

## Some Labor Relations Costs Now Unallowable

Written by Nick Sanders  
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We post this with the objective of completeness; we don't expect that this will be news to many readers nor that it will impact many contractors to a significant degree. But here it is:

On November 2, 2011, the Cost Principle at 31.205-21 was revised. Here's a link to the [Federal Register announcement](#)

. But before we look at the revised Cost Principle, let's recap the history that led to the revision.

On January 30, 2009—literally within days of taking office—President Obama issued an Executive Order entitled [Economy in Government Contracting](#). The Executive Order stated—

It is the policy of the executive branch in procuring goods and services that, to ensure the economical and efficient administration of Government contracts, contracting departments and agencies, when they enter into, receive proposals for, or make disbursements pursuant to a contract as to which certain costs are treated as unallowable, shall treat as unallowable the costs of any activities undertaken to persuade employees -- whether employees of the recipient of the Federal disbursements or of any other entity -- to exercise or not to exercise, or concerning the manner of exercising, the right to organize and bargain collectively through representatives of the employees' own choosing. Such unallowable costs shall be excluded from any billing, claim, proposal, or disbursement applicable to any such Federal Government contract.

On October 30, 2009, the Executive Order was amended to read (in part) as follows—

Contracting departments and agencies shall treat as allowable costs incurred in maintaining satisfactory relations between the contractor and its employees (other than the costs of any activities undertaken to persuade employees to exercise or not to exercise, or concerning the manner of exercising, the right to organize and bargain collectively), including costs of labor management committees, employee publications, and other related activities. See 48 C.F.R. 31.205-21.

So it was only a matter of time before the FAR Councils started rule-making to implement the

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Executive Order(s). On June 14, 2010, a Notice of Proposed Rule-Making was issued for collection of public comments. The comments were reviewed and, essentially, *completely ignored* in drafting the final rule—as the FAR Councils made “just one minor editorial change” in response to public comments.

The Cost Principle was revised to add a new paragraph covering “persuader activities”—that is, “activities undertaken to persuade employees ... to exercise or not to exercise, or concerning the manner of exercising, the right to organize and bargain collectively through representatives of the employees' own choosing.” Such persuader activities are unallowable.

Consistent with the amended Executive Order (and also consistent with the history of the Cost Principle and with the history of the Federal government’s policy towards contractors’ relationships with their workforce), costs incurred in “maintaining satisfactory labor relations” remain allowable.

As we stated at the beginning of this article, we don’t expect this revision to affect many contractors to a significant degree. Those that are affected by the revision likely already know about it. But we like to be complete about these things.