

September 18, 2018

Ms. Lesley Field
Administrator (Acting) - The Office of Federal Procurement Policy ("OFPP")
The Executive Office Building
725 17th Street NW
Washington, DC 20503

Subject: Error in Published Contractor Compensation Cap for Contracts Awarded on or after June 24, 2014

Reference: Web Site <https://www.whitehouse.gov/wp-content/uploads/2017/11/ContractorCompensationCapContractsAwardedafterJune24.pdf>

Dear Ms. Field,

The Financial Executives International – Committee on Government Business ("FEI-CGB") requests that your office review and correct what we have determined to be errors that have been published regarding the Contractor Compensation Cap for Contracts awarded on or after June 24, 2014 (see referenced web site).

FEI is a professional association representing the interests of more than 10,000 chief financial officers, treasurers, controllers, tax directors and other senior financial executives from major companies throughout the United States. FEI represents both the providers and users of financial information. CGB formulates policy opinions on government contracting issues for FEI in line with the views of the membership.

Section 702 of the Bipartisan Budget Act ("BBA") of 2013 (Pub. L. 113–67; enacted Dec 26, 2013) established a cap of \$487,000 per year on the amount the Federal Government will reimburse for contractor-paid employee compensation on contracts with defense and civilian agencies. By law, the cap must be adjusted annually to reflect the change in the Employment Cost Index for all workers, as calculated by the Bureau of Labor Statistics.

Pursuant to section 702(c), the new cap applies to costs of compensation incurred under contracts entered into on or after 180 days following the enactment of the Bipartisan Budget Act of FY 2013 (i.e., on or after June 24, 2014).

Specifically the act stated the following (*emphasis added*):

"(2) DEFENSE CONTRACTS.—Section 2324(e)(1)(P) of title 10, United States Code, is amended to read as follows: "(P) Costs of compensation of contractor and

subcontractor employees for a fiscal year, regardless of the contract funding source, to the extent that such compensation exceeds \$487,000 per year, ***adjusted annually to reflect the change in the Employment Cost Index for all workers, as calculated by the Bureau of Labor Statistics***, except that the head of an executive agency may establish one or more narrowly targeted exceptions for scientists, engineers, or other specialists upon a determination that such exceptions are needed to ensure that the executive agency has continued access to needed skills and capabilities.”

This Cap was established on December 26, 2013 and implemented on June 24, 2014. The requirement in the statute is for escalation to be adjusted annually. Unfortunately, the values posted on the OFPP website do not apply escalation until 24 months (2 years) after the cap was established. This is a full year after the law requires the escalation to begin.

The table below demonstrates the variance between a statutorily determined cap value (per FEI-CGB calculations) vs. the values displayed on the OFPP website.

Period	Per BBA	Per OFPP Website	BLS 12 Mo. Escalation	Calculation Per Statute	Delta	Delta %
CAP Established 12-26-2013	\$487,000					
CAP at Year End 12-31-2014		\$487,000	N/A	\$487,000	\$0	0%
CAP at Year End 12-31-2015		\$487,000	2.20%	\$497,714	(\$10,714)	(2.2%)
CAP at Year End 12-31-2016		\$500,000	2.00%	\$507,668	(\$7,668)	(1.5%)
CAP at Year End 12-31-2017		\$512,000	2.20%	\$518,837	(\$6,837)	(1.3%)
CAP at Year End 12-31-2018		\$525,000	2.60%	\$532,327	(7,327)	(1.4%)

The variance in these calculations will create inconsistency, confusion and potential disputes over the Cap values used in the contracting process. Accordingly, the FEI-CGB recommends corrections to the values currently posted on the OFPP website.

If you wish to engage with the FEI-CGB on this matter, we would be amenable to meeting with you at your convenience. Please contact Mr. Brian Cove at the FEI office in Morristown, NJ at phone number (973) 765-1092 or email at bcove@financialexecutives.org for arrangements.

Thank you for your consideration in this matter.

Sincerely,

Ms. Barbara Michael
Chairman
Financial Executives International – Committee on Government Business

Distribution: Tom Thompson – FEI Staff