




POLICY FLASH 2014-12

DATE: December 18, 2013

TO: Procurement Directors/Contracting Officers


FROM: Director
Contract and Financial Assistance Policy Division
Office of Policy
Office of Procurement and Assistance Management

SUBJECT: Determination of Benchmark Compensation Amount for Certain Executives and Employees

SUMMARY: Attached for your information is the Federal Register Notice (FRN) announcing the fiscal year 2012 compensation cap amount (\$952,308) for compensation costs incurred AFTER January 1, 2012. The FRN includes the Memorandum for the Heads of Executive Departments and Agencies from Joseph Jordan, Administrator, Office of Federal Procurement Policy which sets for the benchmark compensation amount for employees of Federal Government contractors as required by Section 39 of the Office of Federal Procurement Policy (OFPP) Act, as amended ([41 U.S.C. § 1127](#)) for the purposes of section [4304\(2\)\(16\)](#) of title 41 and section [2324\(e\)\(1\)\(P\)](#) of title 10. The Executive Compensation Cap is implemented at [FAR 31.205-6\(p\)](#).

This Flash will be available online at the following website:
http://www.management.energy.gov/policy_guidance/policy_flash.es.htm.

Questions concerning this policy flash should be directed to Carol Jenkins, of the Office of Acquisition and Project Management Policy at 202-287-1827 or at Carol.Jenkins@hq.doe.gov.

Attachment

The allowability of the compensation costs for the senior executives of Government contractors is capped by statute ([10 U.S.C. 2324\(e\)\(1\)\(P\)](#) and [41 U.S.C. 4304\(a\)\(16\)](#)) at a benchmark executive compensation amount. The benchmark amount does not limit the amount of compensation that an executive may otherwise receive. However, the compensation costs in excess of the benchmark amount are unallowable costs for Government contract purposes. While the benchmark executive compensation amount is the maximum allowable amount of compensation costs for certain executives of Government contractors, the benchmark amount as applied to a particular executive is not necessarily a safe harbor. Without regard to the benchmark compensation amount, the allowable compensation costs for each affected executive are still subject to the Federal Acquisition Regulation and the Cost Accounting Standards as applicable and appropriate to the circumstances, e.g., reasonableness and allocability. The Executive Compensation Cap is implemented at [FAR 31.205-6\(p\)](#).

The Administrator, Office of Federal Procurement Policy, (OFPP), determines the benchmark executive compensation amount as required by Section 39 of the OFPP Act, as amended ([41 U.S.C. 1127](#)). The benchmark amount applicable for a fiscal year is the median amount of the compensation provided for all senior executives of all benchmark corporations per commercially available surveys for the most recent year for which data is available at the time the OFPP Administrator determines the amount. The data used is the median (50th percentile) amount of compensation (total amount of wages, salary, bonuses and deferred compensation) accrued over a recent 12-month period for the top five highest paid employees in management positions at each home office and each segment of publicly traded U.S. companies with annual sales over \$50 million. Once a benchmark compensation amount is established for a fiscal year, it is applicable for that fiscal year for a contractor and subsequent fiscal years, unless and until revised by OFPP.

The benchmark executive compensation amount for a fiscal year as determined by the OFPP Administrator applies to contract costs incurred after a stated date. If the contractor's fiscal year does not coincide with the fiscal year for the benchmark compensation amount as determined by OFPP, the benchmark compensation amount as determined by OFPP is adjusted for the contractor's fiscal year, and the benchmark amount, as adjusted, is applicable to the contractor's fiscal year. The sum of the pro-rata portions of the benchmark compensation amounts for the fiscal years straddled by the contractor's fiscal year is the benchmark amount, as adjusted, applicable to the contractor.

Benchmark Executive Compensation Amount	Fiscal Year	For Costs Incurred After	Federal Register Notice	FR Date Published	Metadata
<u>\$952,308</u>	2012	Jan 1, 2012	<u>78 FR 72930</u>	Dec 4, 2013	2 pages, 177 kb
<u>\$763,029</u>	2011	Jan 1, 2011	<u>77 FR 24226</u>	April 23, 2012	2 pages, 177 kb
<u>\$693,951</u>	2010	Jan 1, 2010	<u>75 FR 19661</u>	April 15, 2010	1 page, 41 kb
<u>\$684,181</u>	2009	Jan 1, 2009	<u>74 FR 23893</u>	May 21, 2009	1 page, 45 kb
<u>\$612,196</u>	2008	Jan 1, 2008	<u>73 FR 15779</u>	Mar 25, 2008	1 page, 50 kb
<u>\$597,912</u>	2007	Jan 1, 2007	<u>72 FR 14300</u>	Mar 27, 2007	1 page, 67 kb
<u>\$546,689</u>	2006	Jan 1, 2006	<u>71 FR 26114</u>	May 3, 2006	1 page, 62 kb
<u>\$473,318</u>	2005	Jan 1, 2005	<u>70 FR 23888</u>	May 5, 2005	2 pages, 66 kb
<u>\$432,851</u>	2004	Jan 1, 2004	<u>69 FR 26897</u>	May 14, 2004	1 page, 59 kb

documents). 5 U.S.C. App. Accordingly, the meeting will be closed to the public.

FOR FURTHER INFORMATION CONTACT: Anne M. Zollner, Chief, Trade Policy and Negotiations Division; Phone: (202) 693-4890.

Signed at Washington, DC, the 26 day of November, 2013.

Carol Pier,

Acting Deputy Under Secretary, International Affairs.

