



FEB 10 2004

GSA Office of Governmentwide Policy

MEMORANDUM FOR RONALD POUSSARD

DIRECTOR
DEFENSE ACQUISITION REGULATIONS COUNCIL

FROM:

RODNEY P. LANTIER, DIRECTOR
REGULATORY AND FEDERAL ASSISTANCE
PUBLICATIONS DIVISION

SUBJECT:

FAR Case 2003-002, Reimbursement of Relocation Costs on a
Lump-Sum Basis

Attached are comments received on the subject FAR case published at 68 FR 29264;
December 11, 2003. The comment closing date was February 9, 2004.

<u>Response Number</u>	<u>Date Received</u>	<u>Comment Date</u>	<u>Commenter</u>
2003-002-1	02/03/04	02/03/04	AIA / NDIA
2003-002-2	02/06/04	02/06/04	Jacqueline Simon (AFL-CIO)
2003-002-3	02/09/04	02/09/04	Runzheimer International
2003-002-4	02/09/04	02/09/04	DCAA
2003-002-5	02/09/04	02/09/04	GSA/IT Solutions FTS
2003-002-6	02/18/03	02/18/03	DOD/IG
2003/002-7	02/18/03	02/18/03	POGO

Attachments

2003-002-1

**AEROSPACE INDUSTRIES ASSOCIATION
NATIONAL DEFENSE INDUSTRIAL ASSOCIATION**

January 30, 2004

General Services Administration
FAR Secretariat (MVA)
1800 F Street, NW, Room 4035
ATTN: Ms. Laurie Duarte
Washington DC 20405

Subject: FAR Case 2003-002 on Reimbursement of Relocation Costs on a Lump-Sum Basis

Dear Ms. Duarte:

The Aerospace Industries Association and the National Defense Industrial Association are pleased to comment on the proposed rule to amend the Relocation Cost Principle to permit the use of lump-sum payments as a basis for reimbursing contractors for relocation costs associated with finding a new home, travel to the new location, and temporary lodging.

Our member companies applaud the Councils' effort to expand the use of lump-sum to cover these types of relocation costs. We agree with the Councils' statement that the use of lump-sum payments is a common commercial practice and we believe that the proposed rule will help align relocation cost reimbursement policies with commercial best practices.

Regarding the revised wording in paragraph (b) (4) of the cost principle, we believe there needs to be a clear affirmative statement that the lump-sum payments are allowable costs. Also, we believe that "amounts to be reimbursed" may be confusing regarding whether the statement is in reference to the contractor reimbursing the employee, or the government reimbursing the contractor. Further, it should be clear that either method, actual or lump-sum is an appropriate method for a contractor to use. Currently, the proposed wording could be misconstrued to mean that contractors are allowed to reimburse their employees on a lump-sum basis, but only the actual costs would be allowable.

Also, we believe the proposed language "...to the individual employee..." in paragraph (b) (4) should be deleted. Contractors should not have to demonstrate on an individual basis that the lump-sum payments are reasonable and appropriate for each relocating employee. Once a contractor's systems and policies for using and calculating lump-sum payments have been determined to be acceptable, no further reasonableness or appropriateness testing is necessary at the individual employee level.

2003-002-1

We believe the following wording better captures the intent of the proposed revision to the principle, and should be substituted for the proposed language in finalizing this rule.

(4) Costs shall equal the employee's actual expenses, except in cases where reimbursement is based on an appropriate lump-sum method for any of the following relocation costs:

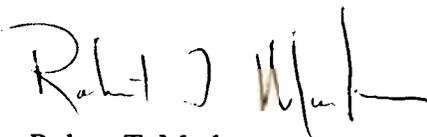
- (i) Costs of finding a new home, as discussed in paragraph (a) (2) of this subsection.
- (ii) Costs of travel to the new location, as discussed in paragraph (a) (1) of this subsection (but not costs for the transportation of household goods).
- (iii) Costs of temporary lodging, as discussed in paragraph (a) (2) of this subsection.
- (iv) Miscellaneous costs of the type discussed in paragraph (a) (5) of this subsection, not to exceed a maximum lump-sum amount of \$5,000.

