

## Chapter 58 – Professional and Consultant Service

### Authoritative Sources

[FAR 31.205-33](#) Professional and Consultant Service

Professional and consultant service costs represent expenses for services rendered by persons –

- who are members of a particular profession or possess a special skill and
- who are not officers or employees of the contractor.

Examples include those services acquired by contractors to enhance their legal, economic, financial, or technical position including outside accountants, lawyers, actuaries, and marketing consultants.

### General Audit Guidelines

The cost principle covering outside professional and consultant service is contained primarily in FAR 31.205-33, Professional and consultant service costs. When evaluating the nature of the services for allowability the audit team should consider the unallowable activities identified in FAR 31.205-33(c) as well as the provisions of other cost principles as applicable.

The audit team's assessment of the underlying nature of the claimed costs determines whether FAR 31.205-33 is applicable and not the contractor's accounting classification. For instance, contractors may record expenses for purchased labor (e.g., janitorial, clerical, security) in a "Consultant" or "Professional Services" account; this does not make these costs subject to the requirements of FAR 31.205-33. Likewise, costs recorded in other accounts may be professional and consultant service costs and the auditor should evaluate the costs using the criteria of FAR 31.205-33. The Frequently Asked Questions (FAQs) provided at the end of this chapter provide several scenarios to assist in implementing this guidance. FAQs 1 through 5 deal specifically with determining if FAR 31.205-33 applies.

FAR 31.205-33(f) contains specific documentation requirements to ensure that professional and consultant service costs can be determined allowable. Auditor judgment is critically important in determining whether the totality of the evidence demonstrates the nature and scope of the services provided.

This chapter addresses the following topics:

**58-1** Documentation Requirements and Audit Evidence

**58-2** Unallowable Costs under FAR 31.205-33 and Other Cost Principles to Consider

**58-3** Factors to Consider in Determining Allowability

## 58-1 Documentation Requirements and Audit Evidence

FAR 31.205-33(f) contains three documentation requirements to ensure that professional and consultant service costs can be determined allowable: (1) details of all agreements; (2) invoices or billings; and (3) consultant work product and related documents.

### **AUDIT GUIDELINES:**

We have to assure ourselves that there is an agreement between the contractor and the consultant, we have to see the invoices, and be able to determine the work product from the consultant to assess the propriety and legality (i.e., allowability) of the consultant services. The type of [evidence](#) satisfying the documentation requirements will vary significantly based on the type of consulting effort and from contractor to contractor. Therefore, it is important for the audit team to understand that the evidence required from the [contractor](#) is essentially the following:

1. An agreement that explains what the consultant will be doing for the contractor;
2. A copy of the bill for the actual services rendered. This should include sufficient evidence as to the time expended and nature of the services provided to determine what was done in exchange for the payment requested, and that the terms of the agreement were met. This documentation does not need to be included on the actual invoice and can be supported by other evidence provided by the contractor; and
3. Explanation of what the consultant accomplished for the fees paid – this could be information on the invoice, a drawing, a power point presentation, or some other evidence of the service provided.

The claimed costs are unallowable without evidence of an agreement, an invoice, and what work the consultant actually performed. It is important to clarify that the audit team is looking for evidence to satisfy these three areas and not a specific set of documents. Therefore, auditor judgment will be the determining factor on the type and sufficiency of evidence required to satisfy these requirements.

The third category of evidence (work product) provides support for the work actually performed by the consultant (in contrast to the first category of evidence regarding the work planned). Although a work product usually satisfies this requirement, other evidence may also suffice. If the contractor provides sufficient evidence demonstrating the nature and scope of the actual work performed, the FAR 31.205-33(f)(3) requirements are met even if the actual work product (for example, an attorney's written advice to the contractor) is not provided. The auditor should not insist

on a work product if other evidence provided is sufficient to determine the nature and scope of the actual work performed.

FAQs 6 through 10 provide various scenarios to assist audit teams in applying this guidance.

In cases where the audit team cannot gather sufficient documentation to support the evidence requirements of FAR 31.205-33(f), but other evidence leads the team to conclude the activity is an otherwise allowable activity and reasonable in amount, the team should cite the FAR 31.205-33(f) non-compliance and question the cost. In the audit report note, the team should include a discussion of the evidence supporting why the activity is otherwise allowable and reasonable in amount, so that the contracting officer can make a fully informed business decision.

