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Know Your Cost Regulations: The Public Relations And Advertising Costs Principle (FAR 31.205-1)

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Although advertising and public relations costs are ordinary and necessary expenses for most businesses, the allowability of such costs has long been limited for Government contract purposes. Advertising and public relations costs are also a frequent target for Government auditors. Indeed, the Defense Contract Audit Agency is largely responsible for adding public relations costs to the advertising cost principle.

This article, the first in CP&A REPORT's "Know Your Cost Regulations" series, focuses on the public relations and advertising costs principle, Federal Acquisition Regulation 31.205-1 (see p. 2). The article, which has been adapted from a chapter in GOVERNMENT CONTRACT COSTS & PRICING, outlines the cost principle's coverage, describes its history, and concludes with an analysis of the issues that often arise in connection with its operation.

Coverage

The public relations and advertising costs principle makes unallowable most costs of advertising other than those related to contract performance or incurred to promote export sales of products normally sold to the Government. It also makes unallowable many types of public relations costs except those incurred to respond to inquiries, communicate with others and participate in community activities.

History

Although advertising is inarguably an ordinary and necessary cost of doing business, advertising costs have long been treated as unallowable unless specifically permitted by the cost principle, based on the theory that the Government derives no benefit from contractor advertising.¹ The 1948 edition of the Armed Services Procurement Regulation listed advertising as an example of both an allowable cost and an unallowable cost. Continuing the policy articulated in the so-called Green Book,² ASPR 15-204, Examples of Items of Allowable Costs, included

(a) Advertising in trade and technical journals, *provided* such advertising does not offer specific products for sale but is placed for the purpose of offering financial support to journals which are valuable for the dissemination of technical information within the contractor's industry (but see paragraph 205(a)).³

On the other hand, ASPR 15-205, Examples of Items of Unallowable Costs, included

(a) Advertising, except "help wanted" advertising, and advertising in trade and technical journals (see paragraph 15-204(a) and (r)).⁴

As published in the 1959 rewrite of the ASPR cost principles, the cost principle again covered only advertising—not public relations—costs, and provided that only the following four types of advertising costs were allowable: (a) advertising in trade and technical journals for dissemination of technical information within the contractor's industry; (b) help-wanted advertising, subject to the criteria of the recruitment cost principle; (c) participation in exhibits upon invitation of the Government for the purpose of disseminating technical information in the contractor's industry, provided the exhibit did not offer specific products or services for sale; and (d) advertising for the exclusive purpose of obtaining scarce materials, plants or equipment, or disposing of scrap or surplus materi-

31.205-1 Public relations and advertising costs.

