

Chapter 42 – Lobbying Costs and Legislative Earmarks

Authoritative Sources

[FAR 31.205-22](#) Lobbying and Political Activity Costs

[FAR 3.8](#) Limitations on the Payment of Funds to Influence Federal Transactions

[FAR 52.203-12](#) Limitation on Payments to Influence Certain Federal Transactions

[DFARS 231.205-22](#) Legislative Lobbying Costs

Introduction

Lobbying costs represent amounts incurred to influence the outcome of elections, referendums, legislation. This chapter addresses the following topics:

42-1 Regulatory and Statutory Requirements related to Lobbying Costs and Legislative Earmarks

42-2 Procedures for Auditing Lobbying Costs and Costs Associated with Legislative Earmarks

42-1 Regulatory and Statutory Requirements related to Lobbying Costs and Legislative Earmarks

Extracts of the pertinent regulatory, contract, and statutory requirements regarding the allowability of lobbying and legislative earmark costs follow. Prior to developing audit procedures, the auditor should review the full text of the following laws and regulations.

FAR 31.205-22, Lobbying and Political Activity Costs, requires contractors to separately identify lobbying costs in their indirect rate submissions and maintain adequate records to affirm their certification of these costs as either allowable or unallowable. FAR 31.205-22(a) describes costs associated with specific activities that are deemed unallowable. For example, this FAR provision defines unallowable lobbying costs as costs incurred in attempting to improperly influence, either directly or indirectly, an employee or officer of the Executive branch of the Federal Government to give consideration to or act regarding a regulatory or contract matter or to influence the outcome of any Federal, State, or local election. Also unallowable are costs incurred in an attempt to influence the introduction, modification, or enactment of Federal, state, or local legislation. However, FAR 31.205-22(b) states that the following lobbying costs are allowable:

- (1) Costs that result from requests by a legislative body for certain types of information.
- (2) Costs for influencing state or local legislation in order to directly reduce contract cost or to avoid material impairment of the contractor's authority to perform the contract.
- (3) Costs for performing any activity specifically authorized by statute to be undertaken with contract funds.

DFARS 231.205-22 disallows costs incurred by DoD contractors for preparing any material, report, list, or analysis concerning the actual or projected economic or employment impact in a particular state or congressional district of an acquisition program for which all research, development, testing and evaluation has not been completed (10 U.S.C. 2249).

FAR Subpart 3.8, Limitations on the Payment of Funds to Influence Federal Transactions, implements 31 U.S.C. 1352, "Limitation on Use of Appropriated Funds to Influence Certain Federal Contracting and Financial Transactions." The legislation is implemented by contract clause rather than as a change to the FAR cost principles. The statute, 31 U.S.C. 1352, prohibits a recipient of a Federal contract, grant, loan, or cooperative agreement from using appropriated funds to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal actions. FAR clause 52.203-12 (applies to all contracts exceeding \$150,000) is the contract clause that implements 31 U.S.C. 1352 and contains certain exemptions from the prohibitions detailed above. For example, the cost of providing information specifically requested by an agency or Congress is allowable. (See FAR 52.203-12(c) for other exemptions.)

The Lobbying Disclosure Act (LDA) of 1995 (2 U.S.C. 26), as amended by the Honest Leadership and Open Government Act of 2007, significantly expanded the registration and reporting requirements for those who engage in lobbying activities. An organization must register (using Form LD-1) with the Secretary of the Senate and the Clerk of the House if the organization has at least one employee who meets the statutory definition of lobbyist and (1) the organization's total lobbying expenses exceed \$10,000 (in the case of in-house lobbyists) or (2) the firm's total income from lobbying activities for a particular client exceeds \$2,500 (in the case of a lobbying firm, including a self-employed lobbyist) during a quarterly reporting period (effective January 1, 2008). Effective January 1, 2009, the CPI-adjusted thresholds for lobbying firms and organizations employing in-house lobbyists are \$11,500 and \$3,000 per quarter, respectively. Lobbyist means "any individual who is employed or retained by a client for financial or other compensation for services that include more than one lobbying contact, other than an individual whose lobbying activities constitute less than 20 percent of the time engaged in the services provided by such individual to that client over a 3-month period." Lobbying Firm means "a person or entity that has 1 or more employees who are lobbyists on behalf of a client other than that person or entity; the term also includes a self-employed individual who is a lobbyist." Lobbying firms are required to file a separate registration and quarterly report for each client, while organizations employing in-house lobbyists file a combined registration and quarterly report (Form LD-2) covering their entire in-house lobbying activities.