## **58-2 Unallowable Costs under FAR 31.205-33 and Other Cost Principles to Consider**

Audit teams should consider the unallowable activities specified in FAR 31.205-33, as well as the provisions in other cost principles in determining the allowability of professional and consultant service costs.

### **AUDIT GUIDELINES:**

FAR 31.205-33 identifies certain consultant costs and activities as unallowable. For instance, consultant costs contingent upon recovery from the Government are unallowable under FAR 31.205-33(b). In addition, audit teams should consider the unallowable activities specified in FAR 31.205-33(c):

(1) Services to improperly obtain, distribute, or use information or data protected by law or regulation (e.g., 52.215-1(e), Restriction on Disclosure and Use of Data) – FAR 31.205-33(c)(1)).

(2) Services that are intended to improperly influence the contents of solicitations, the evaluation of proposals or quotations, or the selection of sources for contract award, whether award is by the Government, or by a prime contractor or subcontractor – FAR 31.205-33(c)(2)).

(3) Any other services obtained, performed, or otherwise resulting in violation of any statute or regulation prohibiting improper business practices or conflicts of interest – FAR 31.205-33(c)(3)).

(4) Services performed which are not consistent with the purpose and scope of the services contracted for or agreed to – FAR 31.205-33(c)(4)).

Audit teams should also consider whether claimed professional and consultant service costs may be unallowable under the provisions of other cost principles.

If the audit team obtains only part of the evidence required by FAR 31.205-33(f), but the audit team determines from the evidence that the activity performed by the consultant is unallowable based on another provision of FAR, the audit team should question the cost – citing the specific provision first (e.g., FAR 31.205-1, Public Relations and Advertising Costs) – followed by a discussion of how the requirements of FAR 31.205-33(f) were not met.

In cases where the FAR 31.205-33(f) documentation requirements are met, but the consultant costs are unallowable based on another provision of FAR, the costs should be questioned by citing just the specific provision (e.g., FAR 31.205-1, Public Relations and Advertising Costs), and not citing FAR 31.205-33(f). Refer to FAQ 11 for a scenario illustrating the application of this guidance.

### **58-3 Factors to Consider in Determining Allowability**

FAR 31.205-33 provides factors for consideration in determining the allowability of professional and consultant service costs.

#### **AUDIT GUIDELINES:**

The factors identified in FAR 31.205-33(d) for consideration in determining allowability are:

- (1) The nature and scope of the service rendered in relation to the service required.
- (2) The necessity of contracting for the service, considering the contractor's capability in the particular area.
- (3) The past pattern of acquiring such services and their costs, particularly in the years prior to the award of Government contracts.
- (4) The impact of Government contracts on the contractor's business.
- (5) Whether the proportion of Government work to the contractor's total business is such as to influence the contractor in favor of incurring the cost, particularly when the services rendered are not of a continuing nature and have little relationship to work under Government contracts.
- (6) Whether the service can be performed more [economically](#) by employment rather than by contracting.
- (7) The qualifications of the individual or concern rendering the service and the customary fee charged, especially on non-Government contracts.
- (8) Adequacy of the contractual agreement for the service (e.g., description of the service, estimate of time required, rate of compensation, termination provisions).

In assessing allowability, no single factor or any special combination of factors is determinative. Also, this is not an all-encompassing list – other factors may also be appropriate for consideration in determining allowability.

## **58-4 Retainer Fees**

Contractors may engage outside professionals and consultants on a retainer-fee basis.

### **AUDIT GUIDELINES:**

For retainer fees to be allowable, FAR 31.205-33(e) requires that contractors maintain documentation to support the following:

- (1) the services covered are necessary and customary,
- (2) the [fee](#) is reasonable in comparison with maintaining an in-house capability, and
- (3) the level of past services justifies the amount of the retainer fees.

Circumstances where consultants do not render services do not automatically make retainer fees unallowable.

### **Frequently Asked Questions**

**Question 1:** A contractor uses a temporary accounting service to perform bookkeeping activities. The accounting service provided several individuals to input vendor invoices into the contractor's accounts payable system after the buyers approved them for payment. Are these costs professional and consultant services?

**Answer:** No. Accounting, by any reasonable interpretation, is a profession under the FAR 31.205-33(a) definition. However, the type and nature of the work performed in this example represents clerical effort that is not a professional and consultant service. Accordingly, it would not be appropriate to evaluate these costs using FAR 31.205-33 criteria.

