

“Lowest Available Airfare”—What Does That Even Mean?

Written by Nick Sanders
Thursday, 09 March 2017 00:00

Cool dude ERMan writes with a question. He asks—

... the new airfares the airlines are coming up with called Economy Basic. Travelers purchase tickets that are cheaper than regular economy but the tickets don't come with overhead bin use privileges and are only allowed one small carry-on that fits under the seat in front of you. How does this impact the lowest airfare available requirement of FAR 31.205-46? Is this new airfare class the new low benchmark?



In December, 2009, the FAR Councils—in their boundless wisdom—saw fit to issue a [final rule](#) revising the 31.205-46 cost principle “to ensure a consistent application of the limitation on allowable contractor airfare costs.” Like many similar cost principle revisions, the language was distorted and stretched and taken out of context by government auditors. (We’re looking at you , DCAA. See MRD 10-PAC-10 for an example of creating requirements where none exist in the regulation.) As a result, contractors and compliance practitioners collectively have scratched their heads regarding what the revisions actually meant and how they were to be implemented in practice.

For a rule that was intended solely “to ensure a consistent application,” the actual application has been anything but consistent.

Let’s quote from the promulgating comments of the final rule ([link above](#))—

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The travel cost principle at FAR 31.205-46(b) currently limits allowable contractor airfare costs to ‘the lowest customary standard, coach, or equivalent airfare offered during normal business hours.’ The Councils are aware that this limitation is being interpreted inconsistently, either as lowest coach fare available to the contractor or lowest coach fare available to the general public, and these inconsistent interpretations can lead to confusion regarding what costs are allowable.

The Councils believe that the reasonable standard to apply in determining the allowability of airfares is the lowest priced airfare available to the contractor. *It is not prudent to allow the costs of the lowest priced airfares available to the general public when contractors have obtained lower priced airfares as a result of direct negotiation.*

Furthermore, the Councils believe that the cost principle should be clarified to omit the term ‘standard’ from the description of the classes of allowable airfares since that term does not describe actual classes of airline service. The Councils further believe that the terms ‘coach, or equivalent,’ given the great variety of airfares often available, may result in cases where a ‘coach, or equivalent’ fare is not the lowest airfare available to contractors, and should thus be omitted.

(Emphasis added.)

Looking at the public comments and FAR Councils’ responses to those comments we see:

4. Comment: How will the Government determine the lowest priced coach class airfare available to the contractor versus the lowest priced coach class airfare available to the general public if the contractor does not have a negotiated airfare agreement with air travel providers and, therefore, only has available to it the same airfare that is available to the general public?

Response: *In the situations described by this commenter, the lowest priced coach class airfare available to the contractor and the lowest priced coach class airfare available to the general public are the same. In this regard, the revision promulgated in this FAR case has no effect on the contractor. This amendment is intended to prohibit the contractor's practice where it has*

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negotiated airfare agreements with travel providers and uses those agreements to purchase first class or business class seats but does not use the lowest priced airfare available under the agreements to determine the allowable cost baseline for the first class or business class seats, but instead determines the allowable cost based on the lowest airfare available to the general public instead of the lowest airfare available to the contractor under the agreements.

This amendment will require the contractor to use the lowest airfare available to the contractor.

(Emphasis added.)

In response to another comment, the FAR Councils stated—

The amendment is not intended to guide contractors through the decision-making process of selecting the most economical airfare with the lowest net cost when multiple corporate airfare agreements are in place, as this is properly addressed in the contractor's policies and procedures that should be applied appropriately and reasonably in the circumstances of each travel mission and its associated scheduling requirements. In relying on the contractor's procedures to select the most economical airfare appropriate in the circumstances, this amendment only seeks to clarify for the contractor that it should use the lowest airfare available to the contractor that meets the schedule requirements of the trip rather than considering only airfare available to the general public for the same flight. This amendment makes explicit that the lowest of the two should be selected as the appropriate baseline.

(Emphasis added.)

Let's summarize all that stuff above.

The contractor is *not* required to choose the lowest airfare available to it. The contractor is required to choose the “most economical airfare with the lowest net cost,” considering “the circumstances of each travel mission and its associated schedule requirements.” That is the requirement. *That is the entirety of the requirement.*

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The purpose of the revision to the cost principle was to clarify that when calculating the amount of unallowable airfare associated with premium fares (business or first class) the baseline for the allowable fare was not the standard coach fare available to the general public but, instead, the actual fare available to the contractor when the contractor had negotiated fare discounts with certain airlines. Big contractors negotiate fare discounts based on their volume of travel and then they tell their employees to travel with the airline(s) that have the agreements in place. Small contractors have no opportunity to negotiate those volume-based fare discounts and thus were not affected by the rule revision. (Notwithstanding DCAA’s creation of allowability requirements where none in fact exist.)

As noted in the FAR Councils’ comments, quoted above, a savvy contractor will create travel policies and procedures (aka, “command media”) that establish the decision-tree to be used that will result in the “most economical airfare with the lowest net cost” considering “the circumstances of each travel mission and its associated schedule requirements.”

In the situation raised by ERMan, the question to be answered (for each contractor) is whether or not it is reasonable to have travelers book a fare that does not permit use of an overhead bin. For some trips—e.g., a day trip with no associated lodging—it may well be prudent and reasonable to book the lower fare. However, for most other travel it would not be prudent and reasonable to book that fare because the traveler would be carrying luggage that would need to be stowed in an overhead bin. The alternative—checking the luggage—might result in an additional fee or might result in a schedule delay as the traveler is forced to wait for the luggage to be retrieved. (There is also the risk of lost luggage.) All of these issues need to be addressed in the contractor’s decision-tree embedded in its travel-related command media.

To summarize, the imposition of the new airfare type creates a need for contractors to revisit their travel policies and procedures. There are some circumstances where it would be prudent to use the new, lower-cost fares; and there are many circumstances where it wouldn’t be prudent to use them. The trick is to delineate those different circumstances so that the travelers (and DCAA auditors) understand the contractor’s practices in this area.

Thanks ERMan for asking this question!

If you have questions of your own that might have wider applicability, feel free to email them in.

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