- (a) "Public relations" means all functions and activities dedicated to—
 - (1) Maintaining, protecting, and enhancing the image of a concern or its products; or
 - (2) Maintaining or promoting reciprocal understanding and favorable relations with the public at large, or any segment of the public. The term public relations includes activities associated with areas such as advertising, customer relations, etc.
- (b) "Advertising" means the use of media to promote the sale of products or services and to accomplish the activities referred to in paragraph (d) of this subsection, regardless of the medium employed, when the advertiser has control over the form and content of what will appear, the media in which it will appear, and when it will appear. Advertising media include but are not limited to conventions, exhibits, free goods, samples, magazines, newspapers, trade papers, direct mail, dealer cards, window displays, outdoor advertising, radio, and television.
- (c) Public relations and advertising costs include the costs of media time and space, purchased services performed by outside organizations, as well as the applicable portion of salaries, travel, and fringe benefits of employees engaged in the functions and activities identified in paragraphs (a) and (b) of this subsection.
- (d) The only allowable advertising costs are those that are—
 - (1) Specifically required by contract, or that arise from requirements of Government contracts, and that are exclusively for—
 - (i) Acquiring scarce items for contract performance; or
 - (ii) Disposing of scrap or surplus materials acquired for contract performance;
 - (2) Costs of activities to promote sales of products normally sold to the U.S. Government, including trade shows, which contain a significant effort to promote exports from the United States. Such costs are allowable, notwithstanding paragraphs (f)(1), (f)(3), (f)(4)(ii), and (f)(5) of this subsection. However, such costs do not include the costs of memorabilia (e.g., models, gifts, and souvenirs), alcoholic beverages, entertainment, and physical facilities that are used primarily for entertainment rather than product promotion; or
 - (3) Allowable in accordance with 31.205-34.
- (e) Allowable public relations costs include the following:
 - (1) Costs specifically required by contract.
 - (2) Costs of –
 - (i) Responding to inquiries on company policies and activities;
 - (ii) Communicating with the public, press, stockholders, creditors, and customers; and
 - (iii) Conducting general liaison with news media and Government public relations officers, to the extent that such activities are limited to communication and liaison necessary to keep the public informed on matters of public concern such as notice of contract awards, plant closings or openings, employee layoffs or rehires, financial information, etc.
 - (3) Costs of participation in community service activities (e.g., blood bank drives, charity drives, savings bond drives, disaster assistance, etc.).
 - (4) Costs of plant tours and open houses (but see paragraph (f)(5) of this subsection).
 - (5) Costs of keel laying, ship launching, commissioning, and roll-out ceremonies, to the extent specifically provided for by contract.
- (f) Unallowable public relations and advertising costs include the following:
 - (1) All public relations and advertising costs, other than those specified in paragraphs (d) and (e) of this subsection, whose primary purpose is to promote the sale of products or services by stimulating interest in a product or product line (except for those costs made allowable under 31.205-38(c)), or by disseminating messages calling favorable attention to the contractor for purposes of enhancing the company image to sell the company's products or services.
 - (2) All costs of trade shows and other special events which do not contain a significant effort to promote the export sales of products normally sold to the U.S. Government.
 - (3) Costs of sponsoring meetings, conventions, symposia, seminars, and other special events when the principal purpose of the event is other than dissemination of technical information or stimulation of production.
 - (4) Costs of ceremonies such as—
 - (i) Corporate celebrations and
 - (ii) New product announcements.
 - (5) Costs of promotional material, motion pictures, videotapes, brochures, handouts, magazines, and other media that are designed to call favorable attention to the contractor and its activities.
 - (6) Costs of souvenirs, models, imprinted clothing, buttons, and other mementos provided to customers or the public.
 - (7) Costs of memberships in civic and community organizations.

als, in connection with the contract.⁵ Beginning in fiscal year 1962, the annual defense appropriation acts contained an even more restrictive prohibition against the payment of advertising costs:

No part of the funds appropriated herein shall be available for paying the costs of advertising by any defense contractor, except advertising for which payment is made from profits, and such advertising shall not be considered a part of any defense contract cost. The prohibition contained in this section shall not apply with respect to advertising conducted by any such contractor, in compliance with regulations which shall be promulgated by the Secretary of Defense, solely for (1) the recruitment by that contractor of personnel required for the performance by the contractor of obligations arising under a defense contract, (2) the procurement of scarce items required by the contractor for the performance of a defense contract, or (3) the disposal of scrap or surplus materials acquired by the contractor in the performance of a defense contract.⁶

As a result, the cost principle was revised to limit allowable advertising costs to the three categories listed in the statute.

The expansion of the cost principle to include public relations costs was in response to a pair of Armed Services Board of Contract Appeals decisions rejecting DCAA's long-standing contention that all public relations costs were "advertising" costs.⁷ In the first of the two cases, *Aerojet-General*, the ASBCA defined the term "advertising" as

characterized by the paid use of time or space to promote the sale of products either directly by stimulating interest in a product or product line, or indirectly by disseminating messages calling favorable attention to the advertiser for the purpose of enhancing its overall image to sell its products. In both instances, the advertiser controls form and content of the message and selects the medium of presentation and its timing.⁸

By contrast, the board reasoned, " 'public relations' to the extent that it involves disseminating information does not customarily involve purchased space or time and the person releasing the information has no control over whether it will be used as prepared, changed, or where and when it will appear or whether it may be discarded."⁹ Using that distinction, the board found allowable the costs incurred in

operating Aerojet's public communications department, including costs associated with (1) printing and distributing the "Aerojet General Booster"—a monthly report on the company's technological developments, progress on Government programs and personnel changes;¹⁰ (2) printing and distributing various company brochures, including the "Aerojet Company Profile" and "Aerojet Good Citizenship Campaign," reprints of a commencement address given by the corporate president, and photographs and fact sheets for news releases;¹¹ (3) conducting liaison activities with the news media and Government public affairs offices;¹² (4) participating in a city job fair;¹³ and (5) manning a press booth at an annual meeting of the American Ordnance Association.¹⁴ Because none of these activities was intended to sell company products either directly or indirectly, the board held that they were neither " 'advertising' as that term is used in the recurring provision of the Defense Department Appropriation Acts" nor " 'costs of advertising media and corollary administrative costs' within the meaning of ASPR 15-205.1"¹⁵

