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NEW DEVELOPMENTS

FY 2006 Defense Bill Approved

The House and Senate have passed a final FY 2006 defense authorization bill approving $441.5 billion. Procurement related changes include:

1. In a victory to numerous industry groups, the Defense Department will restrict use of tiered proposal evaluations called "cascading set-asides." The controversial evaluation scheme requires all offerors to submit proposals at the same time but evaluations occur in stages by socioeconomic categories (i.e. HUBZone firms first, 8(a) firms next, then small business and finally all business). Restrictive language in Section 816 of the bill will require the DOD secretary to prohibit use of the cascading set-asides unless a contracting officer has conducted market research and documents they are unable to determine whether a sufficient number of small businesses are available to justify limiting competition to small businesses.

2. Receiving applause from government employee unions and opposition from the Bush Administration, Section 341 will restrict contracting out of government work by prohibiting conversion of 10 or more federal employees to civilian employees without allowing a competition that includes an "agency tender, a most efficient organization (MEO) plan and a formal cost comparison." The current rule requires the MEO when the work is performed by 65 or over federal employees. Conversion will not take place unless the competitive sourcing official determines that performing the work outside would save at least $10 million or 10% of the government cost estimate for personnel expenses. The bill calls for DOD to create guidelines that would ensure federal employees are given "consideration" for work that might otherwise be performed by the private sector. (A similar provision was included in the 2006 Department of Transportation authorization bill.)

3. Modifies a FY 2005 DOD authorization act provision that prohibited giving a private sector offeror in a public-private competition an advantage over federal in-house offerors because it provided less comprehensive health coverage to its employees. Under the modification, which was generated after considerable DOD and SBA opposition to the 2005 provision, a private sector offeror would be allowed to provide its employees a payment in lieu of a health insurance plan. Also, rather than requiring the private offeror not contribute less toward the premium than the public offeror, the modification would prohibit a plan "that does not comply with the requirements of any federal law governing the provision of health care benefits by government contractors that would be applicable if the contractor performed the activity or function under the contract."

4. Consolidate the existing boards of contract appeals for civilian agencies into a new Civilian Board of Contract Appeals.

5. Extending for three years the five percent goal for DOD contracting with small disadvantaged businesses and certain higher education institutions.

Proposals to Increase FAR and CAS Cost Thresholds

Dec. 12 the FAR Council is proposing to increase a number of acquisition-related thresholds to reflect inflation. The most "heavily used" thresholds are:

- the ceiling for the commercial item test program at FAR 13.500 would increase to $5.5 million from $5.0 million.
- the cost and pricing data threshold at FAR 51.403-4 would increase from $550,000 to $600,000.
- the floor for prime contractor subcontracting plans at FAR 19.702 would increase from $500,000 to $550,000 while the $1 million floor for construction subcontracting plans would remain the same.
- the micropurchase threshold at FAR 2.101 would increase from $2,500 to $3,000.
- the threshold for triggering the requirement that DOD subcontractors disclose whether they have been debarred from $25,000 to $30,000.
- the threshold for collection of the DUNS number from $2,500 to $3,000 (Fed. Reg. 73415).

In a related move, the Cost Accounting Standards Board Dec. 12 published proposed changes reflecting inflation adjustments. The Board is proposing to increase:

1. the threshold for contract applicability from $500,000 to $550,000 to make it consistent with the Truth in Negotiations Act (TINA).
2. the threshold for applicability to a business unit from $7.5 million to $8.5 million.
3. the threshold waiver from $15 million to $17 million.
4. the threshold for full coverage from $50 million to $56.5 million.
5. the threshold for company disclosure statement submissions from $50 million to $56.5 million.
6. the threshold for disclosure statement submissions from a segment of a company from $10 million to $11.5 million.
7. the threshold for educational institutions' disclosure statement submissions from $25 million to $28.3 million (Fed. Reg. 73423).

SBA Raises Monetary-Based Size Standards to Reflect Inflation

The Small Business Administration has increased its monetary size standards for small businesses to account for the effects of inflation since it last increased them in 2002. In a move the SBA claims will allow some 12,000 companies to regain their former small business status for purposes of eligibility for federal programs including procurements, the "anchor" size standard has been increased from $6 million to $6.5 million. Higher monetary size standards will increase by "$1 million to $2.5 million" to account for the 8.7 percent price increases since 2002. The rule will apply to all procurement solicitations issued Jan 5, 2006 or later (Fed. Reg. 72577).

