



PDR (PI-37)

RESPONSE TO FREEDOM OF INFORMATION ACT (FOIA) REQUEST

FOIA - 90-530

RESPONSE TYPE

FINAL PARTIAL

NOV 30 1990

DOCKET NUMBER(S) (if applicable)

REQUESTER
Ms. Vicki W. Girard

PART I - AGENCY RECORDS RELEASED OR NOT LOCATED (See checked boxes)

- No agency records subject to the request have been located.
- No additional agency records subject to the request have been located.
- Requested records are available through another public distribution program. See Comments Section.
- Agency records subject to the request that are identified on Appendixes: _____ are already available for public inspection and copying in the NRC Public Document Room, 2120 L Street, N.W., Washington, DC 20555.
- Agency records subject to the request that are identified on Appendixes: _____ are being made available for public inspection and copying in the NRC Public Document Room, 2120 L Street, N.W., Washington, DC, in a folder under this FOIA number and requester name.
- The nonproprietary version of the proposal(s) that you agreed to accept in a telephone conversation with a member of my staff is now being made available for public inspection and copying at the NRC Public Document Room, 2120 L Street, N.W., Washington, DC, in a folder under this FOIA number and requester name.
- Agency records subject to the request that are identified on Appendixes: _____ may be inspected and copied at the NRC Local Public Document Room identified in the Comments Section.
- Enclosed is information on how you may obtain access to and the charges for copying records placed in the NRC Public Document Room, 2120 L Street, N.W., Washington, DC.
- Agency records subject to the request are enclosed *.
- Records subject to the request have been referred to another Federal agency(ies) for review and direct response to you.
- You will be billed by the NRC for fees totaling \$ _____.
- In view of NRC's response to this request, no further action is being taken on appeal letter dated _____ No _____.

PART II - A - INFORMATION WITHHELD FROM PUBLIC DISCLOSURE

Certain information in the requested records is being withheld from public disclosure pursuant to the exemptions described in and for the reasons stated in Part II, sections B, C, and D. Any released portions of the documents for which only part of the record is being withheld are being made available for public inspection and copying in the NRC Public Document Room, 2120 L Street, N.W., Washington, DC, in a folder under this FOIA number and requester name.

COMMENTS * The Department of Defense referred to the NRC the below listed records for our review and direct response to you.
1. 6/21/89 - Letter to Margaret A. Willis from Ronald A. Thompson, (1 pg.). A copy of this record is enclosed.

SIGNATURE, DIRECTOR, DIVISION OF FREEDOM OF INFORMATION AND PUBLICATIONS SERVICES
Dore H. Brinsley

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UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20555

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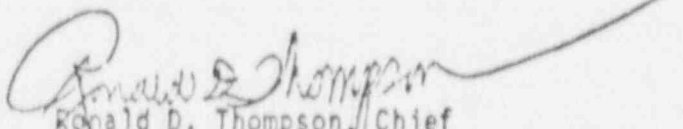
June 21, 1989

Margaret A. Willis
FAR Secretariat (VRS)
General Services Administration
Office of Acquisition Policy
18th & F Streets, NW
Room 4041
Washington, DC 20405

Dear Ms. Willis:

We have reviewed the following FAR cases and have no comment:

- FAR Case 89-28, Asset Revaluation
- FAR Case 89-31, Title to Property under Progress Payments Clause
- FAR Case 89-32, Price Reasonableness Threshold
- FAR Case 88-56, Commercial Bills of Lading under Cost Reimbursement-Type Contracts


Ronald D. Thompson, Chief
Operations Support Staff
Division of Contracts
and Property Management
Office of Administration

JUN 23 1989



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Allowable Costs

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**'GOLDEN PARACHUTES' ARE UNALLOWABLE;
DAR COUNCIL WEIGHING RELATED FAR CHANGES**

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Defense contractors may not charge the costs of "golden parachutes"—arrangements that guarantee lucrative compensation for top corporate executives in the event of a takeover—to the government because such costs neither meet the test of reasonableness nor benefit the government, the Pentagon asserted last week.

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A March 18 statement prepared by the office of Assistant Secretary of Defense for Acquisition and Logistics Robert Costello and distributed to the press says that, although the DOD procurement regulation governing allowability of contract costs does not specifically mention golden parachutes, it does require that all costs charged to government contracts must 1) be reasonable and 2) bear a causal or beneficial relationship to the work performed on such contracts.