**Question 2:** The contractor enters into an agreement with an individual to perform program management activities for one of its contracts. In this capacity, the individual worked directly with contractor employees and contractor management to track and monitor progress on contract performance. Is this a consultant and should the audit team require documentation consistent with the FAR 31.205-33(f) criteria?

**Answer:** No. In this circumstance, the individual is equivalent to a contractor employee. The contractor integrated the individual as an inherent part of operations and no single work product exists to demonstrate the effort expended. The individual's contribution was to the overall management of contract performance. Accordingly, it would not be appropriate to evaluate these costs using FAR 31.205-33 criteria.

**Question 3:** The contractor hired a thermal engineer to address a program-specific technical issue. The contractor charges the costs direct to the benefitting CAS-covered contract. The extent of technical input required was significant and the value of the agreement is over \$1 Million. Should the audit team use the criteria in FAR 31.205-33 to evaluate these costs?

**Answer:** The individual possesses a specialized skill and provides a service to enhance the technical capability of the contractor consistent with the FAR 31.205-33(a) definition. Accordingly, the contractor has appropriately classified the thermal engineer as a consultant. Whether the contractor charges the costs direct or indirect does not affect whether the costs meet the FAR 31.205-33(a) definition. In addition to applying the documentation requirements in FAR 31.205-33(f), the audit team should evaluate the contractor's approach for selecting and compensating the consultant to ensure that the amounts are reasonable. FAR 31.205-33(d) provides considerations for determining allowability including:

- Qualifications of the individual or concern rendering the service and the customary fee charged, especially on non-Government contracts.
- Adequacy of the contractual agreement for the service (e.g., description of the service, estimate of time required, rate of compensation, termination provisions).

**Question 5:** The contractor uses outside writers to augment their in-house staff in preparing technical publications and we are unsure whether they are consultants or not. The contractor's staff prepares drafts of the manuals focusing on technical content. The outside writers proofread the drafts and make recommendations to improve readability.

**Answer:** Since the effort performed by the outside writers does not enhance the contractor's legal, economic, financial, or technical position, they do not meet the definition of a consultant. Since these costs represent purchased labor, the audit team should consider the guidance relating to purchased labor discussed above.

**Question 6:** The contractor engages an efficiency engineer to evaluate the design of the manufacturing process. The contractor classifies the engineer as a consultant and provided documentation supporting the claimed amounts. Our initial fieldwork found that both the agreement and the billings submitted by the engineer clearly satisfy the FAR 31.205-33(f) requirements. However, the documentation for work product is limited to a single agenda item from an executive meeting where the contractor contends the engineer verbally presented his recommendations (which the contractor asserts they adopted). Is this sufficient evidence of work product to accept these costs?

**Answer:** No, but the audit team should apply other audit procedures to collect corroborative evidence. One example would be if the contractor demonstrates action taken to revise the manufacturing process tied directly to the consultant's recommendations. Other corroborative evidence may include the auditor's physical inspection of the contractor's manufacturing facility identifying the recommended improvements, interviews with the contractor employees involved in the manufacturing

process, and coordination with a DCMA technical specialist or Government program office technical support staff.

**Question 7:** The contractor provides an agreement and invoices in support of claimed consultant costs as part of an incurred cost audit. The contractor does not have evidence supporting the consultant's work product, but offers to obtain a letter from the consultant describing the work performed, which in this case involved attending technical meetings with Air Force program officials. The contractor further indicates the same Air Force officials are still on the program and will be visiting next week to discuss follow-on effort. The contractor offers to set up a meeting with the Air Force officials to permit the auditors to confirm the consultant's participation. Should the audit team consider the consultant letter and meet with the program officials as part of their determination of the allowability of the consultant costs?

**Answer:** The audit team should consider the consultant's testimonial evidence and should meet with the Air Force program officials. The testimonial evidence provided by the consultant is similar to a third party confirmation (i.e., evidence from outside the contractor's organization). However, since it was prepared several years after-the-fact, it may not be sufficient on its own. The meeting with the Air Force program officials corroborates the contractor and consultant assertions and provides an independent confirmation. In this case, the audit team should consider the sufficiency and appropriateness of all evidence (contemporaneous and from a later period) in reaching a conclusion. If the audit team was unable to corroborate the testimonial evidence of the consultant with the Air Force program officials, they should consider other appropriate audit procedures, such as having the contractor arrange a meeting with the consultant to confirm legitimacy (i.e., the consultant actually exists) and to gather additional evidence regarding the actual work performed by the consultant.