DCAA Issues New Guidance

- **Training and Education Costs**

The Defense Contract Audit Agency issued guidance to recent revisions to FAR 31.205-44, Training and education costs. The guidance summarizes what are now allowable and unallowable costs and identifies the "significant" changes to the cost principle. The cost principle now clearly states the costs of training and education are generally allowable if such expenses are related to the field in which the employee is working or may reasonably be expected to work. The revised cost principle identifies six types of expressly unallowable costs that are retained from the previous rule: (1) overtime compensation for training and education (2) salaries for time spent attending undergraduate level or part-time graduate level classes during working hours unless there are unusual situations that prevent attendance outside regular hours (3) costs for full time graduate level education in excess of two years (4) grants to educational or training institutions (5) training or education costs for other than bona fide employees and (6) contractor contributions to college savings plans for employee dependents. The restructured rule also eliminates specific requirements and limitations on the allowability of costs associated with various categories and types of training and education such as vocational training, part-time college level courses, full time education and specialized programs and substitutes a "reasonableness" criteria for allowability of these costs.

The guidance states the "significant" changes made by the FAR change are:

1. Whereas the prior rule made any costs related to full-time undergraduate level education unallowable, now only salaries (with certain exceptions) for attending classes are unallowable while other costs such as tuition and text books are no longer unallowable.

2. The revised rule eliminates the 156-hours limitation on allowable salaries for attending part-time college level classes when circumstances did not permit attendance outside working hours and now the reasonableness criteria in FAR 41.201-3 rules.

3. The revised rule eliminates the provision that permits an advance agreement that would set forth allowable costs in excess of limitations contained in the cost principle (05-PAC-067(R).

- **Relocation Costs**

DCAA's guidance restates the three additional types of relocation expenses that may be reimbursed on a lump sum basis and emphasizes the type of documentation required to support the costs. The revised rule extends reimbursement on a lump sum basis in lieu of actual costs to three additional types of relocation costs: (1) costs of finding a new home (2) costs of traveling to the new location and (3) costs of temporary lodging. Before the change, only miscellaneous costs could be reimbursed on a lump sum basis up to $5,000.

The guidance alludes to the new language at FAR 31.205-35(b)(6)(i) that states "Reimbursement on a lump sum basis may be allowed for any of the following relocation costs *when adequately supported by data on the individual elements*…comprising the build-up of the lump-sum amount to be paid…" (Italics added). Noting the new rule does not impose a ceiling amount, the guidance states the lump sum amount must be adequately supported to be allowable and if not supported, is to be questioned. Adequate support should include detailed calculations of the individual cost elements (e.g. airfare, car rental, lodging and meals) that reflect "specific factors" such as number of travelers, travel destination, estimated travel days. The rule changes envision lump-sum amounts to be established before the employee actually incurs the costs and prohibits subsequent adjustments to reflect actual amounts incurred. Thus, under the lump sum payment approach for these relocation costs, the contractor is not required to maintain records of actual costs incurred by employees since the lump sum amount is based on estimates of individual elements of costs. The guidance states contractors who elect to adopt the lump-sum approach should establish policies and procedures that identify the group/class of employees who are eligible for lump-sum payments and provide guidelines for determining the lump-sum amount (05-PAC-074(R).

- **Internal Controls**

The Defense Contract Audit Agency released guidance on documenting their understanding of internal controls for contractors with less than $15 million annual dollar volume (ADV). Since the recent financial scandals, auditors are now required to document their understanding of contractor internal controls in every audit performed. For smaller contractors, in lieu of testing internal controls, DCAA notes it is more efficient to assess control risk as maximum and then perform the necessary level of testing. For non-major contractors with more than $15 million ADV, auditors are told to use the internal control questionnaire (ICQ) to document their understanding. For contractors with less than $15 million of ADV, auditors are allowed to use a simplified procedure in a narrow format in accordance with CAM 10-504-6b. For desk reviews, as opposed to audits, low risk contractors with less than $15 million ADV, these steps are not necessary. The guidance provides two examples to illustrate the documentation requirements (05-PQA-066(R).