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"The DOD position holds that the costs of 'golden parachutes' are not reasonable nor do they benefit government work," the statement says. "Accordingly, they are unallowable and have always been questioned on government contracts."

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According to one DOD source, the Defense Contract Audit Agency has not been able to identify a single instance in which DOD has allowed such costs to be included in a contractor's overhead charges; in every instance where contractors claimed such costs, those costs were disallowed.

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DAR Case Pending

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Meanwhile, the Defense Acquisition Regulatory Council is considering several changes to the Federal Acquisition Regulation that would specifically make golden parachutes and other costs associated with mergers and acquisitions unallowable.

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DAR Case 84-18, "Accounting for Mergers and Business Combinations," has been forwarded to the Council by the cost principles committee. The DAR Council is expected to make its decision on the case in a few weeks.

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One DOD source told FCR that the proposed FAR changes may entail revisions to two Cost Accounting Standards—CAS 404, Capitalization of tangible assets, and CAS 409, Depreciation of tangible capital assets.

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Dingell To Hold Hearing

The Pentagon statement on golden parachutes was issued in response to recent criticism by Reps. John Dingell (D-Mich) and Ron Wyden (D-Ore) of the methods DOD uses to reimburse contractors for the salary and bonuses they pay their top executives.

Under current cost principles, contractors may include in their overhead charges the proportion of executive compensation that corresponds to the amount of government business the contractor has.

In a March 11 letter to Defense Secretary Caspar Weinberger, Dingell and Wyden cited "bloated salaries and lavish bonuses" paid to top executives of major defense firms such as TRW and General Dynamics. They maintained that it is not fair that taxpayers should help foot the bill for such costs.

In particular, the letter criticized TRW's golden parachute arrangement, which like all such arrangements, is designed to discourage a takeover attempt by requiring that the acquiring entity continue to pay top executives of the acquired entity for a certain period of time, often at higher salaries, even after they have left the firm.

Under the TRW golden parachute arrangement, the top 14 executives would be guaranteed three years cash compensation plus bonuses.

The letter points out that, under TRW's golden parachute arrangement, those executives would be paid over \$16 million in a takeover. Roughly half that amount could be billed to the government as part of the overhead charge. TRW's chairman of the board, Ruben Mettler, would receive one-fourth of that amount—\$4.2 million—under the arrangement.

"The taxpayers would pay more for Dr. Mettler not to work than they pay for the combined annual salaries of President Reagan, Vice President Bush, and the entire Cabinet," the letter pointed out.

However, a DOD official told FCR that TRW has made an agreement with DOD that its golden parachute costs will not be charged to the government if there is a take over. The source said Dingell had been informed of the agreement. Other firms reportedly have made similar agreements with DOD.

However, Dingell and Wyden maintain that nothing in DOD procurement regulations prevents such costs from being charged to defense contracts. Their letter contends that proposed changes to the FAR that would specifically disallow such costs "have been consigned to limbo within the Pentagon's bureaucracy and have never been enacted."

DOD officials maintain that the DAR case in question, Case 84-18, has been held up because of the heavy burden the DAR Council has been under to implement statutory requirements. Costello's statement is intended to set the record straight that such costs, while not specifically unallowable at the present time, could nevertheless not be charged to a government contract.

Separately, Deputy Assistant Secretary of Defense for Procurement Eleanor Spector issued a memo March 17 to the services reminding them that the costs of golden parachutes are unallowable.

Spector also told the House Government Operations Subcommittee on Legislation and National Security March 18 that DOD has a longstanding practice of disallowing golden parachutes.

The House Energy and Commerce subcommittee on Oversight and Investigations—which Dingell chairs—plans to hold a hearing in late spring on the subject of

DAR Case Pending

Meanwhile, the DAR Council is considering a proposal (DAR Case 84-18, "Accounting for Mergers and Business Combinations," that would specifically make unallowable the cost of golden parachutes.

The pending DAR case would amend FAR 31.205-6, Compensation for Personal Services, to make unallowable the costs of golden parachutes and golden handcuffs (lucrative compensation packages by the acquiring entity to induce executives of the acquired entity to remain). In addition, the case would amend FAR 31.205-27, Organization costs, to make unallowable the costs entailed in fighting a takeover.