The lobbying reports (Form LD-1 and FD-203) can be found at [the Clerk of the House of Representatives](#) and the [Secretary of the Senate](#) websites. Both websites provide various filter criteria for searching the databases.

The Office of Management and Budget (OMB) describes “earmarks” as funds provided by Congress for projects, programs, or grants where the purported Congressional direction (whether in statutory text, report language, or other communication) circumvents otherwise applicable merit-based or competitive allocation processes, or specifies the location or recipient. Typically, a legislator seeks to insert earmarks in spending bills that direct a specified amount of money to a particular contractor, organization, or project in his or her home state or district. Contractors may expend a significant amount of effort (and related costs) to support earmarks associated with specific contractors and programs. These costs should generally be considered unallowable lobbying costs as defined in FAR 31.205-22 and 52.203-12.

42-2 Procedures for Auditing Lobbying Costs and Costs Associated with Legislative Earmarks

After reviewing the pertinent regulatory, contract, and statutory requirements regarding the allowability of lobbying costs discussed above, the auditor should plan appropriate audit procedures to review contractor’s submissions to determine whether the contractor properly identified and excluded unallowable lobbying and related costs from submissions to the Government. The following are items that should be considered when planning the audit:

When planning and performing audits of lobbying costs and audits of a contractor’s Washington Office costs (CAM 6-806), auditors should determine whether the contractor is a registrant under the Lobbying Disclosure Act and obtain copies of the quarterly reports filed by the contractor. Unallowable lobbying expenses identified and excluded from the contractor’s overhead settlement proposals should be reconciled with the total expenses reported on quarterly reports. If any significant differences are found, the auditor should request an explanation from the contractor. The list of employees and specific lobbying issues disclosed in quarterly reports should also be considered in planning and performing audits of labor costs. However, it should be noted that this list may not include all employees participating in lobbying efforts because of the “20 percent rule” and minimum one lobbying contact requirement. Auditors should also perform procedures to determine if the contractor properly excluded any directly associated costs related to the unallowable lobbying costs.

OMB has created databases by fiscal year for appropriations earmarks that are displayed on their [website](#). The organization named Taxpayers for Common Sense (TCS) also has identified appropriations earmarks that are included by fiscal year in databases at their website at <http://taxpayer.net>. Audit procedures should include review of pertinent earmark information provided in the databases available on the OMB and TCS websites. Earmarks can be identified by fiscal year, contractor, lawmaker, project, and amount. The DCAA intranet webpage includes hyperlinks to these websites at “Useful Audit Links, Links By Audit Type” under topics on both “Forward Pricing” and “Incurred Costs.” Additionally, the available OMB Appropriation’s Earmarks databases have been downloaded and placed on the Accounting and Cost Principles (PAC) home page under “Program Areas, Lobbying Costs and Earmarks.” For significant earmarks, contractors should be queried to determine the procedures used to identify and remove

the costs associated with supporting earmarks from forward-pricing and incurred cost proposals. Contractor support for earmarks may include program management, contracting, public relations, consultants and technical personnel. In addition to labor costs, auditors should consider directly associated costs such as travel and conference expenses. Auditors should be alert during other audits to possible lobbying effort associated with supporting earmarks. For example, during an audit of incurred travel and meeting expenses, auditors should be alert to lobbying effort when ascertaining the purpose of travel and meetings. Many significant earmarks relating to certain contractor programs require contracting personnel to attend meetings with Congressional members or their staff to pursue earmark funding.

If a contractor does not have documented policies and procedures for accumulating and identifying lobbying costs in its accounting system, a deficiency report shall be issued to Government contracting authorities to alert them to the contractor's business system deficiencies. Corrective action must be taken by the contractor to ensure compliance with FAR Part 31 cost principles and the Cost Accounting Standards (CAS). Consider issuing a CAS 405, Accounting for Unallowable Costs, non-compliance audit report in accordance with the guidance in CAM, Chapter 8.