On 30 September 2016 a final rule **was published** in the Federal Register that implements the new executive compensation ceilings in the 31.205-6 cost principle. What can we say now that we haven't said before on this topic? It's not like we haven't devoted several articles to various aspects of the cost principle's focus on executive compensation.

For the record, let's stop calling it "executive compensation" because the ceiling no longer applies to the top five highest-paid executives of every business segment; the ceiling now applies to *all employees*. So it's not a limit on unequal C-Suite pay: it's a limit on compensation. Period. Forget the free market. Forget that most (if not all) Federal competitions have to list price as one evaluation factor. Forget Low-Price Technically Acceptable (LPTA) awards. Congress has directed the executive agencies (all of them) to put a limit on how much contractors can pay their employees.

Of course, we can hear the rebuttal now: "It's not a limit on compensation; it's a limit on allowable compensation. Contractors can pay their employees whatever they want, but this limits how much of that compensation the Federal government will reimburse contractors." Yeah, right. That rebuttal may make sense if the contractor is like Apple or Oracle, and only a very small percentage of sales are to the Federal government. In other cases, such as Lockheed Martin, Northrop Grumman, Raytheon, and many others, the vast majority of sales are to the Federal government, and so this rule effectively limits compensation.

But wait! Isn't there an exception built into the rule? Sure. The rule provides—

An agency head 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. In making such a determination, the agency shall consider, at a minimum, for each contractor employee in a narrowly targeted excepted position—

(A) The amount of taxpayer funded compensation to be received by each employee; and

(B) The duties and services performed by each employee.

As if that's ever going to happen.

The final rule clarifies that the date of contract award controls the compensation allowability test. That part is helpful.

Not much more to say about that.

However, speaking Oracle, did you hear that it **has decided** to end participation in GSA's Schedule 70? As the report (link in previous sentence) tells readers:

It's not going to just stop selling directly through the IT schedule, but the software giant will no longer use third-party resellers either, according to multiple sources. … Sources said Oracle decided the GSA schedules just weren't worth the hassle any longer — the compliance requirements, the potential and real threats of False Claims Act lawsuits and the new Transactional Data Reporting (TDR) rule, all played into this decision.

We'd like to opine that maybe rules such as the "executive" compensation ceilings don't make companies feel happy about selling to the Federal government. Maybe some companies – especially those like Oracle whose Federal sales are a very small percentage of total sales – are so fed up they are ready to take a walk. Who knows?

In related news, we hear through the grapevine that DCAA has taken an "interesting" position with respect to auditing the "blended rate" method of calculating allowable compensation. We hear that DCAA incurred cost auditors are telling certain contractors that they *must* use the blended rate method. (Which is wrong because it's an option, not a requirement.) We hear contractors are being told that if they don't use the blended rate method, DCAA will apply the most current (lowest) compensation ceiling, regardless of the year in which the contractor's contracts were awarded. The (alleged) DCAA approach will maximize questioned costs, of course.

In related news, the new DCAA reorganization seems to have resulted in Compensation Teams for each of the new regions. It would be nice if each Compensation Team took the same approach to evaluating contactor compensation. Experience tells us to be skeptical. But we can hope.