When lump-sum employee reimbursement is used, the lump-sum amounts paid for these relocation costs are allowable. An individual's receipts for actual paid amounts are not required for lump-sum reimbursement.

In addition to the above recommended wording, our member companies recommend the Councils consider adopting the Councils' May 25, 1999 proposal as it relates to the elimination of the home sale/purchase ceilings of 14% and 5%, respectively. We believe there are many occasions where reasonable and necessary relocation costs exceed these ceilings on home sales and home purchases. These ceilings are also administrative burdens that limit equitable recovery of relocation costs. We believe the Councils recognized those burdens when they proposed their elimination in the 1999 proposed rule change.

If you would like to meet to discuss our comments on the proposed rule, please contact Dick Powers of AIA or Ruth Franklin of NDIA. Dick can be contacted by phone at (703) 358-1042, or by email at powers@aia-aerospace.org. Ruth can be reached at (703) 247-2598, or by email at rfranklin@ndia.org.

Sincerely,



Robert T. Marlow
Aerospace Industries Association
Vice President, Government Division



Peter M. Steffes
National Defense Industrial Association
Vice President, Government Policy

2003-002-2



"John Threlkeld"
<THRELJ@afge.org>

02/06/2004 03:13 PM

To: farcase.2003-002@gsa.gov
cc: "Jacque Simon" <SIMONJ@afge.org>
Subject: Comments on FAR Case 2003-002

General Services Administration
FAR Secretariat (MVA)
1800 F Street, NW, Room 4035
ATTN: Laurie Duarte
Washington, DC 20405

Subject: FAR Case 2003-002

Dear Ms. Duarte:

On behalf of the American Federation of Government Employees, AFL-CIO, which represents more than 600,000 federal employees who serve the American people across the nation and around the world, I thank you for the opportunity to comment on the proposed rule to amend the Federal Acquisition Regulation (FAR) at 48 CFR Part 31, "Reimbursement of Relocation Costs on a Lump-Sum Basis" that was published in the Federal Register on December 11, 2003 (68 FR 69264).

In addition to aggressively representing the interests of its members, AFGE takes a keen interest in ensuring the fairness and integrity of federal rulemaking. Indeed, AFGE led the opposition to an earlier attempt in 1999 to rewrite the travel and relocation rules to benefit contractors at the expense of taxpayers, federal employees in particular, even to the point of inspiring ten U.S. Senators to weigh in against those wasteful, pork-laden proposals. AFGE is strongly opposed to this proposal because of the millions of taxpayer dollars that will be wasted on this special interest giveaway. It must also be pointed out that this proposal would make federal employees second class citizens vis-a-vis their contractor counterparts with respect to relocation expenses.

The proposed rule would amend FAR 31.205-35 "Relocation Costs" to permit contractors the option of being reimbursed on a lump-sum basis for three additional types of employee relocation costs, (1) the costs of finding a new home, (2) costs of travel to the new location, and (3) costs of temporary lodging. These three additional types of costs that would be eligible for lump-sum "reimbursement" are in addition to the so-called "miscellaneous expense" category that was made eligible for lump-sum reimbursement of up to \$5,000, via amendments to the FAR that were finalized on June 27, 2002 (67 FR 43518).

It is AFGE's understanding that the June 2002 amendment to the "Relocation" cost principle at FAR 31.205-35, was designed to consider the expanded use of a "lump-sum" approach. Under the more tempered leadership of then Office of Federal Procurement Policy (OFPP) Administrator, Angela Styles, the use of a "lump-sum" approach for reimbursing contractors for costly and expensive employee relocations was modestly expanded. In contrast, the proposed rule appears to have abandoned the previously expressed cautions, and merely acceded to the original contractor "wish list."