NASA Requires Small Business Subcontracting Plans Before Award

Effective Dec 15 NASA is requiring offerors on research contracts to submit small-business subcontracting plans before the agency makes an award, whereas before the change only the successful offeror had to submit the plan after award. Responding to industry criticisms that the new requirement would raise proposal costs for unsuccessful bidders, NASA raised the requirement to submit subcontract plans before selection only to awards above $5 million rather than the original amount for over $500,000 (Fed. Reg. 74206).

Proposed Legislation to Modernize the 8(a) Program

The House Small Business Committee Dec 8 introduced legislation that would make several changes to the 8(a) minority business program. It would raise the dollar limit for 8(a) sole-source contracts for 8(a) firms from $3 million to $6 million and would increase the dollar limit on competitive contracts for 8(a) firms from $5 million to $10 million. The measure would also allow companies that have completed the program to continue competing as small disadvantaged businesses "in industries that have traditionally been closed to them.". Other changes intended to "modernize" the program include (1) repealing the requirement that companies be in business for two years in order to participate (2) increase the net worth ceiling for participating businesses from the current $250,000 to no less than $750,000 and require the SBA to establish criteria for even higher net worth amounts that would take into account capital needs of different industries and (3) increase the duration of the program from nine to ten years. The legislation grows out of a report by the Committee that points out failures of the federal government to meet minority-owned business contracting goals and suggests ways to increase their participation as both prime contractors and subcontractors

Industry Criticizes New Government Property Proposed Changes

Recent proposed changes to FAR Part 45, Government Property has generated considerable criticism from Industry in two areas: title to overhead property and "as is" property. The proposed rule combines several clauses into one. It has been a long-held rule that overhead property is owned by the government and hence is not subject to state taxation.

For fixed price contracts, FAR 52.236-16 provides title to the government while FAR 52-245-5 provides similar title under cost-type contracts. Since these two clauses will be eliminated under the proposed rule, the Council of Defense and Space Industry Associations (CODSIA) and the Defense Contract Management Agency argue that their elimination will also eliminate any justification for exempting overhead costs from state taxes on cost type contracts resulting in significant increased costs to the government.

As for the other contested issue, under the proposed rule the government may, at its option, furnish property in an "as is" condition. When this occurs, the government "makes no warranty with respect to the serviceability and/or suitability of the property for contract performance." In such cases, repairs, replacements and refurbishment will be "at the contractor's expense." The current "as is" clause in FAR 52.246-19 is limited to fixed-price contracts and must be disclosed in the solicitation. CODSIA claims the new provision creates "an extraordinary cost risk", especially for small and medium-sized companies who may not have the resources to absorb the costs of making an unknown quantify of property suitable for use. In addition, the new provision would not require a per-contract inspection for cost-type contracts leaving contractors "entirely at risk for the condition of the property" with no contractual right to an inspection. CODSIA recommends the proposed provisions be deleted.

DOD Finalizes 10 Year Limit on TO/DO Contracts

The Defense Department finalized a rule that raises the cap on new task order/delivery order contracts from five years to ten. The final version of the rule includes language clarifying the 10 year cap applies to information technology contracts. The clarification was necessary since FAR 17.204(e) specifically exempts IT contracts from regulatory time limits. DOD says the rule is necessary because the 10 year limit is intended to address concerns that frequent use of option periods that extend TO/DO contracts inhibit competition (Fed. Reg. 73151).

CASES/DECISIONS

Parties "Intent" Determine Whether Costs are IR&D

(*Editor's Note. We have discussed the results of the Newport News case in several REPORT and DIGEST articles in 2005 where the court took an expansive view of what costs cannot be charged indirect to IR&D – costs that are either "explicitly or implicitly" required on a contract. The following case appears to allow for more opportunities to charge IR&D, especially when the contract does not prohibit it and written policies do provide for it.*)

ATK Thiokol charged "development effort" to upgrade a launch vehicle motor intended to be sold in the commercial market to independent research and development (IR&D) and the government denied the IR&D asserting that both CAS 420 and FAR 31.2-5-18 states that a cost may not be treated as IR&D if it is "required in the performance of a contract." The government argued that the costs were "implicitly required" in a contract it had with Mitsubishi and that the research costs were a "practical necessity" for performance of the contract. The Court ruled against the government declining to interpret "required in performance of a contract" the way the government advocated. The Court stated to do so would violate CAS 402 which requires a contractor to consistently allocate like costs incurred under like circumstances and when the contractor states that certain costs will "sometimes be direct/sometimes indirect" the intent of the parties and contractor's practices should rule. Looking at its disclosure statement, the court ruled the costs were properly charged to IR&D because its disclosure statement provided that research and development costs are IR&D and are allocated directly *only* when (1) a contract specifically requires Thiokol to incur the cost (2) the contract paid for the cost and (3) at the time Thiokol incurred the cost, the cost had no reasonably foreseeable benefit to more than one cost objective.

