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## CLAIMING ALLOWABLE TRAVEL COSTS: AVOIDING COMMON MISPERCEPTIONS

Guidelines contained in FAR 31.205-46 delineate specific parameters for identifying and claiming allowable travel expenses, even though some of those parameters are vague and can be easily misinterpreted.

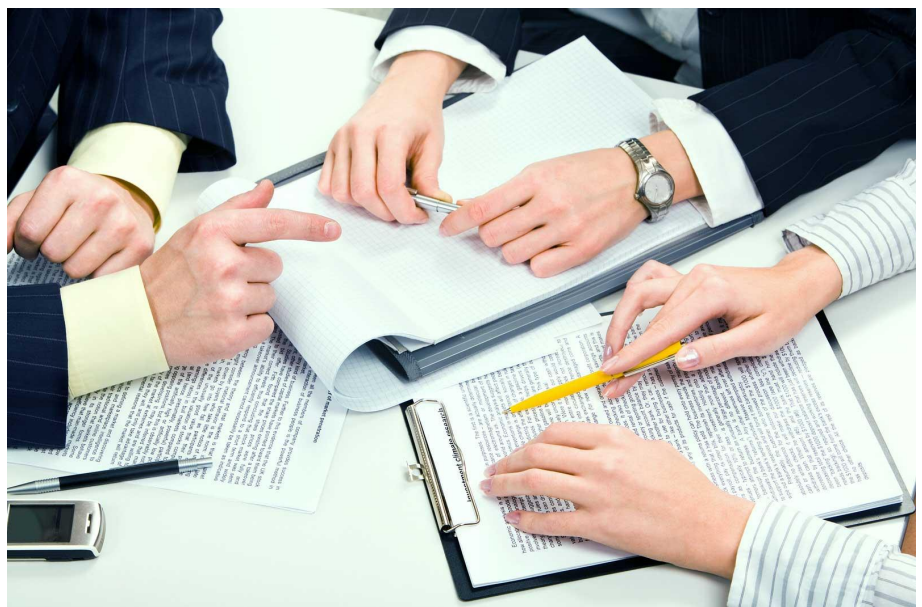
Government contractors often incorrectly apply the provisions of this cost principle because of misperceptions as to the meaning of certain core travel cost provisions. Certain travel cost principle provisions that seem to be a problem for many of our clients include the following:

- FAR 31.205-6 incorporates certain provisions of various Federal travel regulations (an example of those

regulations is the FTR). However, a common misperception is that ALL provisions of the regulations applicable to Federal employees will also apply to Government contractors. This is simply not the case. The only provisions that are brought in from travel regulations which are applicable to government contractors as well as government employees are the definition of per diem, maximum per diem rates, and special situations in which allowable per diem may be exceeded. Government contractors are not, for example, required to use FTR guidelines for partial day per diem or reduced per diem amounts for extended temporary duty.

- Government contractor employees are held to the maximum per diem

(lodging and meals/incidentals (M&I)) specified in certain Federal travel regulations, depending on the location of travel. The Government travel regulations separate the ceiling per diem values between lodging and M&I. However, Government contractors are held to the total daily per diem value specified in those regulations, and NOT to the individual ceiling values for lodging and M&I. For example, assume that the total per diem value for Dallas is \$200, and within the FTR, values making up this ceiling value are \$150 for lodging and \$50 for M&I. As long as employee daily per diem, in total, does not exceed \$200, it does not matter if actual lodging was \$175 and meals were \$25—total of both is no more than



the \$200 cap. One other nuance to be aware of, the taxes on the hotel are not directly included in the measure of per diem; however, if your lodging (excluding taxes) exceeds the per diem, the expectation is that a pro-ration of the taxes will also be unallowable.

- Adherence to the maximum per diem ceilings is calculated on a daily basis. This means that for each travel day, claimed/incurred per diem in excess of the ceiling is unallowable. Determination of allowable daily per diem cannot be made using an average daily calculation over the duration of the travel, as some contractors seem to think. In our Dallas example above, if an employee incurs/claims \$250 on day one, and \$150 on day two, unallowable per diem for day one is \$50—you cannot average day one and day two claimed values (simple average is \$200) to measure compliance to the ceiling.
- Some contractors forget that the travel cost principle stipulates three specific documentation criteria for travel expenses to be allowable. Those requirements are: (1) date and place (city, town, or other similar designation); (2) purpose of the trip; and (3) name of person on trip and that person's title or relationship to the contractor. If these three items are not documented, associated travel costs are technically expressly unallowable.
- Although certain provisions of the FTR do not specifically apply, recognize that government auditors will also apply reasonableness criteria to your policy and practices. For example, if your policy is to



allow the total per diem for each day of travel (including the last day for which there is no lodging), it will most likely be challenged as unreasonable (because it is unreasonable).

Government contractors are cautioned to become knowledgeable of the travel cost principle, and avoid making broad interpretations of vague provisions without further study. A best practice to ensure compliance with this particular cost principle is to maintain a written company procedure that identifies allowable and unallowable travel costs, as well as specific requirements for documentation supporting claimed travel expenses.

## CODE OF BUSINESS ETHICS AND CONDUCT & DISPLAY OF HOTLINE POSTERS

FAR 52.203-13 and -14 are contract clauses introduced in 2007 which are very prescriptive in terms of

contractual requirements for a Contractor Code of Business Ethics and Conduct (COBEC) as well as the display of agency hotline posters including those for contracts with The Department of Homeland Security (by specific reference).

This basic requirement applies to contracts > \$5 million. Of note, the requirements flow-down to subcontractors > \$5 million other than commercial (FAR 2.101) or those performed entirely outside the US and the contractual requirements will not apply to a small business.

