

CASE MANAGEMENT RECORD

Info

ORIGINAL
UPDATED

CASE NUMBER:	DAR: <i>85-200</i>	CAAC:	FAR:			
TITLE: <i>Co. Farm. Cites.</i>						
REFERENCE: <i>FAR See let 2/21/80</i>						
SYNOPSIS: <i>add'l public comment</i>			ORIGINATION DATE:			
PRIORITY:		ORIGINATOR CODE:				
KEYWORDS:						
CASE REFERENCES:						
FAR CITES:						
DFARS CITES:						
CASE MANAGER: <i>N</i>		SUBCOUNCIL ASSIGNMENT:				
COGNIZANT COMMITTEES: <i>CCP</i>						
RECOMMENDED ACTION:						
BOX RECORD	1)	2)	3)	4)	5)	6)
7a)	7b)	7c)	8a)	8b)	8c)	9)
10)	11)	12)	13a)	13b)		
DISCUSSION DATE:			DOCKET DATE:			
REPORT DATE:						
FAC	NUMBER:	DATE:	ITEM:			
DAC	NUMBER:	DATE:	ITEM:			
DEPARTMENTAL	NUMBER:	DATE:				
BULLETIN	NUMBER:	DATE:				
CASE CLOSED:			CASE COMPLETED:			



FEB 21 1986

Colonel Otto J. Guenther
Director, Defense Acquisition
Regulatory Council
ASD(A&L)DASD(P)DARS
C/O 3E791, The Pentagon
Washington, DC 20301-3062

Subject: FAR Case 85-64, Company-furnished automobiles

Dear Colonel Guenther:

Additional comments received concerning the subject FAR Case are forwarded for your appropriate action.

Sincerely,

MARGARET A. WILLIS
FAR Secretariat

Enclosures

cc: Chairman, Civilian Agency Acquisition Council
ATTN: Team Leader, Contract Cost, Price and Finance



General Services Administration
Office of Acquisition Policy
Washington, DC 20405

JAN 31 1986

MEMORANDUM FOR LARRY J. RIZZI
DIRECTOR
OFFICE OF FEDERAL ACQUISITION
AND REGULATORY POLICY (VR)

FROM: IDA M. USTAD *Ida Ustad*
DIRECTOR
OFFICE OF GSA ACQUISITION
POLICY AND REGULATIONS (VP)

SUBJECT: Proposed changes to the Federal
Acquisition Regulation

The Office of GSA Acquisition Policy and Regulations concurs with the proposed Federal Acquisition Regulation (FAR) changes concerning the following subsections:

<u>FAR Case</u>	<u>Subsections</u>	<u>Subject</u>
85-63	31.201-2	Determining allowability
85-64	31.205-6	Compensation for personal services
	31.205-46	Travel costs
85-65	31.205-14	Entertainment costs
85-66	31.205-33	Professional and consultant service costs
85-67	31.205-52	Executive lobbying costs
85-68	31.205-51	Alcoholic beverage costs
85-71	31.205-38	Selling costs
85-73	31.205-8	Contributions and donations
	31.205-15	Fines and penalties
	31.205-47	Defense of fraud proceedings

RECEIVED

Sundstrand Aviation Operations

unit of Sundstrand Corporation



4747 HARRISON AVENUE P O BOX 7002 • ROCKFORD ILLINOIS 61125-7002 • PHONE (815) 226-6000 • TWX 910-631-4255 • TELEX 257-440

January 30, 1986

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

Attention: Ms. Margaret A. Willis

Dear Ms. Willis:

The purpose of this letter is to comment on the series of FAR cases which have been issued to implement Section 911 of the FY 1986 DoD Authorization Act. Since all of these FAR cases directly pertain to the regulation of allowable costs payable to defense contractors, we feel that it is appropriate to provide some general comments and then address each FAR case separately. The FAR cases to be addressed in this letter are:

1. 85-63: Determining Allowability
2. 85-64: Company Furnished Automobile
3. 85-65: Club Memberships
4. 85-66: Costs of Litigating Appeals
5. 85-67: Executive Branch Lobbying
6. 85-68: Alcoholic Beverages
7. 85-71: Selling Costs
8. 85-73: Donations; Fines and Penalties; Defense of Fraud Proceedings