The Court alluded to the controversy acknowledging that the absence of any clear definition of the phrase "required in the performance of a contract" has caused considerable debate regarding whether only those costs that are explicitly required are excluded from the definition of IR&D or whether all costs, either explicitly or implicitly, are to be excluded. It said the meaning of the phrase is not fixed and should be determined on a case-by-case basis. It concluded that here, the Mitsubishi contract "clearly evidences" the parties did not intend for IR&D costs to be included in the statement of work where the SOW obligated Thiokol to update the motor without specific reference to development effort and the price structure contained no price for the development effort. Lastly, at the time Thiokol entered into the Mitsubishi contract, a commercial market for the motor seemed viable (*ATK Thiokol v US, Fed. Cl. No. 99-44C*).

Agency Did Not Have to Tell Offeror Its Price Was Too High

The "best value" solicitation for base operations services provided that price and three technical factors together were to be considered equal in weight. IAP's proposed price was 34 percent higher than the government's estimate and 21 percent higher than the awardee's price and the government determined its price was reasonable. IAP protested the award claiming the Navy failed to inform it during its discussions that its proposed price was too high. The GAO rejected the protest stating where an offeror's price is high compared to competitors' prices or the government's estimate, the agency may, but is not required to, address the matter in discussions. It concluded if an offeror's price "is not so high as to be unreasonable or unacceptable" for contract award the agency may conduct discussions without advising the offeror its prices are not competitive (*IAP World Services, Inc. GAO No. B-297084*).

Government Shouldn't Have Relied on Parent's Experience

(*Editor's Note. Utilizing the experience of a parent or subsidiary can be very helpful in winning contracts but the following decision underscores the need to obtain explicit commitments of support by them.)*

ECI Northwest provided a proposal for a fixed price contract to provide mine restoration services where the solicitation required at least three similar projects of comparable size and scope. The Forest Service awarded the contract to ECI Northwest concluding it met the responsibility criteria based on projects completed by its parent, ECI. The GAO sided with the unsuccessful offeror's protest asserting the Forest Service improperly credited ECI's experience solely based on the understanding that ECI Northwest was a branch office of ECI. It concluded there was insufficient evidence of "ECI's pre-award commitment to ECI's Northwest's successful performance of the contract" (*Charter Environmental Inc., GAO No. B-297219*).

Recovery of Actual Incurred Costs on a Negligent Estimate is a "Windfall"

SPL's bid on a fixed price requirements contract to provide 31,361 new combat wheels, based upon the Army's estimate, included $743,000 of fixed price costs spread over the estimated amount of wheels to be ordered. When the Appeals Board found the government had negligently prepared its estimate and the non-negligent amount of ordered wheels would have been 10,537, SPL sought to obtain its actual fixed costs of $1.8 million spread over the non-negligent amount of wheels. The Appeals Board disagreed with SPL's method of computing damages noting SPL had assumed the risk of increased costs in its firm fixed price contract where, at best, it would have recovered the $743,000 of estimated fixed costs over the 31,361 wheels. While SPL was entitled to $421,000 for the higher amount for each of the non-negligent quantity the $1.2 million it sought based upon its actual incurred fixed expenses costs would constitute an inappropriate "windfall". The Board also rejected SPL's claim for other unreimbursed costs and excess inventory, asserting the contractor failed to show how the increased costs were incurred solely as a result of the negligent estimate and the risk of accumulating excess inventory falls on the contractor since under a requirements contract there is no guarantee a particular amount will be ordered (*S.P.L. Spare Parts Logistics Inc., ASBCA N. 54435*).

