



THE OFFICE OF THE ASSISTANT SECRETARY OF DEFENSE

WASHINGTON, D.C. 20301-8000

ACQUISITION AND LOGISTICS
DASD (P) DARS

11 DEC 1985

In reply refer to
DAR Case: 85-200

Lenny

MEMORANDUM FOR MR. LAWRENCE J. RIZZI, CHAIRMAN
CIVILIAN AGENCY ACQUISITION COUNCIL

SUBJECT: DAR Case 85-200, Company-Furnished Automobiles

The DAR Council has approved the attached case which includes an explanation of the recommended revision to the FAR, together with all necessary supporting documentation and memoranda. The recommended revisions to FAR 31.205-6 and 31.205-46 are based on a provision contained in Section 911 of the Defense Procurement Improvement Act of 1985 (Title IX of the DoD Authorization Act of 1986, P.L. 99-145), which specifies that, as a minimum, the cost principles applicable to contractor costs of company-furnished automobiles shall be clarified.

If the CAAC agrees with our position, please forward the case to the FAR Secretariat for assignment of a FAR case number and the solicitation of public comments. As a final note, please assure that proposed 31.205-46 reflects changes made as a result of CAAC Case 85-9, Corporate Aircraft. This case must appear in the Federal Register as a proposed rule prior to 30 December 1985 to permit publication of a Final Rule by 7 April 1986.

Otto

OTTO J. GUENTHER, COL, USA
Director
Defense Acquisition
Regulatory Council

Attachments

*Uniform - on argument
- ad a.*

*Special Argument
Committee*

*Violent
Improvement*

Subject

PROPOSED REVISION TO FAR 31.205-6

31.205-6 Compensation for personal services

(a) through (l) - No change.

(m) Fringe Benefits.

[(1)] Fringe benefits are allowances and services provided by the contractor to its employees as compensation in addition to regular wages and salaries. ~~The cost of [F] fringe benefits, includ[ed]ing,~~ but [are] not limited to, the cost of vacations, sick leave, holidays, military leave, employee insurance, and supplemental unemployment benefit plans. ~~is allowable if reasonable.~~ [Except as provided elsewhere in Subpart 31.2,] ~~F[t]he costs of fringe benefits are allowable to the extent that they are [reasonable and are] required by law, employer-employee agreement, or as an established policy of the contractor.~~

[(2)] That portion of the cost of company-furnished automobiles that relates to personal use by employees (including transportation to and from work) is unallowable regardless of whether the cost is reported as taxable income to the employees (see 31.205-46(f)).]

Collateral Requirements

Regulatory Flexibility Act

The proposed change to (FAR Cite) does not appear to have significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et. seq.) because the normal method of procuring with small businesses is by means of full and open competition. And under this type of a competition, FAR Part 31 would not be applicable.

PROPOSED REVISION TO FAR 31.205-46

31.205-46 Travel costs

(a) through (e) - no change.

[(f) Costs of contractor owned or leased automobiles, as used in this paragraph, include the costs of lease, operation (including personnel), maintenance, depreciation, insurance, etc. These costs are allowable, if reasonable, to the extent that the automobiles are used for company business. That portion of the cost of company-furnished automobiles that relates to personal use by employees (including transportation to and from work) is compensation for personal services and is unallowable as stated in 31.205-6(m)(2).]

TAB D
DAR Case 85-200

PROPOSED FEDERAL REGISTER NOTICE

DEPARTMENT OF DEFENSE
GENERAL SERVICES ADMINISTRATION
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 31

Federal Acquisition Regulation (FAR); Compensation for personal services and travel costs

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

ACTION: Proposed rule.

SUMMARY: The Defense Acquisition Regulatory (DAR) Council and the Civilian Agency Acquisition (CAA) Council are proposing a change to Federal Acquisition Regulation (FAR) 31.205-6, Compensation for personal services, and 31.205-46, Travel costs.

COMMENTS: Comments should be submitted to the FAR Secretariat at the address shown below on or before 30 days after publication in the FEDERAL REGISTER to be considered in the formulation of a final rule.

ADDRESS: Interested parties should submit written comments to:

General Services Administration
FAR Secretariat (VRS)
18th and F Streets, N.W., Room 4041
Washington, DC 20405

Please cite FAR Case _____ in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Ms. Margaret A. Willis, FAR Secretariat, telephone (202) 523-4755.

SUPPLEMENTARY INFORMATION:

A. Background.

A provision contained in Section 911 of the Defense Procurement Improvement Act of 1985 (Title IX of the DoD Authorization Act of 1986, P.L. 99-145) specifies that, as a minimum, the cost principles applicable to contractor costs of company-furnished automobiles shall be clarified to define in detail and in specific terms those costs which are unallowable, in whole or in part, under covered contracts.

The DAR and the CAA Councils are proposing revisions to FAR 31.205-6, Compensation for personal services, and 31.205-46, Travel costs, to implement the Act. The proposed revisions state that the cost of contractor owned or leased automobiles is allowable, if reasonable, to the extent that the automobiles are used for company business. Additional proposed language states that the portion of the cost of company-furnished automobiles that relates to personal use by employees is compensation for personal services and is unallowable. The Councils believe it is inappropriate for the Government to reimburse contractor employees' personal costs at taxpayers' expense.