[PR Doc. 2013-29019 Filed 12-3-13; 8:45 am]

BILLING CODE 4510-28-P

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

Determination of Benchmark Compensation Amount for Certain Executives and Employees

AGENCY: Office of Federal Procurement Policy, Office of Management and Budget.

ACTION: Notice.

SUMMARY: The Office of Management and Budget is publishing the attached memorandum to the Heads of Executive Departments and Agencies announcing that \$952,308 is the "benchmark compensation amount" for certain executives and employees in terms of costs allowable under Federal Government contracts during contractors' fiscal year 2012. This determination is required under Section 39 of the Office of Federal Procurement Policy Act, as amended (41 U.S.C. 1127). The benchmark compensation amount applies to both defense and civilian agencies.

FOR FURTHER INFORMATION CONTACT: Raymond Wong, Office of Federal Procurement Policy, at 202-395-6805.

Joseph G. Jordan,
Administrator, Office of Federal Procurement Policy.

Memorandum for the Heads of Executive Departments and Agencies

FROM: Joseph G. Jordan, Administrator,
Office of Federal Procurement Policy
SUBJECT: Determination of Benchmark Compensation Amount for Certain Executives and Employees, Pursuant to Section 39 of the Office of Federal Procurement Policy Act, as amended (41 U.S.C. § 1127)

This memorandum sets forth the benchmark compensation amount for employees of Federal Government contractors as required by Section 39 of the Office of Federal Procurement Policy (OFPP) Act, as amended (41

U.S.C. § 1127) for the purposes of section 4304(a)(16) of title 41 and section 2324(e)(1)(P) of title 10. The statutory benchmark amount (the "cap") limits the allowability of compensation costs under Federal Government contracts as implemented at Federal Acquisition Regulation (FAR) 31.205-6(p). In less technical terms, the statute places a cap on the total annual compensation amount the Federal Government will reimburse a contractor for the compensation the contractor provides to each of its employees for work done pursuant to certain Federal Government contracts. This cap applies to the compensation of certain contractor senior executives on contracts with civilian agencies (i.e., agencies other than the Department of Defense (DOD), the National Aeronautics and Space Administration (NASA), and the United States Coast Guard), and the compensation of all contractor employees on contracts with defense agencies (i.e., DOD, NASA and Coast Guard), when the contractor is performing contracts that are of either a cost-reimbursable nature or other cost-based nature. It should be noted that, while the statute places a cap on the amount that the Federal Government will reimburse the contractor, the statute does not limit the amount of compensation that the contractor actually pays to its employees. Contractors can, and do, provide compensation to their employees that exceed the amount that is reimbursed by the Federal Government.

Section 39 of the OFPP Act sets out a formula for determining the cap amount. Specifically, the cap amount is set at the median (50th percentile) amount of compensation provided, over the most recent year for which data is available, to the five most highly compensated employees in management positions at each home office and each segment of all publicly-owned U.S. companies with annual sales over \$50 million. The determination is based on analysis of data made available by the Securities and Exchange Commission. Compensation means the total amount of wages, salaries, bonuses, restricted stock, deferred and performance incentive compensation, and other compensation for the year, whether paid, earned, or otherwise accruing, as recorded in the employer's cost accounting records for the year.

When the cap was raised to \$693,951 for Fiscal Year (FY) 2010, the President called on Congress to repeal the current statutory formula and replace it with a lower, more sensible limit that is on par with what the Government pays its own executives and employees. Over the last

several years, the Administration has strongly reiterated the need for reforms to the current statutory framework and Congress has considered several proposals to reform the compensation cap. To date, however, Congress has not revised the cap amount or the formula for adjusting the cap. Instead, Congress made only a modest change that expanded application of the statutory cap on defense contracts from the contractor's senior executives to all of its employees (section 803 of the National Defense Authorization Act for FY 2013, Pub. L. 112-81, December 31, 2011). This expansion of the applicability of the cap to all contractor employees did not cover contracts with the civilian agencies, so the cap for those contracts remains applicable only to certain contractor senior executives, which is defined as the five most highly compensated employees in management positions at each home office and each segment of the contractor.

After consultation with the Director of the Defense Contract Audit Agency, OFPP has determined, pursuant to the requirements of Section 39, that the FY 2012 cap amount for the compensation of a contractor employee covered by this provision is \$952,308. (By comparison, the cap for FY 2011 was \$763,029, which means that the statutorily-mandated formula for calculating the cap has generated a *one-year increase of nearly \$190,000* in the amount that taxpayers are required to reimburse contractors for their compensation practices.) This amount applies to limit the costs of compensation for contractor employees that are reimbursed by the Government to the contractor for costs incurred on all contracts, after January 1, 2012 and in subsequent contractor FYs, unless and until revised by OFPP. This applies to covered contracts for both defense and civilian procurement agencies, as specified in Section 39. Additionally, as explained above, with regard to civilian agencies, the cap continues to cover compensation to the same limited number of contractor executives as did the Section 39 caps for FY 2011 and prior years. With regard to covered contracts awarded by DOD, NASA, and the Coast Guard, the cap covers compensation for all contractor employees. Consequently, the cap may apply to different groups of contractor employees, employed by the same contractor, if that contractor has contracts with both defense and civilian agencies.

Because Congress has not changed or replaced the statutory formula for setting the cap, the Administration is compelled by statute to raise the cap for another year in accordance with that

documents). 5 U.S.C. App. Accordingly, the meeting will be closed to the public.

FOR FURTHER INFORMATION CONTACT: Anne M. Zollner, Chief, Trade Policy and Negotiations Division; Phone: (202) 693-4890.

Signed at Washington, DC, the 26 day of November, 2013.

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