Government Should Have Evaluated Relevance of Past Performance

(*Editor's Note. We are finding busy source selection officials, especially when faced with more technically sophisticated work sometimes fail to effectively consider the more subtle relevance factor of the past performance. The following case illustrates opportunities to overturn award decisions when this occurs.*)

The RFP for chemical and radioactive waste management services provided that in addition to price and technical factors, the agency would consider the currency and relevance of past performance. When the field was narrowed to two offerors the agency awarded the contract to Clean Venture based on its lower price and the conclusion its technical factors and past performance rating were equal to Clean Harbors. The GAO sustained Clean Harbors protest, finding the agency's past performance evaluation was based entirely on the averaged numerical scores contained in responses to past performance questionnaires sent to the offerors' references without indication the agency considered the relevance of the offerors' past performance. The GAO said this was "problematic" because the RFP specifically required consideration of relevance and found that Clean Venture's two references involved substantially smaller, less complex contracts than the current requirements while Clean Harbors experience, as the incumbent, had the most relevant experience (*Clean Harbors Environmental Services Inc., GAO B0296176*).

NEW/SMALL CONTRACTORS

Current Hot Buttons for DCAA Evaluation of Accounting Practices

Recently, we were requested by some organizations (e.g. Wind2 Software, now part of Deltek) and publications (e.g. Contract Management) to provide our insights into what government auditors such as DCAA are concerned with when evaluating the accounting practices of contractors. At first we thought we would not duplicate any versions of the articles we wrote here since most of our subscribers are quite familiar with auditors' concerns due to their day-to-day contact with them. However, after thinking about the matter further, we decided it would be helpful to both new subscribers as well as personnel in our subscribers' organization who may be less familiar with what the auditors are concerned with. It could also be beneficial as a checklist for our more experienced readers to ensure policies and procedures are sufficient or accounting software is adequate for government cost and pricing purposes. If helpful, please feel free to duplicate this article and use it as an education tool for your organization.

Although a number of organizations within the government provide audit services, the premiere agency is the Defense Contract Audit Agency (DCAA), and most auditing organizations follow its lead. This article highlights eight current hot buttons for the DCAA audit.

1. *Timekeeping*. You must be especially vigilant over your timekeeping procedures. Today labor costs are the single greatest expense for most contracts, so the government is extremely interested in how you keep track of hours worked. DCAA has very detailed and specific requirements for timekeeping. To meet these requirements, contractors must demonstrate in their manual or electronic timesheets an ability to accomplish the following:

- Prevent changes from being made after the timesheet is submitted.
- Limit changes only to those made by employees, preventing others from changing records without the employee's approval.
- Maintain a log of all time record changes, including who made the change, when, and for what purpose. Ensure the log is active even before posting.
- Provide multiple approval levels (e.g., immediate supervisor, project supervisor, and program manager).
- Provide security features and flexibility regarding who can and cannot access time records.
- Allow electronic time recording from multiple locations, e.g., corporate, branch offices, and the field.
- Allow electronic time entry by non-employees (e.g., subcontractors), and provide flexibility by allowing non-employees to make charges as direct employees or subcontractors without processing their time through payroll.
- Assure that only approved cost objectives are charged.
- Provide for time in/time out recording at various time intervals.

2. *Labor Charging*. Labor charging is critical because DCAA is intensely focused on adequate internal controls (e.g., labor charging controls) in the light of recent financial scandals and findings of the President's Council on Integrity and Efficiency. Auditors want to make sure that once the employee enters his or her hours, the accounting system can reliably track the labor and costs associated with that time, and then charge the cost of that labor to the correct contract. DCAA compliance requires:

- Clear visibility of labor costs through the accounting system.
- Labor distribution reports that reconcile hours entered into the system with a variety of job cost reports.
- Job cost reports that reconcile with financial statements.
- All reports generated by the system be consistent.

3. *Uncompensated Overtime*. Over the last five years, inspector generals in all government departments have become highly concerned about the way in which contractors treat uncompensated overtime (UOT). The government's concern with UOT applies to employees who are exempt from the Fair Labor Standards Act and who, therefore, are paid a set salary regardless of hours worked. It becomes relevant to government auditors when these employees work overtime. An exempt employee, for example, paid a salary of $1,000 per week earns $25 per hour on a

40-hour week ($1,000 divided by 40 hours). When that employee works 50 hours per week, his effective rate is lowered to $20 per hour ($1,000 divided by 50 hours).

DCAA is concerned about costing issues related to UOT. They worry about contractors "gaming the system" by, for example, charging all cost type work the full $25 per hour for the 40 hours worked while commercial or government fixed-price work not being charged at all. In order to minimize opportunities for gaming, DCAA allows only three acceptable approaches for charging hourly rates to contracts (see our article in May-June 2002 issue of the GCA REPORT).