Although the FAR clauses are currently applicable, the Department of Justice has requested the FAR Council revisit one other aspect of this which is the mandatory / immediate disclosure (to the Government) of significant violations. In reviewing the public comments to these new provisions ([www.regulations.gov](http://www.regulations.gov)), public submissions on FAR Case 2007-006), it is noteworthy, but ultimately a moot point that 15 of 42 respondents

requested an extension to the response period. Moot point because the regulation, published on November 23, 2007, simply discounted those responses and addressed the remaining 27 public submissions.

Apparently it's not significant to the Councils that 15 respondents requested additional time notwithstanding the fact that many proposed rules don't even receive 15 responses. In reference to the "public submissions" it's also noteworthy but equally moot that many of the 27 were not "public submissions", but comments from government agencies including DOJ and numerous OIGs.

In summarizing the "public comments" as "general support" for the rule, the councils took note of the fact that many comments were laudatory, immediately citing that one respondent referred to the proposed rule as a "good attempt". In most applications, the phrase "a good attempt" is not necessarily a compliment and it would seem to be well short of "laudatory". The published rule also noted one "public comment" that the rule was outstanding. Quite likely the source of this comment was not the public, but one of many government agency responses.

Having briefly noted some flaws in the process, nonetheless the FAR clauses are effective as of December 24, 2007 (perhaps a Christmas present for those who believe in Santa Claus). Although the FAR requirements are somewhat prescriptive in nature, they also contain limited flexibilities which (if nothing else) permit the Councils to

make note of the fact that the regulations are flexible. It is unfortunate that the Councils perceive the need for such prescriptive regulations in attempting to define internal controls in the context of a company's code of business ethics.

Unfortunate to the extent "prescriptive" frequently contributes to form over substance and it fails to give any consideration to pre-existing compensating internal controls which may be far superior in terms of the desired effect in comparison to the one size fits all approach. However, the regulations do provide one absolutely essential ground-rule that should be a consideration for every company whether or not subject to these prescriptive regulations; that a contractor (company) has a system of internal controls suitable to the size of the business.

In fact, as noted in the lengthy discussion in the Federal Register, no one is exempt from having at least a satisfactory record of integrity and business ethics (reference to FAR 9.104-1(d)). In terms of what does all of this mean to me (as a contractor or potential contractor), it should equate to nothing additional for large companies that have been subject to DCAA "ICAPS" audits which already contain the essence of the new regulations (reference [www.DCAA.mil](http://www.DCAA.mil) ., internal control matrix for audit of control environment and overall accounting system). For others, there will need to be an internal assessment of your existing "COBEC" vis-à-vis the new regulation to the extent you receive a contract incorporating the clauses and, one should anticipate that the government

will perform some evaluation of your "COBEC".

A final note, recognize that the regulations are being revisited as requested by DOJ (now FAR Case 2007-006), but very recently a very important respondent, the Chairman of the House Armed Services Committee, expressed his concerns with the foreign contracts exemption. Perhaps in this case, the FAR may ultimately become an acronym for "Frequently Amended Regulation".

## CAS BOARD ACTIONS

As published in the Federal Register 73 FR 8260 on February 13, 2008, the CAS Board has decided to leave intact the CAS exemption for contracts executed and performed entirely outside of the United States and its possessions.

The reasons for leaving this exemption alone were the overwhelming number of "leave it alone" respondents (three respondents who suggested that the exemption remain). Additionally, one can infer the unstated reason, the fact that the CAS Board has more significant issues to resolve including the Pension Protection Act ("Harmonization").

As one other measure of the CAS Board's workload, the Federal Register also published a request for public comments regarding the thresholds in CAS 403.40(c)(2) (thresholds which go back to 1972). Spurred by a suggestion from AIA (to use the CPI which would more than quadruple the thresholds), it's now open for public comment. However, the CAS Board also took note of the

fact that it has no data from which to assess the impact of any change; hence, one possible solution will be a data-call before a solution.

Obviously, the request for public comments is exactly that (comments are to be sent electronically to [casb2@omb.eop.gov](mailto:casb2@omb.eop.gov)). If one is contemplating a response, first recognize that there is much more to CAS 403 than just the thresholds; however, the request for public comments is very narrow. As one could observe from reading public submissions and the disposition of same, rarely if ever does a regulatory board deal with comments applicable to the "regulation", but unrelated to the questions at hand.

A good example is the COBEC discussion within our newsletter which noted that the FAR Councils summarily dismissed 15 requests for more time to respond. In other words, in the case of CAS 403, the "three" factors are not on the table (e.g. should it be "four" is not up for discussion). In the immediate case of CAS 403, the narrow focus is for a good reason; it's enough of a challenge to deal with something as sublime as the impact of time on a dollar threshold.

Lastly, regarding an increase to the threshold, which may seem automatic (given the passage of time and the devaluation of the 1972 thresholds); one should also recognize that the application is to "residual expenses" which are clearly the allocation of last resort within CAS 403. Why increase the threshold and potentially cause the wrong behavior (more residual allocations, just not constrained by the three factor formula).

## TRAINING OPPORTUNITIES

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**Date:** April 3, 2008

**Location:** Beason & Nalley  
101 Monroe Street  
Huntsville, AL 35801

**Registration:** On the web:

<http://beasonnalley.com/events/event040308.html>

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#### ***Instructors***

Mike Steen  
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Go to [www.fedpubseminars.com](http://www.fedpubseminars.com) and click on the Government Contracts tab or call Beason & Nalley at 256.533.1720.

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#### **Beason & Nalley, Inc.**

101 Monroe Street  
Huntsville, AL 35801  
Tel.: 256.533.1720  
Toll Free: 1.800.416.1946

Email: [info@beasonnalley.com](mailto:info@beasonnalley.com)

[www.beasonnalley.com](http://www.beasonnalley.com)