Also, the DAR case would amend several FAR sections, including 31.205-10, Cost of money, 31.205-11, Depreciation, and 31.205-16, Gains and losses on disposition of depreciable property or other capital assets, and 31.205-49, goodwill, to make unallowable the added cost of money and the depreciation involved write-up of asset values to current market value that typically occurs in a takeover.

In addition, the case would amend FAR 42.1200 and 42.1204 to extend the requirement for a novation agreement to include situations whereby one company gains control of another through acquisition of a majority of its stock.

The case is currently under consideration by the DAR Council. Once the Council has approved it, it will be sent to the Civilian Agency Acquisition Council for approval, and then issued as a proposed rule in the *Federal Register*.

Text of Spector's March 17 memo on golden parachutes follows:

MEMORANDUM FOR
ASSISTANT SECRETARY OF THE ARMY (RD&A)
ASSISTANT SECRETARY OF THE NAVY (S&L)
ASSISTANT SECRETARY OF THE AIR FORCE (RD&L)
DIRECTORS OF THE DEFENSE AGENCIES

SUBJECT: Golden Parachutes

An article in the *Washington Post* on March 14, 1987, stated that under Pentagon rules the costs of "golden parachutes" could be billed to the Department of Defense (DoD). Golden parachutes are usually defined as lucrative compensation packages for executives that are triggered in the event of a corporate takeover.

Although the DoD regulation governing the allowability of contract costs does not specifically mention "golden parachutes," it does require that all costs charged to Government contracts be "reasonable." A "reasonable cost" does not exceed that which would be incurred by a prudent person in the conduct of competitive business. Additionally, costs charged to Government contracts must bear a causal or beneficial relationship to the work performed on such contracts. The DoD position holds that the costs of "golden parachutes" are not reasonable nor do they benefit government work. Accordingly, they are unallowable and should be questioned on Government contracts.

The Defense Logistics Agency issued policy guidance on "golden parachutes" in early 1983 as did the Air Force. The Defense Contract Audit Agency

(DCA) issued policy guidance on normal contracts. Severance pay in the Contract Audit Manual in paragraph 4. However, you are requested to ensure that the policy guidance in this memorandum is made available to all appropriate personnel to make certain that unreasonable costs are not reimbursed on DoD contracts.

This memorandum does not apply to severance pay that meets the requirements of Paragraph 31.205-6(g) of the Federal Acquisition Regulation.

/s/ Eleanor R. Spector
Deputy Assistant Secretary of
Defense for Procurement

Contract Policy

DOD LAUNCHES TEST PROGRAM TO SIMPLIFY,
SPEED UP ACQUISITION PROCESS

Under Secretary of Defense for Acquisition Richard Godwin has launched a "procurement regulatory reform test" designed to simplify and speed up the acquisition process. To this end, he has delegated his authority to issue class deviations to the FAR and DFARS, and waivers of any DOD procurement regulation not required by statute or executive order, to the service acquisition executives, with authority to redelegate to the assistant secretary level.

"The DOD acquisition process is controlled by too many detailed, complex laws and regulations," Godwin stated in a March 11 memo to the service secretaries and the head of the Defense Logistics Agency.

"To this end, I am establishing a pilot contracting activity program. . . . The goal is to make it easier and quicker for contracting personnel to get line managers and commanders the quality products and services they need, when they need them," the memo says.

"The pilot activities should place a strong emphasis on quality and timeliness as well as price to get the best value for the nation," the memo continues. "I would also like them to test procurement methods more in line with commercial practices for both commercial and non-commercial products and services."

All class deviations or waivers and the justification for such must be reported to Assistant Secretary of Defense for Acquisition and Logistics Robert Costello. The focal point for the initiative is the office of Deputy Assistant Secretary of Defense for Installations Robert Stone.

Costello Assigns Five-point Agenda to Deputies

Separately, Assistant Secretary of Defense for Acquisition and Logistics Robert Costello has assigned his five-point agenda to five of his deputies. Costello had outlined an agenda last fall before he was confirmed by the Senate (46 FCR 1001).

Little information is available on the implementation of the five initiatives, since the assignments were made only recently.

The Costello assignments are as follows:

- Improving relations with industry—Deputy Assistant Secretary of Defense for Procurement Eleanor Spector. To this end, Spector plans to hold meetings with industry representatives on a regular basis. Also, the DAR Council will conduct meetings with industry