Rather than rearguing the reasons that use of the "lump sum" approach should not be further expanded, AFGE will quote from the original preamble to the final rule that was published on June 27, 2002 at 68 FR 43517:

Response to Comments: The lump-sum reimbursement approach covering miscellaneous expenses only that is currently in the FAR was retained, but the ceiling amount was increased from \$1,000 to \$5,000. An unlimited lump-sum for miscellaneous expenses could easily become a sub rosa vehicle for reimbursing unallowable costs (such as a loss on the sale of a home) or for awarding a

2003-002-2

hidden bonus to the relocating employee. While some commenters contend that contractors and the Government will share in cost reductions through use of lump-sum payments, others believe the opposite will occur. No convincing data were found one way or the other. This is further bolstered by indications from ERC [Employee Relocation Council] that companies use lump-sum reimbursements primarily to improve employee morale and to reduce administrative costs. The net cost impact is unclear. This issue may be pursued again in a separate FAR case to determine if there is a clear answer justifying adoption of a broader lump-sum approach.

Not wanting to disappoint contractors, the Director of Defense Procurement and Acquisition Policy (DPAP), pursued a separate FAR case to continue the expansion of use of the lump-sum approach for reimbursing contractor employee relocation expenses. Of course, 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. As noted in the proposed rule (68 FR 69264), a public meeting was held on January 27, 2003. Not surprisingly, representatives from a defense contractor, an industry association, and a travel and relocation firm retained by contractors, all testified in favor of expansion of the lump-sum approach, since as euphemistically stated in the previous June 27, 2002 rule, it "* improves employee morale*"

Not having to justify costly relocation expense bills (which frequently amount to tens of thousands, and sometimes even hundreds of thousands of dollars, per employee move) may indeed, improve the morale of contractor employees, but it should collectively reduce the morale of taxpayers who will have to foot these bills in a time of major budget deficits.

Accordingly, AFGE strongly opposes any expansion of use of "lump-sum" reimbursement of contractor employee relocation expenses. With few exceptions, these costs should only be reimbursed on an "actual cost" basis. However, in the interest of promoting greater flexibility within the existing relocation cost principle, but without increasing overall costs to taxpayers, AFGE 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. This would allow some added flexibility for use of what amounts to a current \$5,000 per contractor employee "miscellaneous" move allowance, without having to justify the reasonableness of costs, but would not expand undocumented taxpayer liability per contractor employee move.

AFGE wishes to add three additional points. First, the preamble to the proposed rule states:

While individual receipts are not required with a lump-sum approach, contractors would still have to demonstrate that amounts paid are reasonable and appropriate for the circumstances of each relocating employee.

If reduced record keeping is the purpose of the proposed rule, AFGE fails to see how this will be accomplished. Either the proposed rule amount to a "free pass" on certain contractor employee relocation expenses, or else contractors will need to keep records to establish reasonableness. Otherwise, the preamble statement is disingenuous.

Second, the next paragraph of the preamble goes on to state:

The proposed rule is expected to reduce the accounting and administrative burden of the relocation cost principle on contractors and lead to faster relocations. Costs to the Government are not expected to increase significantly (emphasis added) as a result of this revision.

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As previously stated, the proposed rule does not appear to reduce the administrative burdens placed on contractors, particularly if they would still have to potentially justify lump-sum payments made to employees. We seriously doubt that the rule will lead to "faster relocations." However, the more disturbing statement is that costs to the federal government are not expected to increase "significantly." AFGE has no idea what the drafters consider to be significant, but in a Federal budget that is projected to run a more than half trillion dollar per year deficit in FY 2005, much of that from wasteful service contracting, we think that any rule that increases taxpayer expenditures to contractors has to be justified on a cost-benefit basis. The FAR Councils have failed miserably in this regard. It is no secret that contractors favor a lump-sum approach to relocation costs because they believe it will lead to increased levels of reimbursement above what the current "actual costs" approach provides.

