



Office of the General Counsel

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February 23, 1989

Margaret A. Willis
FAR Secretariat
General Services Administration

Dear Ms. Willis:

This responds to your letter of October 28, 1988, requesting our comments on three proposed changes to the Federal Acquisition Regulation (FAR). These are FAR case Nos. 88-33, 88-54, and 88-49.

FAR case No. 88-33 is a proposal to revise the cost principle on public relations and advertising costs by deleting paragraph (h) of FAR section 31.205-1. Paragraph (h) now provides that costs made specifically unallowable under section 31.205-1 are not made allowable under any of the other cost principles, for example those dealing with employee morale (FAR section 31.205-13) or recruitment costs (FAR section 31.205-22). Conversely, costs that are specifically unallowable under other cost principles are not allowable under section 31.205-1.

The stated reason for deleting paragraph (h) is that it is thought to be inconsistent with the recent revision of FAR section 31.204(c), which provides guidance on the allowability of costs to which more than one cost principle may be relevant. FAR section 31.204(c) provides that in such circumstances the cost is to be apportioned among the relevant cost principles. If the cost cannot be apportioned, the cost principle that "most specifically deals with, or best captures the essential nature of, the cost" applies.

We would not support deleting paragraph (h) from FAR section 31.205-1. In our comments on a prior revision of this cost principle (copy enclosed), we said that we were particularly in favor of that provision because it would serve to prevent unallowable public relations costs from being recovered under other cost principles. We continue to believe that paragraph (h) serves that purpose.

Moreover, we believe the recent revision of FAR section 31.204(c) does not provide the proper guidance for determining allowability in situations where more than one cost principle may be relevant. Our specific concern is that the reference to apportionment suggests that where the allowability of a particular item is open to question, the issue may be resolved by allowing part of the item and disallowing the remainder. In our view, such compromises ought not to be encouraged. Rather, given the intent of Congress to eliminate unallowable costs being charged to defense contracts, see 10 U.S.C. § 2324 (Supp. IV 1986), we think that contracting officers should be required to make determinations that particular costs are either allowable or unallowable.

FAR case No. 88-54 is a proposal to revise FAR section 31.205-33, the cost principle on professional and consultant services costs. The revision would provide examples of costs covered by the cost principle, specify a number of circumstances under which the costs of professional and consultant services would be expressly unallowable, and describe what may be submitted as evidence of the nature and scope of services provided. We support this proposed revision.

FAR case No. 88-49 is a proposal to add provisions on the use of master solicitations at FAR sections 14.203-3 and 15.408(d). Master solicitations are documents containing essential contract provisions for the procurement of supplies or services that are bought repetitively. We have no comment on the proposed change.

Sincerely yours,



James F. Hinchman
General Counsel

Enclosure