In the second decision, *The Boeing Co.*, the board considered the allowability of costs incurred in connection with Boeing's 50th anniversary celebration in 1966.¹⁶ The board concluded that many of the costs—including printing and postage expenses for a city-sponsored anniversary banquet, chartering a plane for dignitaries who would otherwise have been prevented from attending the banquet because of a strike by all of the nation's major airlines, making a motion picture about the company's history and paying to have it aired on television, and refurbishing a museum display—were allowable public relations costs.¹⁷ Curiously, given its rationale in *Aerojet-General*, the board held that the costs of shipping a travel model display and distributing historical posters

fall squarely within our definition of advertising, as an activity, including exhibition, to promote the sale of products either directly by stimulating interest in a product or product line, or indirectly by disseminating messages calling favorable attention to the advertiser for the purpose of enhancing its overall image to sell the products.¹⁸

More disappointing to aviation enthusiasts, the board also held that the costs of constructing a replica of Boeing's first plane and flying it along the East

Coast were by nature unreasonable and therefore unallowable.¹⁹

Initially unsuccessful in getting the Defense Acquisition Regulations Council to revise the cost principle to include public relations costs, DCAA published guidance in its *Defense Contract Audit Manual* urging auditors to challenge public relations costs on the basis of reasonableness.²⁰ DCAA also took its case to Congress.²¹ The Chairman of the House Legislative and National Security Subcommittee on Government Operations opened a July 25, 1984 hearing on public relations costs by stating,

Today we examine yet another issue involving [the Department of Defense's] management, and we ought to put that in quotes, of public funds—the practice of DOD paying defense contractors' public relations expenses, that is, expenses incurred to enhance the contractor's public image.

We will hear testimony on recent studies which indicate that a loophole exists in contract cost principles which results in reimbursement to many contractors for such items as exhibits, ceremonies, promotional materials, and gifts.

Each year the auditors of the Defense Contract Audit Agency—within the Defense Department itself, their own Defense Contract Audit Agency—question over a half billion dollars claimed by contractors as public relations expenses. However, many of the questioned costs are subsequently allowed by contracting officers and ultimately paid by the Department of Defense with taxpayers' dollars.²²

DCAA's Assistant Director, Policy and Plans, testified that public relations costs comprised many costs that were easily misclassified and lacked overall control because there was no generally accepted definition of what constitutes public relations costs, nor a requirement to identify those costs separately.²³ Moreover, he testified, the questioned costs may not be sustained by the CO or board of contract appeals even if DCAA tried to exert some cost control.²⁴

Consistently, a General Accounting Office official testified that many of the cost principles were ambiguous, and there was often a divergence of views on what were allowable costs.²⁵ He further testified that in negotiating indirect rate agreements, DOD COs generally did not segregate out individual items of questioned cost, but rather settled on a bottom-

line basis with the outcome being “a 50-50 split or somewhere thereabouts.”²⁶

The following year's defense authorization act contained a provision requiring DOD to disallow any costs included in an indirect cost rate proposal that violated a FAR or Defense FAR Supplement cost principle, and to assess a penalty (a) equal to the amount of the disallowed cost if the cost was found unallowable by clear and convincing evidence and (b) equal to twice the amount of the disallowed cost if the cost had previously been determined to be unallowable.²⁷ The act also required that defense contract auditors be present at the negotiations of indirect cost rates, and that the settlements itemize the individual questioned costs that were to be paid.²⁸

In addition, the act directed the Defense Secretary to prescribe regulations making 10 categories of costs unallowable and clarifying the cost principles applicable to 16 other categories.²⁹ Included among the unallowable costs were (1) “Costs of advertising designed to promote the contractor or its products,” and (2) “Costs of promotional items and memorabilia, including models, gifts, and souvenirs.”³⁰ Included among the categories of costs requiring clarification were air shows, community relations, selling and marketing, public relations, and advertising.³¹