In 1999, the Defense Contract Audit Agency (DCAA) estimated that increased costs from amending the "Relocation" cost principle would amount to \$52 million per year excluding the cost of "tax gross ups" and \$130 million per year, including the cost of "tax gross ups." At a minimum, AFGE estimates the impact of this rule at \$50 million per year in 1999 dollars. Given the increased level of relocation activity among government contractors since that time, the amount is likely to be much higher today.

AFGE considers the proposed rule to be another in a long line of accommodations to the government contracting industry. It is significant to note that federal employees, when relocating, must submit detailed itemizations of bills, and may not be reimbursed on a "lump-sum" basis.

AFGE urges the FAR Councils to exercise a more taxpayer-oriented approach to this issue. Either the proposed rule should be withdrawn, or alternatively, the current \$5,000 "miscellaneous costs" that are eligible for lump-sum reimbursement may be expanded, as explained above. However, in no case should increases in lump-sum payments beyond \$5,000 per contractor employee be considered until removal of the limitations can be justified on economic grounds and federal employees are afforded the same advantages as their contractor counterparts.

Sincerely,

Jacqueline Simon

Public Policy Director

2003-002-3



"Burd, Kay Lynn H.
(KHB)"
<kburd@runzheimer.com>

To: "farcase.2003-002@gsa.gov" <farcase.2003-002@gsa.gov>
cc:
Subject: FAR case 2003-002

02/09/2004 04:23 PM

General Services Administration
FAR Secretariat
ATTN: Laurie Duarte

This comment is in regard to recommended changes to the relocation cost principle at FAR 31.205-35 to expand the use of reimbursement on a lump-sum basis. As stated in the Federal Register, these changes are in keeping with current commercial business practice. 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. As a service provider, we regularly work with companies across all industries to establish lump-sum calculations that incorporate these components, reflect company policies, ensure geographical price sensitivity, and consider each relocating employee's situation (e.g., family size and composition). Lump-sum allowances calculated in this way are fair to the employee and reasonable to the employer. 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.

Sincerely,

Kay Burd
Director, Product Development & Consulting Services
Global Mobility Services
Runzheimer International
Rochester, WI 53167

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DEFENSE CONTRACT AUDIT AGENCY
DEPARTMENT OF DEFENSE
8725 JOHN J. KINGMAN ROAD, SUITE 2135
FORT BELVOIR, VA 22060-6219

2003-002-4

IN REPLY REFER TO

PAC 730.8.A.02/2004-02

February 9, 2004

General Services Administration
FAR Secretariat (MVA)
Attn: Laurie Duarte
1800 F Street, NW, Room 4035
Washington, DC 20405

SUBJECT: Public Comment on Proposed Rule to Allow Select Reimbursement of Relocation Costs on a Lump-Sum Basis, FAR 2003-002

Dear Ms. Duarte:

A Federal Register notice dated December 11, 2003 requested comments regarding the DAR and CAA Councils' proposed rule revising FAR 31.205-35, Relocation costs. The proposed rule would provide contractors with the option of claiming employee relocation costs based on actual costs incurred or an appropriate lump-sum basis for costs of (i) finding a new home, (ii) travel to the new location, and (iii) temporary lodging. The Defense Contract Audit Agency (DCAA) appreciates the opportunity to provide the following comments for the Councils' consideration.

DCAA does not believe that allowing lump-sum reimbursement of travel and living-related relocation costs is in the best interest of the government at this time.

In July of 1999, we performed a survey of more than 50 government contractors to determine the extent of actual relocation costs. Based on this limited survey, we estimated that relocation costs in excess of \$600 million were being allocated to cost reimbursement type contracts each year. We recently surveyed four large contractor locations to estimate the approximate amount of relocation costs incurred and claimed by these contractors. This limited survey continues to support that contractors are incurring hundreds of millions of dollars of relocation costs annually. These contractors are not currently claiming all relocation costs incurred on Government contracts due to specific allowability limitations provided in the existing cost principle.