B. Regulatory Flexibility Act.

The proposed revisions are not expected to have a significant economic impact on a substantial number of small entities because they merely clarify policy, facilitate negotiations, reduce areas of dispute, and should not create an economic burden on any business entity.

C. Paperwork Reduction Act.

The Paperwork Reduction Act does not apply because the proposed revisions do not impose any additional reporting or recordkeeping requirements on the public, *beyond those already required by the Internal Revenue Service Code.*
List of subjects in 48 CFR Part 91:

Government Procurement.

DATE:

Therefore, it is proposed that 48 CFR Part 31 be amended to read as follows:

(See TABs A and B for revised coverage)



DEPARTMENT OF THE NAVY

OFFICE OF THE ASSISTANT SECRETARY
(SHIPBUILDING AND LOGISTICS)
WASHINGTON, D C 20380

DAR Staff
Case 85-200

22 November 1985

MEMORANDUM FOR THE DIRECTOR, DAR COUNCIL

SUBJECT: DAR Case 85-200, Company-Furnished Automobiles

I. PROBLEM:

Review present FAR coverage and recommend changes necessary to clarify the cost principles applicable to contractor costs of company-furnished automobiles, as required by the provisions of Section 911 of the Defense Procurement Improvement Act of 1985 (Title IX of S.1160, DoD Authorization Act of 1986, P.L. 99-145).

II. RECOMMENDATIONS:

A. That FAR 31.205-6, Compensation for personal services, be revised as shown in TAB A.

B. That FAR 31.205-46, Travel costs, be revised as shown in TAB B.

C. That the memorandum shown at TAB C be used to transmit the proposed revision to the Civilian Agency Acquisition Council, together with the proposed Federal Register notice shown at TAB D.

III. DISCUSSION:

A. Background.

Title IX, Section 911(f)(1)(O) of the 1986 Defense Authorization Act specifies that, as a minimum, the cost principles applicable to contractor costs of company-furnished automobiles shall be clarified. The Act states that amendments are to define in detail and in specific terms those costs which are unallowable, in whole or in part, under covered contracts.

Although many companies provide the use of automobiles to their executives and other personnel (e.g., sales and marketing representatives), the costs of company-furnished automobiles are not specifically addressed in FAR Part 31, Contract Cost Principles and Procedures. Some companies permit employees to use the vehicles for personal reasons, such as travel to and from work, as well as for the conduct of company business. Individual company policy determines whether employees are required to reimburse the company for personal use of the automobiles or whether such use is treated as employee compensation.

When furnished for the conduct of company business, it is common practice for the Government to reimburse contractors for reasonable acquisition or

leasing costs of the vehicles, together with operating and maintenance expenses. Generally, such costs are considered as an ordinary cost of doing business. When utilized for personal use, contractors may contend that a prorated share of the automobile and related costs is a fringe benefit under FAR 31.205-6 and is allowable to the extent that total compensation is reasonable and the other general and reasonableness criteria outlined in the cost principles are met.

B. Committee Comments.

While the original House version of the Department of Defense Authorization Act of 1986 did not address company-furnished automobiles, the Senate version would have required the Secretary of Defense to amend procurement regulations so as to make unallowable (i) that portion of the cost of the use of company-furnished automobiles which is of personal benefit to the user, and (ii) transportation to and from work except as specifically provided for in regulations or in the contract. The compromise House/Senate version, which was subsequently incorporated in the DoD Authorization Act of 1986, provides that the Secretary of Defense shall amend procurement regulations so as to clarify the cost principles applicable to company-furnished automobiles.

The Committee views company-furnished automobiles for the conduct of company business as an ordinary cost of doing business. The fundamental question is whether the cost of personal use should be allowable. The Committee believes it would be inappropriate for the Government to reimburse employees' personal costs at taxpayers' expense. Hence, it was concluded that such personal use should be unallowable. Additional coverage has been developed to state that costs of contractor-owned or -leased automobiles, which includes the cost of lease, operation (including personnel), maintenance, depreciation, insurance, and other related costs, are allowable, if reasonable, to the extent that the automobiles are used for official company business. Several editorial changes to 31.205-6(m) were made to improve clarity.

All members of the Committee concur in the contents of this report.



J. W. ERMERINS
Chairman
Cost Principles Committee

Cost Principles Committee Members

DoD Members

Sherman Dillon, Army
Charles A. Zuckerman, Air Force
Donald W. Reiter, DLA
Charles D. Brown, OASD(C)
Josephina L. Flinn, DCAA
Charles Hamilton, ODASD(P)

Other Members

Frank T. Van Lierde, GSA
Robert W. Lynch, NASA
William T. Stevenson, DOE

Attachments:

- TAB A - Rev. to FAR 31.205-6
- TAB B - Rev. to FAR 31.205-46
- TAB C - Transmittal Memo to CAAC
- TAB D - Proposed Federal Register Notice

COORDINATION SHEET

Prepared by: OGreen/djb/11Dec85/B105/1211FernSt.
ASD(A&L)DASD(P)DARS/x77267

File:

Dist: DARS Subj/Read/Chron