



## OFPP Sets FY 2006 Cap on Executive Compensation at \$546,689

The Office of Federal Procurement Policy (OFPP) May 3 announced \$546,689 as the maximum "benchmark" executive compensation that will be allowable under federal government contracts during a contractor's fiscal year 2006.

Federal contractors may compensate their executives above this amount, but the additional compensation will not be an allowable cost that is reimbursable under their federal contracts.

The benchmark amount reflects "the median (50th percentile) amount of compensation accrued over a recent 12 month period for the top five highest paid executives of public-traded companies with annual sales over \$50 million," OFPP said. It is based on commercially available surveys that analyze the data made available by the Securities and Exchange



Commission. The amount is determined by OFPP in consultation with the Defense Contract Audit Agency.

"Compensation" is defined as the total amount of wages, salary, bonuses, deferred compensation, employer contributions to defined contribution pension plans for the fiscal year, whether paid, earned, or otherwise accruing, as recorded in the contractor's cost accounting records for the fiscal year.

The cap is established under the Office of Federal Procurement Policy Act as amended by Section 808 of the FY 98 defense authorization act (Pub. L. No. 105-85); it applies to costs incurred after Jan. 1, 2006, under "covered" contracts, whether with defense or civilian agencies.

## Tax Withholding on Payments to Federal Contractors Provision Signed into Law

Legislation was just signed into law which would make mandatory a three percent withholding of all federal government payments made to Government contractors. The provision would take effect beginning in calendar year 2011.

This means that every payment made to a Government contractor would have three percent of the gross amount deducted from each invoice submitted for services/supplies provided to a Government customer. The provision, recommended by the National Taxpayer Advocate, was enacted to allegedly overcome a trend of Government contractors being delinquent in making federal income tax payments.

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The legislation has sparked sharp criticism by many Senate and House members, and a fight is sure to come since those legislators believe the provision to be unconstitutional.

Sen. Larry Craig (R-Idaho) noted that the legislation will essentially allow the Government to take three percent of invoiced amounts interest free. He was also critical of certain groups supporting the act as a loophole closing measure, in that no such loophole exists given the purpose of the provision. In a press conference, Senator Craig stated, "It's not going to be in effect until 2010, but go out and talk to the businesses in your state that are doing business with the federal government," he said.

## DCAA Issues Guidance on Statistical Sampling FAR Revision

DCAA issued a guidance memo to its auditors on April 14 related to a change in FAR Part 31 for accounting for unallowable costs via statistical sampling techniques.

The revised FAR provision, which was effective October 2005, implements changes to FAR 31.201-6 permitting Government contractors to use statistical sampling methods for identifying and excluding unallowable costs from bids and invoiced amounts.

The DCAA guidance reminds auditors that the revised verbiage also requires Government contractors to seek an advance agreement with the ACO as to the sampling methods, and also notes that auditors are to be involved in the review and approval process of any proposal for such an advance agreement.

### **DOE to Discontinue Reimbursement for Defined-Benefits Plans**

The Department of Energy recently issued a new policy that will phase-out payments to Government contractors for costs paid to their employees under defined-benefit retirement plans, as well as certain types of medical benefit plans. The period for discontinuing reimbursement for defined-benefit pension costs will likely be negotiated on a company by company basis, but no later than March 1, 2007 for all Government contractors.

DOE stated that it will continue paying Government contractors for costs for current and retired employees' defined benefit pension and medical plans under existing contract requirements. For new employees, however, DOE will reimburse contractors only for the costs of defined-contribution pension plans such as those permitted under Section 401(k) of the tax code, and market-based medical benefit plans.

The change in policy was purportedly made to alleviate volatile fluctuations in pension and medical costs incurred by contractors, and lower costs absorbed by DOE in doing business with those companies.

### **Training Opportunities**

**Government Contract Accounting Systems Compliance**  
*Presented by Federal Publications Seminars*

**Dates:**

Nov. 1-2, 2006, Washington DC  
Dec. 6-7, 2006, Las Vegas, NV

**Course Instructors:**

Darryl Walker and Scott Butler

**For more information**, go to [www.fedpubseminars.com](http://www.fedpubseminars.com), and click on the Government Contracts tab or call Beason & Nalley.

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### **Future Newsletter Editions**

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