We also reviewed the current relocation policies in place at these four contractor locations. For the most part, these policies provide for the reimbursement of "reasonable" and "actual" expenses, with additional limitations (e.g., per diem rates, number of days, etc.) related to travel and temporary lodging during the relocation process. Three of the four contractors we surveyed use a single corporate wide policy on their employee relocation reimbursement programs. One of these contractors has claimed that it is a predominately commercial company, and the other two companies also have a substantial commercial business base. These large

2003-002-4

PAC 730.8.A.02/2004-02

February 9, 2004

SUBJECT: Public Comment on Proposed Rule to Allow Select Reimbursement of Relocation Costs on a Lump-Sum Basis, FAR 2003-002

companies with increasingly commercial business have not adopted what is purported to be a common commercial practice of reimbursing their employees for the subject relocation expenses on a lump-sum basis. Instead of establishing a lump-sum option for their commercial business segments, these companies continue to apply a policy which parallels the current cost principle.

In 2003, Prudential Relocation, a relocation management firm, performed an online survey of nearly 300 companies. In an August 23, 2003 company news release, Ms. Carmelita Brown, Vice President, Global Consulting Group, Prudential Relocation states:

What the survey shows is that companies aren't quite sure how to take advantage of Lump Sum provisions as part of an overall relocation policy. There is clearly a trend toward increased usage, but companies seem unsure how to structure this for the best results.

Only 30 percent of the surveyed companies said they are using lump-sum to cover travel and temporary lodging expenses.

We also note that during the February 6, 2003 public meeting, representatives of Runzheimer International, another relocation management firm, informed the attendees that DoD was considering the use of the Runzheimer lump-sum model for DoD civilian relocation. However, in a January 14, 2004 e-mail Ms. Adlore Chaudier, Vice President, Runzheimer Government Services Group, stated:

Runzheimer worked within the Defense Integrated Travel & Relocation Solutions (DITRS) office to put together a plan for testing or implementing a lump sum allowance program. That effort was shut down by Mr. Hamre shortly before he left DoD.

Both Prudential Relocation, in its survey results, and Runzheimer International, at the public meeting, stated that most companies currently using lump-sum do not track actual costs incurred by the employee. Accordingly, DCAA has 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.

Cost principles covering areas of significant costs should not include provisions allowing for reimbursement of the cost based on general reasonableness criteria in the FAR. Even if the contractor already has in place a system of internal control for relocation costs, the administrative costs to the government will increase if the cost principle is changed to allow lump-sum reimbursement of even this limited area of relocation costs. Audit effort will necessarily increase (as will the contractor support of the increased audit effort) because instead

2003-002-4

PAC 730.8.A.02/2004-02

February 9, 2004

SUBJECT: Public Comment on Proposed Rule to Allow Select Reimbursement of Relocation Costs on a Lump-Sum Basis, FAR 2003-002

of having uniform objective measurements for allowable amounts, the auditor will now be forced to evaluate each individual contractor system for establishing reasonable amounts. One of the main reasons for providing specific allowability requirements in the cost principles is to achieve consistent treatment of costs. Using a broad criterion such as the general reasonableness principle in the FAR will lead to differences of opinion among government officials and even more so between the government and contractors. These differences of opinion will result in increased disputes, which will increase the effort required by contractors, auditors, contracting officers and the courts to settle these disputes. In addition, these disputes would delay the overhead cost settlements, resulting in further delays in closing contracts that have been physically completed, which in turn would increase administrative efforts by all parties involved.

