

Seminars Versus Selling

Written by Nick Sanders

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In our attempts to make sense of the FAR Part 31 Cost Principles, from time to time we discuss some aspect of cost allowability that seems to be a challenge for many folks.

Today we want to talk about the allowability issues associated with attendance at a technical seminar, symposium, or conference. These are not trade shows, though you could be forgiven for thinking so because, quite often, contractors set up booths in the foyer. And it's a fact that almost every seminar or technical conference has sponsors: some sponsorships are differentiated by levels (e.g., gold, silver, bronze, etc.), which means that the highest level sponsors paid the most money and get the most favorable attention called to them. Other seminars are "hosted" which means that one contractor provides the facilities and the snacks & beverages.

Some employees attend these seminars or conferences in order to disseminate technical information; others attend to man the tradeshow booth. Others attend to mingle and network at the breaks. Some individuals do all of the above.

There is labor to deal with, and expenses, and seminar registration fees and seminar sponsorship fees. Where is the bright line for cost allowability determinations?

A couple of cost principle points will help us figure this out.

31.205-1 states (in part)—“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. 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 [these] functions and activities... 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;

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(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.”

(Emphasis added.)

Except as specifically noted as being allowable, all advertising costs are unallowable.

31.205-38 states (in part)—“Selling’ is a generic term encompassing all efforts to market the contractor’s products or services ... Selling activity includes the following broad categories:

(1) Advertising. ... (2) Corporate image enhancement. ... (3) Bid and proposal costs. ... (4) Market planning. ... Long-range market planning costs are subject to the allowability provisions of [31.205-12](#) . Other market planning costs are allowable. .. (5) Direct selling. Direct selling efforts are those acts or actions to induce particular customers to purchase particular products or services of the contractor. Direct selling is characterized by person-to-person contact and includes such efforts as familiarizing a potential customer with the contractor’s products or services, conditions of sale, service capabilities, etc. It also includes negotiation, liaison between customer and contractor personnel, technical and consulting efforts, individual demonstrations, and any other efforts having as their purpose the application or adaptation of the contractor’s products or services for a particular customer’s use. *The cost of direct selling efforts is allowable.*

[The costs of any selling efforts other than those addressed in this cost principle are unallowable.]”

(Emphasis added.)

Except for activities noted as being allowable, selling costs are unallowable. Generally, only “direct selling” expenses are allowable. More specifically, general schmoozing, networking, and corporate image enhancement efforts are not allowable.

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31.205-43 states (in part)—“The following types of costs are allowable ... When the principal purpose of a meeting, convention, conference, symposium, or seminar is the dissemination of trade, business, technical or professional information or the stimulation of production or improved productivity—

(1) Costs of organizing, setting up, and sponsoring the meetings, conventions, symposia, etc., including rental of meeting facilities, transportation, subsistence, and incidental costs;

(2) Costs of attendance by contractor employees, including travel costs ... and

(3) Costs of attendance by individuals who are not employees of the contractor, provided—

(i) Such costs are not also reimbursed to the individual by the employing company or organization, and

(ii) The individuals attendance is essential to achieve the purpose of the conference, meeting, convention, symposium, etc.”

Okay. Now we've got the basic rules and we can apply them.

If you read the rules (and you *did* read them, right?) then it becomes apparent that we need to understand *the purpose* of the expenditure in order to make the proper cost allowability determination.

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When the purpose is the dissemination of information, costs are allowable.

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When the purpose is corporate image enhancement, costs are unallowable.

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When the purpose is advertising, general marketing, networking, etc., the costs are unallowable. (Unless the efforts are to promote export of defense products.)

Those employees manning the trade show booth in the foyer? Unallowable time and expense. The employees there to network at the breaks? Unallowable time and expense. However, those employees attending the seminar or conference in order to learn something—that is 100% allowable.

What that means is that the employees who are attending for dual purposes will need to properly break-out their time and expenses between allowable and unallowable activities. Making the presentation? Likely allowable. Manning the booth afterwards? Almost certainly unallowable.

What about sponsorships?

As noted in the 205-43 cost principle, sponsorship is allowable where the purpose is a bona fide dissemination of technical information. However, where there is no dissemination of bona fide technical information—for example, where no employee is presenting and no employee is attending to learn—then the purpose of the sponsorship would be general image enhancement (general selling), and the costs would be unallowable.

Thus, the rule: *bona fide training and technical information exchange are allowable, while general image enhancement and general selling are unallowable.*

Remember, where costs are unallowable then all directly associated costs are also unallowable. These unallowable directly associated costs include travel-related expenses, as well as labor and allocated fringe benefits.

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