



Executive Compensation Developments, July 2012

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In April 2012, the Office of Federal Procurement Policy issued a revision to their cap on executive compensation. The cap effective for costs incurred after 1/1/11 is \$763,029. Compensation in excess of this limit is deemed unallowable. The 2010 limit is \$693,951. Fiscal years not on a calendar year basis are prorated based on these amounts.

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.

Contractors awarded cost reimbursement contracts (including cost-plus-fixed-fee and time and material contracts) are typically subject to FAR 52.216-7, Allowable Costs and Payments (see also FAR 31.201-3 and FAR 31.205.6). Upon government audit, the audit agency will determine reasonableness based upon a number of factors and surveys that support executive compensation responsibility.

In June 2012, the Armed Services Board of Contract Appeals (ASBCA) rendered on decision in the *Metron, Inc. VS. DCMA*, finding in favor of Metron. Metron demonstrated that its officer compensation was below the 75th percentile of executive compensation published by in the Radford Survey. DCAA (Reston Branch) used multiple surveys, attempted to precisely match labor category descriptions to survey compensation levels and made calculated adjustments to ultimately question approximately \$586,000 of executive compensation. The adequacy of Metron's compensation levels and approach was persuasively supported by subject matter expert analyses and testimony and the use of a highly reputable survey which best fit Metron's circumstances. ASBCA found that contractors are not necessarily required to use more than one compensation survey. The record established that to the limited extent that Metron paid an executive at approximately the 75th percentile of reporting companies in the Radford Survey, the compensation level was reasonable.

A word of caution...in March 2012, the Commonsense Contractor Compensation Act of 2012, S. 2198, was introduced which would lower the maximum amount taxpayers reimburse all government

contractors for their salaries.

The Senators' bill would limit the taxpayer reimbursement for government contractor salaries to the amount of the President's salary – currently \$400,000. The measure would also extend the cap to all government contractor employees.

Currently government contractors can charge taxpayers \$693,951 (sic \$763,029) for the salaries of their top five employees, based on a federal executive compensation benchmark. Employees of government contractors outside of the top five can and do earn taxpayer-funded amounts in excess of the current benchmark.

The new bill would build on a previous measure by Senators Boxer and Grassley – which was passed as part of the National Defense Authorization Act in December – that set limits on taxpayer-funded salaries for defense contractor employees. It extended the \$693,951 (sic \$763,029) salary cap to all defense contractor employees, not just the top five.

What this means for a government contractor: Make sure you have adequate support for your executive compensation by developing comparisons to widely available surveys that reasonable match the duties, responsibilities and geographical considerations. Since audits may occur many years after the applicable period, be sure to maintain this information with your accounting records and incurred cost reports. Consider scanning this information and maintaining it in an offsite location or on the cloud