Effective April 7, 1986, the cost principle was retitled “Public relations and advertising costs” and revised to restrict the allowability of public relations costs.³² Similar to the current cost principle, the April 7, 1986 revision made expressly unallowable the costs of (a) air shows, conventions and exhibits; (b) sponsoring meetings and other events unless the principal purpose was the dissemination of technical information or stimulation of production; (c) ceremonies such as corporate celebrations and new product announcements; (d) promotional material, motion pictures, brochures, handouts, magazines and other media designed to call favorable attention to the contractor and its activities; (e) souvenirs, models, imprinted clothing, buttons and other mementos; (f) costs of memberships in civic and community organizations; and (g) all other public relations costs, except those expressly allowed by the cost principle, the primary purpose of which is to promote the sale of products or services by stimulating interest in a product or product line or by disseminating messages calling favorable attention to the contractor for

purposes of enhancing the company's image to sell its products or services.³⁵

Notwithstanding congressional criticism during the July 1984 hearing of "big boondoggles" to the Paris air show,³⁴ the Supplemental Defense Appropriations Act of 1987³⁵ and FY 1988 DOD Appropriations Act³⁶ both had provisions making allowable "reasonable costs incurred to promote American aerospace exports at domestic and international exhibits."³⁷ The FY 1989 Defense Authorization Act expanded this provision to make allowable costs incurred in promoting the export of all U.S. defense industry products, including exhibiting or demonstrating products.³⁸ Specifically, it revised 10 USCA § 2324(f) to add the following new ¶ (5):

The regulations shall provide that costs to promote the export of the United States defense industry, including costs of exhibiting or demonstrating products, shall be allowable to the extent that such costs—

(A) are allocable, reasonable, and not otherwise unallowable;

(B) with respect to the activities of the business segment to which such costs are being allocated, are determined by the Secretary of Defense to be likely to result in future cost advantages to the United States; and

(C) with respect to a business segment which allocates to Department of Defense contracts \$2,500,000 or more of such costs in any fiscal year of such business segment, are not in excess of the amount equal to 110 percent of such costs incurred by such business segment in the previous year.³⁹

Both FAR 31.205-1 and the selling cost principle at FAR 31.205-38 were amended effective May 15, 1991, to implement this new provision.⁴⁰ Among other things, the revision deleted ¶ 31.205-1(g), added the current ¶ (d)(2) to the list of allowable advertising costs, and revised ¶ (f)(2) of the list of unallowable public relations and advertising costs to limit its applicability to trade shows and other special events that are not a significant effort to promote the export of products normally sold to the Government.

As a result of the frequent statutory changes and temporarily overlapping coverage in the DFARS, de-

termining the allowability of air shows, special events, and trade shows intended to promote export sales has been somewhat problematic. The DCAM includes the table on p. 6 as a guide to its auditors.⁴¹

There were other relatively minor changes to the cost principle during the 1990s. Section 2101 of the Federal Acquisition Streamlining Act of 1994 added the costs of "conventions" to the list of costs to be clarified in the cost principles.⁴² Accordingly, effective Oct. 1, 1995, ¶ (f)(3) of the cost principle's list of unallowable public relations and advertising costs was amended to add the word "conventions."⁴³

In response to recommendations from GAO and the Office of Management and Budget, ¶ (f)(5) of the same list was revised, effective Feb. 18, 1997, to remove the parenthetical "(but see 31.205-13(a), Employee morale, health, welfare, food service, and dormitory costs and credits; 31.205-21, Labor relations costs; 31.205-43, Trade, business, technical, and professional activity costs; and 31.205-44, Training and education costs)."⁴⁴ Effective May 16, 1997, the selling cost principle at FAR 31.205-38 was revised to remove the ceiling on foreign selling costs, and ¶ (d)(2) of FAR 31.205-1 was revised to remove the reference to the ceiling.⁴⁵ Finally, ¶ (d) was revised for "streamlining purposes," effective May 3, 1999, by replacing one of the allowability criteria for advertising costs, "Recruiting personnel required for performing contractual obligations, when considered in conjunction with all other recruitment costs (but see 31.205-34)," with "Allowable in accordance with 31.205-34."⁴⁶

Analysis

The cost principle treats advertising costs and public relations costs differently. Paragraph (d) of the cost principle contains an *exclusive* list of allowable advertising costs. Consequently, all advertising costs not specified in ¶ (d) are unallowable.⁴⁷