In summary, we believe that the cost principle should not provide lump-sum reimbursement for these types of relocation costs until there is adequate data available in the commercial market or government sector to assist in determining reasonableness. While the published marketing information of relocation management firms (e.g., Prudential Relocation and Runzheimer International) does appear to support that there is a trend toward the use of lump-sum for travel and temporary lodging related relocation costs, it is not a predominant industry practice at this time. In addition, two of the largest DoD contractors have decided not to implement lump-sum policies for their commercial segments when they clearly had the opportunity to do so. These facts belie the stated purpose of allowing Government contractors to use a commercial company practice in reimbursing employee relocation expenses.

Thank you for the opportunity to comment on this case. DCAA 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.

Sincerely,

/Signed/
Robert DiMucci
Assistant Director
Policy and Plans

2003-002-5



Althea Kireillis

02/09/2004 03:02 PM

To: farcase.2003-002@gsa.gov
cc: Linda A. Hall/TQ/CO/GSA/GOV@GSA
Subject: FAR Case 2003-002

I believe the following is question should be clarified before FAR Case 2003-002 is published based on the question:

Is the proposed lump-sum amount of \$5K applicable to both Continental United States (CONUS) and Outside CONUS relocations? I assume it is for both but it would be helpful to not to have to interpret the final language.

Since we also write contracts and or Task orders to support the US Forces and other agencies working OCONUS it would be helpful. We recently have had DCAA audit problems in this very area.

Very Respectfully,
Althea Kireillis
Director, FEDSIM Acquisition
FEDSIM - The Leader in Large Scale Integration
(703) 306-7608

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Office of IT Solutions within the
Federal Technology Services of the
General Services Administration



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2003-002-6

Ms. Laurie Duarte
General Services Administration
FAR Secretariat (MVA)
1800 F Street, N.W., Room 4035
Washington, DC 20405

FEB -5 2004

Dear Ms. Duarte:

We have reviewed the proposed change to Federal Acquisition Regulation (FAR) 31.205-35, Relocation Costs, published in the Federal Register on December 11, 2003, that would revise the FAR to allow reimbursement of relocation costs on a lump-sum basis. Specifically, this revision would permit contractors the option of claiming employee relocation costs on a lump-sum basis for the costs of finding a new home, travel to the new location, and temporary lodging. We disagree with the proposed revision.

A Defense Contract Audit Agency survey in 1999 estimated that over \$600 million in relocation costs were allocated to cost reimbursement type contracts each year. Allowing lump-sum reimbursement of these costs without supporting documentation is not in the best interests of the Government. The proposed revision would subject millions of dollars to a subjective test of reasonableness requiring Government auditors, contracting officials, attorneys, and others to expand 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. Contractors will also incur additional expenses in excess of any administrative costs saved supporting the reasonableness of the relocation costs. In addition, for the Government to evaluate the reasonableness of these costs, additional fees may have to be paid to the various relocation cost tracking services to obtain baselines to judge incurred or proposed costs against. Finally, once a contractor implements a lump-sum policy for these costs, the contractor will not collect information regarding actual expenses for these items; therefore, the Government will not have a contractor-specific cost history to use in determining reasonableness.

Based on the information provided in the Federal Register notice on this FAR case, we question 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." Of the eight responses received by the FAR Council to the previous FAR Notice on Reimbursement of Relocation Costs on a Lump-Sum Basis, October 24, 2002, one was a joint response by the Aerospace Industries Association and the National Defense Industrial Association with no specifics on the number of companies using lump

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sum reimbursement and another response citing a Runzheimer International survey of 109 companies that indicated that by the end of 2001, approximately 55 companies were using a lump-sum reimbursement.

In summary, the FAR Council has not adequately considered the increased risk and increased costs to the Government of allowing contractors to be paid for these costs on a lump-sum basis. The information supplied on commercial practices does not support the assertion that lump-sum payments for these types of relocation costs is either a best practice or a standard commercial practice. We do not recommend the FAR be revised as proposed.

Thank you for the opportunity to comment on the proposed rule. If you have any questions, please contact Ms. Pat Bartron at (703) 604-8753.