Sundstrand Corporation is a defense contractor which participates in significant DoD and NASA programs primarily as a subcontractor. As a defense contractor, we are concerned that the purpose and thrust of Section 911 will serve to reduce the number of firms entering into or continuing to do business with the Government. It will also increase the expenses of doing business with the government because of the need for industry to establish accounting, audit, legal, and other internal management systems and controls to administer the increasingly disparate functions of Government and commercial business. Most significantly, it will increase the overall business risk of doing business with the Government because of the various administrative, civil, and criminal actions and penalties which can arise out of complex financial transactions where audits or investigations are conducted months or years after the transactions have occurred. This increased business risk will detract from full and effective contractor attention to the technical and schedule aspects of Government programs, and is likely to foster an adversarial relationship between Government and industry

RECEIVED
FEB 6 1986

personnel involved in contract execution and administration.

The referenced series of FAR cases implementing Section 911 are likewise perceived as furthering the concerns expressed above. Although a major mandate of Section 911 is to prescribe regulations which "clarify" cost principles, the proposed regulations seem to maximize the scope of unallowable costs. This maximizing of unallowable costs goes beyond the Section 911 mandate of "clarification" and does not indicate any attempt to use the authority of Section 911 to "establish appropriate definitions, exclusions, limitations, and qualifications" which recognize customary and appropriate costs incurred in the conduct of business. The failure to establish appropriate definitions, exclusions, limitations, and qualifications to allow costs which are reasonable and directly related to maintaining the effectiveness and viability of defense contractors goes beyond the scope of Section 911.

The referenced series of FAR cases do not prescribe the method and manner of their applicability to subcontractors of a covered contract. This is a mandate of Section 911 which must be accomplished along with the prescribing of proposed cost principle revisions. The failure to do this violates Section 911 and makes it difficult or impossible to completely assess the overall impact of the proposed revisions on prime and subcontractors.

The referenced series of FAR cases do not include any discussion of, or proposed regulations implementing Section 911 definition of "covered contract," particularly since this definition is different than the current FAR provisions pertaining to the applicability of cost principles to contracts. Again, the action of proposing piecemeal cost principle revisions without recognizing and implementing the other substantive and definitional portions of Section 911 violates Section 911 and leads to the prescribing of proposed regulations which may not have overall consistency and thus are in violation of the statute.

Our comments addressed to each separate FAR case are provided in Enclosure 1 to this letter.

Sundstrand Corporation appreciates this opportunity to comment on these FAR cases. Although we may not be in complete agreement with the purpose and thrust of Section 911 and these FAR cases, we are committed to maintaining a meaningful dialogue with the Government concerning such significant matters.

Sincerely,



R. John Chapel
Director, Business Planning

Enclosure

1. FAR CASE 85-63: DETERMINING ALLOWABILITY

Section 911 does not provide for or require such a rule. The legislative history of Section 911 reveals, in fact, that such a rule was considered and deleted at the specific insistence of the Senate. The proposed rule ignores the reality of the business environment by failing to recognize that costs may have more than one purpose or that the facts and circumstances of a specific situation may and should determine the proper treatment of costs. The objective or intent of incurring costs can and should be a consideration in the proper categorization of costs as allowable or unallowable. The rule proposed in FAR Case 85-63 is likely to result in Government efforts to "fit" costs into unallowable areas, rather than encouraging the definition and clarification of cost principles which are reasonable and consider the business environment. This rule should not be adopted.

2. ~~FAR CASE 85-64:~~ COMPANY - FURNISHED AUTOMOBILE

This rule should be revised to recognize there are circumstances where an employee on company business could use a company automobile to go to and from work, but not solely or primarily for the purpose of transportation. An example would be an employee returning from a business trip in the late evening in a company automobile and driving to his home. The employee's trip to his home in the evening and to work in the morning should not be considered as personal use of the automobile, particularly where such use is not continuous or routine for the employee. In this regard, the second sentence of the proposed FAR 31.206-45F) should be revised to insert the word "primarily" between the words "used" and "for."