For example, *Rough Rock Demonstration School Board*, which involved an analogous cost principle applicable to Indian Self-Determination and Education Assistance Act contracts, disallowed costs originally recorded under the heading "personnel department" and later changed to "advertising" because the materials (a color brochure and video tape) had a dual purpose

of recruiting teachers and attracting students, and the contract permitted advertising only for the recruitment of personnel required for the contract.⁴⁸ The board expressed sympathy “with the difficulties that must have been involved in attempting to operate a school, recruit new teachers and new students, correct past deficiencies, and upgrade and stabilize a curriculum, following a performance evaluation that urged a closing of the secondary school altogether,” and acknowledged that “[i]t cannot be easy to go back and re-read a [Bureau of Indian Affairs] contract and its incorporated references in connection with each and every action the school

board contemplated during the course of the school year.” However, the board stated, “that is what a Government contractor—not just a BIA contractor, but any Government contractor—is required to do. The appellant in this case can be no exception. Consequently, we cannot grant it the equitable relief it so obviously seeks.”

By contrast, the listing of allowable public relations costs in ¶ (e) is *illustrative* rather than exclusive. Therefore, costs of other, similar activities are allowable, provided the costs meet the general tests of allowability and are not prohibited by ¶ (f).

Contract Dates	DOD Contracts	All Other Government Contracts
5/16/97 – Current	(1)	(1)
5/15/91 – 5/15/97	(2)	(2)
4/12/88 – 5/15/91		
Costs incurred on or after the start of the contractor’s 1st fiscal year beginning on or after 12/15/88.	(3)	(4)
Costs incurred prior to the start of the contractor’s 1st fiscal year beginning on or after 12/15/88.	(4)	(4)
Prior to 4/12/88	(5)	(6)
<p>(1) Costs of “significant” effort to promote export sale of product normally sold to the U.S. government are allowable. This includes air shows, trade shows, and special events.</p> <p>(2) Costs of “significant effort” to promote export sale of products to the U.S. government are allowable subject to a ceiling. This includes air shows, trade shows, and special events.</p> <p>(3) (a) for DoD contracts open as of 5/15/91, (2) is retroactively applied to fiscal years beginning on or after 12/15/88. (b) For DoD contracts open as of 12/15/88 but closed prior to 5/15/91, costs of “significant effort” to promote export sales of U.S. defense industry products were allowable subject to a ceiling. DoD contracts have specific coverage in the DFARS that is applied in place of the FAR coverage. The FAR coverage remained applicable to non-DoD contracts as discussed in (4) below. For these DoD contracts, DFARS 231.205-1 and 231.205-38 provided that the costs of activities which contain “significant efforts” to promote exports of U.S. defense industry products are allowable.</p> <p style="text-align: center;">* * * *</p> <p>(4) The following costs to promote American aerospace exports at domestic and international exhibits, such as air shows, trade shows, and conventions, were allowable provided they were reasonable:</p> <ul style="list-style-type: none"> • Transportation of the aircraft; • Aerospace parts and equipment; • Other associated support cost. <p style="text-align: center;">* * * *</p> <p>(5) For DoD contracts awarded prior to April 12, 1988 and completed before the start of the contractor’s first fiscal year beginning on or after December 15, 1988, air shows, trade shows, and conventions were generally unallowable. However, for DoD contracts awarded prior to April 12, 1988 and still in progress on or after the start of the contractor’s first fiscal year beginning on or after December 15, 1988, air shows, trade shows, and convention costs are generally allowable as described in (2) and (3).</p> <p style="text-align: center;">* * * *</p> <p>(6) For contracts with the U.S. government other than with DoD awarded prior to April 12, 1988 and completed prior to May 15, 1991, air shows, trade shows, and conventions were generally unallowable. However, for non-DoD contracts awarded prior to April 12, 1988 and still in progress on or after May 15, 1991, air shows, trade shows, and convention costs are generally allowable as described in (2) if incurred on or after May 15, 1991.</p> <p style="text-align: center;">* * * *</p>		

The unallowability rules in ¶ (f) focus on both the purpose and form of the activity. Public relations and advertising costs, other than those listed in ¶¶ (d) and (c) of the cost principle, are unallowable if their primary *purpose* is to promote the sale of company's products or services by either stimulating interest in a product or product line, or disseminating messages for the purpose of enhancing the company image. And regardless of the purpose, the costs of souvenirs, models, imprinted clothing, buttons and other mementos provided to customers or the public are unallowable. Government auditors frequently ignore the qualifier "provided to customers or the public," and question the costs of such items even if provided to the contractor's employees.