Sincerely,



Patricia A. Brannin
Assistant Inspector General for
Audit Policy and Oversight

cc: DAR Council

2003-002-7



POGO
<pogo@pogo.org>
02/09/2004 03:52 PM

To: farcase.2003-002@gsa.gov
cc:
Subject: Comments on FAR Case 2003-002

Dear Laurie Duarte:

POGO fully concurs in the substantive objections expressed by the American Federation of Government Employees in its February 6, 2004 e-mail (below) on "Reimbursement of Relocation Costs on a Lump-Sum Basis."

Sincerely,

Danielle Brian

Executive Director

Project On Government Oversight

General Services Administration

FAR Secretariat (MVA)

1800 F Street, NW, Room 4035

ATTN: Laurie Duarte

Washington, DC 20405

Subject: FAR Case 2003-002

Dear Ms. Duarte:

On behalf of the American Federation of Government Employees, AFL-CIO, which represents more than 600,000 federal employees who serve the American people across the nation and around the world, I thank you for the opportunity to comment on the proposed rule to amend the Federal Acquisition Regulation (FAR) at 48 CFR Part 31, "Reimbursement of Relocation Costs on a Lump-Sum Basis" that was published in the Federal Register on December 11, 2003 (68 FR 69264).

In addition to aggressively representing the interests of its members, AFGE takes a keen interest in ensuring the fairness and integrity of federal rulemaking. Indeed, AFGE led the opposition to an earlier

2003-002-7

Subject: FAR Case 2003-002

Dear Ms. Duarte:

On behalf of the American Federation of Government Employees, AFL-CIO, which represents more than 600,000 federal employees who serve the American people across the nation and around the world, I thank you for the opportunity to comment on the proposed rule to amend the Federal Acquisition Regulation (FAR) at 48 CFR Part 31, "Reimbursement of Relocation Costs on a Lump-Sum Basis" that was published in the Federal Register on December 11, 2003 (68 FR 69264).

In addition to aggressively representing the interests of its members, AFGE takes a keen interest in ensuring the fairness and integrity of federal rulemaking. Indeed, AFGE led the opposition to an earlier attempt in 1999 to rewrite the travel and relocation rules to benefit contractors at the expense of taxpayers, federal employees in particular, even to the point of inspiring ten U.S. Senators to weigh in against those wasteful, pork-laden proposals. AFGE is strongly opposed to this proposal because of the millions of taxpayer dollars that will be wasted on this special interest giveaway. It must also be pointed out that this proposal would make federal employees second class citizens vis-a-vis their contractor counterparts with respect to relocation expenses.

The proposed rule would amend FAR 31.205-35 "Relocation Costs" to permit contractors the option of being reimbursed on a lump-sum basis for three additional types of employee relocation costs, (1) the costs of finding a new home, (2) costs of travel to the new location, and (3) costs of temporary lodging. These three additional types of costs that would be eligible for lump-sum "reimbursement" are in addition to the so-called "miscellaneous expense" category that was made eligible for lump-sum reimbursement of up to \$5,000, via amendments to the FAR that were finalized on June 27, 2002 (67 FR 43518).

It is AFGE's understanding that the June 2002 amendment to the "Relocation" cost principle at FAR 31.205-35, was designed to consider the expanded use of a "lump-sum" approach. Under the more tempered leadership of then Office of Federal Procurement Policy (OFPP) Administrator, Angela Styles, the use of a "lump-sum" approach for reimbursing contractors for costly and expensive employee relocations was modestly expanded. In contrast, the proposed rule appears to have abandoned the previously expressed cautions, and merely acceded to the original contractor "wish list."

