

CLIENT ALERT

Expressly Does Not Require Being Expressed: Fed. Circuit Finds Salary Costs for Lobbying are Expressly Unallowable

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In *Raytheon Co. v. Sec’y of Def.*, No. 2018-2371 (Fed. Cir. Sept. 18, 2019), the Federal Circuit affirmed the ASBCA’s decision that salary costs for lobbying activities are expressly unallowable under FAR 31.205-22. Raytheon argued that salary costs of employees who participate in lobbying activities are not “expressly unallowable” under FAR 31.001, because FAR 31.205-22 only generically refers to “costs associated with [lobbying activities]” and does not mention or identify in-house salary costs “by name.” The court disagreed, focusing on the definition of an “expressly unallowable cost” and concluding that “a particular item or type of cost . . . specifically named and identified as unallowable,” ***includes costs unambiguously falling within a generic description of a “type” of unallowable cost.*** According to the court, salaries of corporate personnel involved in lobbying are a prototypical lobbying expense, and, therefore, unambiguously “costs associated with” lobbying and “expressly unallowable.” The court also rejected various Raytheon arguments based on prior amendments to the lobbying cost principle and textual comparisons to other cost principles.

Because the Court concluded that salary costs for associated with lobbying are themselves “expressly unallowable,” it did not address Raytheon’s challenge to the Board’s alternative holding that even “directly associated costs” of an unallowable activity are “expressly unallowable,” subject to the penalties provided under FAR 42.709-1(a)(1).

For more information, please contact the professional(s) listed below, or your regular Crowell & Moring contact.

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