For both public relations and advertising, the term "costs" is defined broadly to include the costs of media time and space and services purchased from outside organizations, as well as the applicable portion of salaries, travel and fringe benefits of employees engaged in public relations or advertising activities. The DCAM has without any citation to authority expanded this list to include "an allocable share of supervision, space, utilities, and administrative costs."⁴⁹

Summary

Although there have been relatively few reported cases addressing the public relations and advertising costs principle, these costs are likely to remain an area of audit focus.

❖ Endnotes

- 1 See Explanation of Principles for Determination of Costs Under Government Contracts, ¶ 51 (April 1942) ("As a general rule advertising is an inadmissible item of cost, on the reasoning that advertising is not required in order to do business with the Government.").
- 2 The "Green Book" was a pamphlet of cost principles issued in April 1942 by the War and Navy departments for use in determining costs under their cost-reimbursement supply contracts. The pamphlet, entitled "Explanation of Principles for Determination of Costs Under Government Contracts," was popularly known as the "Green Book" because of the color of its cover. The text of the "Green Book" is reprinted in Appendix B of GOVERNMENT CONTRACT COSTS & PRICING.
- 3 ASPR 15-204 (1948 Ed.).
- 4 ASPR 15-205 (1948 Ed.). The referenced ¶ 15-204(r) covered "Recruiting (including 'help wanted' advertising) and training of personnel."
- 5 ASPR 15-205.1 (1955 Ed., Rev. 50).
- 6 Department of Defense Appropriation Act, 1962, P.L. 87-144, § 636, 75 Stat. 365 (1961).
- 7 See *The Boeing Co.*, ASBCA 14370, 73-2 BCA ¶ 10325 at 48742, 16 GC ¶ 327; *Aerojet-Gen. Corp.*, ASBCA 13372, 73-2 BCA ¶ 10307 at 48650, mot. for recon. denied, 73-2 BCA ¶ 10164, 16 GC ¶ 6.
- 8 *Aerojet-Gen.*, 73-2 BCA ¶ 10164 at 47845.
- 9 *Id.* at 47842-43.
- 10 *Id.* at 47847.
- 11 *Id.* at 47848.
- 12 *Id.*
- 13 *Id.* at 47849.
- 14 *Id.*
- 15 *Id.*
- 16 *The Boeing Co.*, 73-2 BCA ¶ 10325 at 48740.
- 17 *Id.* at 48742-44.
- 18 *Id.* at 48744.
- 19 *Id.* at 48744.
- 20 DCAM ¶ 7-1203.1b (May 1979).
- 21 Additionally, DCAA apparently decided to engage in a little public relations of its own. The March/April 1984 issue of *Common Cause Magazine* contained an article decrying the fact that taxpayers were paying millions "to polish the defense industry's image." Florence Graves, "Lookin' Good," *Common Cause Magazine* 13-21 (March/April 1984). The article discusses the *Boeing* and *Aerojet-General* decisions, DCAA's repeated attempts to force a change in the cost principle, and its refusal to accept "no" for an answer. *Id.* at 21. It concludes by quoting an unnamed, former DCAA official as saying that DCAA probably should not be too optimistic about its chances of changing the regulation because, "They've already been told, 'no'—'Hell no'—four times." *Id.*
- 22 Public Relations Costs Charged to DOD Contracts: Hearing Before the Subcomm. on Legislation and National Security of the House Comm. on Government Operations, 98th Cong. 1-2 (Jul. 25, 1984) (hereinafter "Public Relations Hearing") (opening statement by Rep. Jack Brooks (D-Texas)).
- 23 *Id.* at 38-39 (statement by Fred J. Newton, Assistant Director, Policy and Plans, DCAA).
- 24 *Id.* at 39.
- 25 *Id.* at 17, 26-27 (statement of Frank C. Conahan, Director, National Security and International Affairs Division, GAO). GAO changed its name to the Government Accountability Office on July 7, 2004. The change was made as a result of the GAO Human Capital Reform Act of 2004, and is intended to better reflect the full breadth of GAO's oversight role. See GAO Human Capital Reform Act of 2004, P.L. 108-271, § 8, 118 Stat. 811 (Jan. 20, 2004).
- 26 *Id.* at 27.
- 27 Defense Procurement Improvement Act of 1985, P.L. 99-145, tit. IX, pt. A, § 911(a)(1), 99 Stat. 682 (Nov. 8, 1985), codified at 10 USCA § 2324.
- 28 *Id.*
- 29 *Id.*
- 30 *Id.*
- 31 *Id.*
- 32 51 Fed. Reg. 12296 (April 9, 1986).
- 33 *Id.*
- 34 Public Relations Hearing, *supra* at 26 (statement of Rep. Brooks).
- 35 Supplemental Appropriations Act of 1987, P.L. 100-71, tit. I, § 4, chap. II, 101 Stat. 391, 398 (July 11, 1987).