**Question 8:** The contractor hires an international marketing consultant to evaluate and recommend new areas to promote, sell, and distribute products (market planning activities). The agreement provides for a \$12,000 monthly flat-fee payment. In submitting invoices, the consultant references the agreement and details the actual services provided. However, the billings do not include details on the number of hours worked. Should the audit team question these costs under FAR 31.205-33(f)(2) because the invoices do not detail the time expended?

**Answer:** The audit team should not automatically question the consultant costs simply because the invoice does not detail the time expended. The audit team should first review the billings in combination with the terms of the agreement. Then meet with the contractor to ascertain what other evidence the contractor can provide to determine if the payment is consistent with the services agreed to and provided. Further testing should determine the nature and scope of the services planned and actually performed to ensure the allowability of the costs. The auditor also should ensure the amount paid is reasonable for the services performed and sufficient evidence exists to establish that the consultant performed the services.

**Question 9:** A consultant provided a training course to the contractor's pricing group on how to prepare proposals that comply with the requirements of FAR Part 15. The contractor provided a copy of the agreement and the paid invoice. The contractor also provided a list of attendees, but the contractor does not have a copy of the training material used by the consultant to serve as evidence of work product. Should the audit team question the consultant costs due to lack of documentation?

**Answer:** Not necessarily. The agreement, paid invoice, and some evidence that the class was actually given is sufficient to satisfy the FAR 31.205-33(f) requirements. The audit team could further support that the class occurred by collecting testimonial evidence through interviews conducted with employees listed as attendees.

**Question 10:** The contractor engaged a consultant to assist in the preparation of a major procurement proposal. The contractor provided the consultant agreement which allowed for billings at a fixed rate per hour and monthly invoices which showed hours billed by day. The contractor also showed the audit team a copy of the proposal – all twelve binders – indicating “surely three feet of paper satisfies the work product requirement.” Should the audit team accept the claimed costs?

**Answer:** Not based on this evidence alone. While the agreement and invoices satisfy a portion of the evidence requirements, the proposal by itself does not demonstrate what work the consultant actually performed. The contractor must provide additional corroborative evidence that demonstrates the consultant's connection with the preparation of the proposal. Examples of evidence that would demonstrate this connection might be correspondence or emails showing the consultant's review of draft sections of the proposal, meeting minutes or lists of attendees for discussions on the proposal that included the consultant, or documentation of input the consultant provided that the contractor incorporated into the proposal.

**Question 11:** The contractor's incurred cost claim includes expenses paid to a public relations firm hired to improve the company's image. The contractor booked the costs as a consultant and, in support of the claimed amounts, provided an agreement, billings, and work product. The agreement describes in detail the work requirements, rates of compensation, etc. The invoice billings include sufficient detail as to the time expended and the nature of the actual services provided. The work product includes trip reports, weekly memoranda of activities completed, and a final report. Since the contractor met all of the documentation requirements, is the claimed cost allowable?

**Answer:** No. Notwithstanding the meticulous documentation provided by the contractor for this consultant, the underlying costs are unallowable under FAR 31.205-1, Public relations and advertising costs. In evaluating the nature of the services for allowability, the audit team should consider the unallowable activities identified in FAR 31.205-33(c) as well as the provisions of other cost principles, as applicable (e.g., FAR 31.205-22, Lobbying and political activity costs; FAR 31.205-27, Organization costs; FAR 31.205-47, Costs related to legal and other proceedings; FAR 31.205-38, Selling costs).



## **Callout**

**Evidence** – Possible sources include testimonial evidence, the auditor's physical inspection of the contractor's facilities and operations, and coordination with other Government personnel (e.g., ACO and PCO representatives). ([Return](#))

**Contractor** - The audit team should explain to the contractor that they are looking for evidence that a prudent person would already possess and should not call for the creation of documentation. ([Return](#))

**Economically** - To properly assess, the audit team must make an apples-to-apples comparison. The consultant expense is likely to be all-inclusive, but in developing the cost to add an employee, be sure to consider all related costs, such as fringe benefits and overheads. ([Return](#))

**Fee** - Cost and level of expertise should be considered. ([Return](#))