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Not wanting to disappoint contractors, the Director of Defense Procurement and Acquisition Policy (DPAP), pursued a separate FAR case to continue the expansion of use of the lump-sum approach for reimbursing contractor employee relocation expenses. Of course, 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. As noted in the proposed rule (68 FR 69264), a public meeting was held on January 27, 2003. Not surprisingly, representatives from a defense contractor, an industry association, and a travel and relocation firm retained by contractors, all testified in favor of expansion of the lump-sum approach, since as euphemistically stated in the previous June 27, 2002 rule, it "* improves employee morale*"

Not having to justify costly relocation expense bills (which frequently amount to tens of thousands, and sometimes even hundreds of thousands of dollars, per employee move) may indeed, improve the morale of contractor employees, but it should collectively reduce the morale of taxpayers who will have to foot these bills in a time of major budget deficits.

Accordingly, AFGE strongly opposes any expansion of use of "lump-sum" reimbursement of contractor employee relocation expenses. With few exceptions, these costs should only be reimbursed on an "actual cost" basis. However, in the interest of promoting greater flexibility within the existing relocation cost principle, but without increasing overall costs to taxpayers, AFGE 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. This would allow some added flexibility for use of what amounts to a current \$5,000 per contractor employee "miscellaneous" move allowance, without having to justify the reasonableness of costs, but would not expand undocumented taxpayer liability per contractor employee move.

AFGE wishes to add three additional points. First, the preamble to the proposed rule states:

While individual receipts are not required with a lump-sum approach, contractors would still have to demonstrate that amounts paid are reasonable and appropriate for the circumstances of each relocating employee.

If reduced record keeping is the purpose of the proposed rule, AFGE fails to see how this will be accomplished. Either the proposed rule amount to a "free pass" on certain contractor employee relocation expenses, or else contractors will need to keep records to establish reasonableness. Otherwise, the preamble statement is disingenuous.

Second, the next paragraph of the preamble goes on to state:

The proposed rule is expected to reduce the accounting and administrative burden of the relocation cost principle on contractors and lead to faster relocations. Costs to the Government are not expected to increase significantly (emphasis added) as a result of this revision.

As previously stated, the proposed rule does not appear to reduce the administrative burdens placed on contractors, particularly if they would still have to potentially justify lump-sum payments made to employees. We seriously doubt that the rule will lead to "faster relocations." However, the more disturbing statement is that costs to the federal government are not expected to increase "significantly." AFGE has no idea what the drafters consider to be significant, but in a Federal budget that is projected to run a more than half trillion dollar per year deficit in FY 2005, much of that from wasteful service contracting, we think that any rule that increases taxpayer expenditures to contractors has to be justified on a cost-benefit basis. The FAR Councils have failed miserably in this regard. It is no secret that contractors favor a lump-sum approach to relocation costs because they believe it will lead to increased levels of reimbursement above what the current "actual costs" approach provides.

In 1999, the Defense Contract Audit Agency (DCAA) estimated that increased costs from amending the "Relocation" cost principle would amount to \$52 million per year excluding the cost of "tax gross ups" and \$130 million per year, including the cost of "tax gross ups." At a minimum, AFGE estimates the impact of this rule at \$50 million per year in 1999 dollars. Given the increased level of relocation activity among government contractors since that time, the amount is likely to be much higher today.

AFGE considers the proposed rule to be another in a long line of accommodations to the government contracting industry. It is significant to note that federal employees, when relocating, must submit detailed itemizations of bills, and may not be reimbursed on a "lump-sum" basis.

AFGE urges the FAR Councils to exercise a more taxpayer-oriented approach to this issue. Either the proposed rule should be withdrawn, or alternatively, the current \$5,000 "miscellaneous costs" that are eligible for lump-sum reimbursement may be expanded, as explained above. However, in no case should increases in lump-sum payments beyond \$5,000 per contractor employee be considered until removal of the limitations can be justified on economic grounds and federal employees are afforded the same advantages as their contractor counterparts.

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Sincerely,

Jacqueline Simon

Public Policy Director

Project On Government Oversight

Watchdog Since 1981

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