36 FY 1988 Department of Defense Appropriations Act, P.L. 100-202, § 8062, 101 Stat. 1329-43, 1329-73 (Dec. 22, 1987).

37 These statutory provisions were implemented by interim rule effective April 12, 1988. 53 Fed. Reg. 12128 (April 12, 1988), as corrected by 53 Fed. Reg. 13274 (April 22, 1988). The interim rule moved the existing ¶ (g) to (h) and added a new ¶ (g) to the cost principle as follows:

(g) Notwithstanding the provisions of paragraph (d) and subparagraph (f)(2) of this subsection, reasonable costs incurred to promote American aerospace exports at domestic and international exhibits, such as air shows, trade shows, and conventions, are allowable. Such reasonable costs include transportation of the aircraft, aerospace parts and equipment, and other associated support cost. However, such allowable costs shall not include the cost of entertainment, hospitality suites or chalets, advertising media other than exhibits, and other costs not necessary to establish, operate, or maintain an exhibit, display, or demonstration so long as Section 8062 of Pub. L. 100-202, or a similar provision in a subsequent act, is in effect.

(h) Costs made specifically unallowable under this subsection 31.205-1 are not made allowable under subsections of Subpart 31.2 such as 31.205-13, Employee morale, health, welfare, food service, and dormitory costs and credits; 31.205-22, Legislative lobbying costs; 31.205-34, Recruitment costs; 31.205-39, Selling costs; 31.205-43, Trade, business, technical, and professional activity costs; or 31.205-44, Training and education costs. Conversely, costs that are specifically unallowable under these and other subsections of Subpart 31.2 are not made allowable under this subsection.

FAR 31.205-1(g), (h) (1988). Paragraph (h) was subsequently eliminated, effective Sept. 20, 1989. 54 Fed. Reg. 34755 (Aug. 21, 1989).

38 FY 1989 National Defense Authorization Act, P.L. 100-456, § 826, 102 Stat. 1918 (Sept. 9, 1989).

39 Id. at § 826(a).

40 56 Fed. Reg. 15142 (April 15, 1991).

41 DCAM ¶ 7-1202.2g (April 8, 2011).

42 FASA, P.L. 103-355, 108 Stat. 3273 (1994).

43 60 Fed. Reg. 42659 (Aug. 16, 1995).

44 61 Fed. Reg. 67422 (Dec. 20, 1996). The drafters' comments accompanying publication of the rule noted that GAO's Nov. 20, 1992 report, *Contract Pricing: Unallowable Costs Charged to Defense Contracts*, recommended that the cost principles at FAR 31.205-1, 31.205-13 and 31.205-14 be revised to eliminate confusion as to which cost principle was controlling, and that a December 1992 "OMB SWAT" summary report on civilian agency contracting practices also recommended these cost principles be made more explicit.

45 62 Fed. Reg. 12703 (March 17, 1997).

46 64 Fed. Reg. 10547 (March 4, 1999).

47 See *Starks Contracting Co., Inc.*, VABCA 1339, 79-2 BCA ¶ 14018 (upholding Government's disallowance of advertising costs because "Appellant offered no evidence to show, nor did it assert, that its advertising costs fell into one or more of the allowable categories under the [Federal Procurement Regulation]"); c.f., also *Garrett Corp.*, ASBCA 13024, 69-2 BCA ¶ 7797 (noting that "some selling costs present severe questions regarding their legality and allowability under ASPR 15-205.1 ('Advertising Costs'), 15-205.8 ('Contributions and Donations') and 15-205.11 ('Entertainment Costs')").

48 *Rough Rock Demonstration School Bd.*, IBCA 2373, 88-3 BCA ¶ 21013.

49 DCAM ¶ 7-1202c(2)(ii).