ''customary, standard, coach or equivalent'' increasingly do not describe an actual class of airline service. This amendment clarifies that the reasonable standard to apply in determining allowability of airfare cost is the lowest airfare available to the contractor. This clarification in the cost principle should not increase the documentation implicit in the existing cost principle.

9. *Comment*: The proposed amendment is based upon the premise that there is a standard airfare rate that contractors pay each time for a negotiated fare. There are significant

differences in airfare based upon timing and load factors. Employees of the same contractor on the same flight might incur different airfare prices based on supply and demand. Determination of allowable airfare based upon this proposed rule of the ''available air fare standard'' will be more difficult to determine than exists under the current cost principle. We see no need for the proposed revision as it appears to be based upon the premise that there is only one negotiated price a contractor will pay for a flight.

Response: This amendment does not establish any ''available air fare standard'' nor does the amendment presume that there is only one negotiated price a contractor can pay for a particular flight. The final rule eliminates the reference to ''coach or equivalent''.

10. *Comment*: There are two parts to this comment. (1) The proposed amendment is perceived to require a comparison of coach class fares available to determine the lowest available for allowability purposes; as such, the comparison would be impossible to apply systematically for a number of reasons, most notably the disparity in the nature of price reductions. A specific flight with a negotiated airfare may appear to be the lowest cost when purchasing the ticket, but in fact a flight with a different airline providing a volume rebate later has a lower net cost. Throughout the cost principles is the underlying concept that only reasonable costs will be reimbursed. The measure of what is reasonable has never been interpreted to represent only the absolutely lowest cost available. (2) Also, elimination of the word ''standard'' from paragraph (b) of the cost principle creates a conflict with paragraph (c)(2) of the cost principle which requires comparison to ''standard airfare'' for travel costs by contractor-owed, -leased, or chartered aircraft.

Response: With respect to the first comment, the Councils do not believe the revision will be impossible to apply systematically. The amendment is not intended to guide contractors through the decision-making process of selecting the most economical airfare with the lowest net cost when multiple corporate airfare agreements are in place, as this is properly addressed in the contractor's policies and procedures that should be applied appropriately and reasonably in the circumstances of each travel mission and its associated scheduling requirements. In relying on the contractor's procedures to select the most economical airfare appropriate in the circumstances, this amendment only seeks to clarify for the contractor that it should use the lowest airfare available to the contractor that meets the schedule requirements of the trip rather than considering only airfare available to the general public for the same flight. This amendment makes explicit that the lowest of the two should be selected as the appropriate baseline.

With respect to the second comment, the noted ''conflict'' created among paragraphs (b) and (c)(2) by the elimination of the word ''standard'' from (b), the Councils appreciate the commenter's observation and have replaced the word ''standard'' with ''allowable'' in paragraph (c)(2) where applicable.

This is a significant regulatory action and, therefore, was subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1933. This rule 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.* The Councils believe that few small businesses have negotiated rate agreements with airlines. The rule will primarily affect businesses with negotiated rate agreements who otherwise might seek to charge negotiated rates for first class or business travel which are lower than the coach rate available to the general public. Finally, no comments were received from small businesses on the Regulatory Flexibility Act statement in the proposed 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. chapter 35, *et seq.*

List of Subjects in 48 CFR Part 31

Government procurement.

Dated: November 30, 2009.

Al Matera,

Director, Acquisition 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: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

■ 2. Amend section 31.205–46 by revising paragraph (b); and by removing from paragraph (c)(2) introductory text the word ''standard'' and replacing it with the word ''allowable'' wherever it appears (twice). The revised text reads as follows:

31.205–46 Travel costs.

* * * * *

(b) Airfare costs in excess of the lowest priced airfare available to the contractor during normal business hours are unallowable except when such accommodations require circuitous routing, require travel during unreasonable hours, excessively prolong travel, result in increased cost that would offset transportation savings, are not reasonably adequate for the physical or medical needs of the traveler, or are not reasonably available to meet mission requirements. However, in order for airfare costs in excess of the above airfare to be allowable, the applicable condition(s) set forth above must be documented and justified.

* * * * *

[FR Doc. E9–28935 Filed 12–9–09; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 6, 8, 15, and 52

[FAC 2005–38; Item VII; Docket 2009–0003; Sequence 6]

Federal Acquisition Regulation; Technical Amendments

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

ACTION: Final rule.

SUMMARY: This document makes amendments to the Federal Acquisition Regulation in order to make editorial changes.

DATES: *Effective Date*: December 10, 2009.

FOR FURTHER INFORMATION CONTACT: The Regulatory Secretariat, 1800 F Street,