4. *Indirect Rate Computations.* The government provides for full costing of contracts, including both direct and indirect costs. DCAA, in practice, allows only certain methods for computing and allocating those indirect costs, and the agency imposes rules on how to apply rates. You can utilize a variety of indirect costing approaches. The specific decisions are usually based on such considerations as maximizing or minimizing proposed prices, administrative ease, and so forth. Auditors will examine what indirect cost structure you adopt and will make sure that it generates "equitable" allocations to government contracts. Common rates include:

- Overhead – one, several by location, on-site/off-site
- General and Administrative
- Service Centers
- Company-wide fringe benefit
- Material/Subcontract handling

5. *Tracking Costs by Final Cost Objectives.* The DCAA requirement regarding what constitutes a "final cost objective" has expanded significantly in recent years. Once limited to prime contracts and subcontracts, it has evolved to include complex teaming arrangements, task and delivery orders under contract vehicles like ID/IQ and the Federal Supply Schedule (FSS), and cost sharing arrangements. Under one contract vehicle, individual task orders may be cost reimbursable, time-and-material, labor hour, fixed price, or a hybrid mix. Cost accumulation requirements for final cost objectives are found at both the federal level and, increasingly, at state and local government levels. In order for your accounting system to receive the DCAA's highest rating of "adequate," auditors will insist that your system allow you to accomplish the following:

- Segregate, identify, and report all costs by final cost objectives.
- Isolate separately funded contract vehicles
- Report unique requirements for different pricing and costing arrangements, e.g., funding limitations on cost-type contracts, milestones on fixed-price contracts, and contract specific billing rates on T & M.

6. *Incurred Cost Submittals.* Contractors with cost-reimbursable contracts must submit incurred costs proposals annually where there are strict submittal timing and format requirements. It is quite common for DCAA to require submittals of 15 or more separate exhibits with these proposals. In examining your submittals, auditors will:

- Make certain that all submitted exhibits reconcile with each other.
- Tie totals to trial balances.
- Select "high risk" accounts to audit in detail.

7. *Screening Unallowable Costs.* Today the federal government looks very closely at unallowable costs, even if they are insignificant in amount. Although the definitions of what is "unallowable" have changed over the years, if you include expressly unallowable costs within incurred cost submittals, you can be penalized. Now state and local governments are beginning to apply this same level of scrutiny. Demonstration of adequate screening requires you to:

- Identify and record an unallowable cost at the time it is first recorded
- Ensure unallowable costs are excluded from bids, billings, claim and termination proposals, incurred cost submittals, etc.
- Assign unallowable costs to the appropriate accounts
- Provide visibility of all transactions in accounts for scrubbing purposes
- Have the ability to provide percentage adjustments to selected accounts so only a portion of costs included in an account is screened.

8. *Travel and Expense Reporting.* Next to timesheets, travel and expense reports are most critically scrutinized by DCAA. Auditors examine expense reports for unallowable costs, and in these times they give special attention to relocation and travel expenses. In striving for audit compliance, your accounting practices should detail the following kinds of items:

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- Identified unallowable costs, e.g., excess per diem, entertainment, and first class travel
- IRS-required information
- Proper approvals

From time to time, we have and will continue to address these hot areas in greater depth.

QUESTIONS AND ANSWERS

Q. Since our cell phones include both business and personal use how do we determine how much of our employees' cell phone bills are allowable government costs.

A. As far as we know, there is not specific government guidance on this. Though occasional auditors can be expected to get "picky," generally they will inquire into contractors' policies and procedures on this matter and if it appears reasonable, will accept the resulting charges. We have seen several approaches taken by contractors and accepted by auditors. For example, many contractors will simply charge the entire amounts to indirect expense pools, on the theory that the bill would be the same whether employees used it exclusively for business or used it for both business and personal reasons. Others who are more conservative attempt to prorate the portion of the bill between business and personal use and charge only the prorata percentage to indirect cost pools. One method of measuring this would be to select a sample of employees, (the government has become much more favorable to statistical sampling methods to screen unallowable costs), track their personal versus business usage over, say, a month and apply the resulting percentage of usage to all cell phone bills.

Q. We recently won an award where we subsequently discovered we had made a math error in our pricing calculations. Are we locked into our erroneous bid price?

A. There have been many cases that have defined what constitutes a math error. To prevail the contractor must first show the alleged mistake was a clear-cut math error and not a "mistake in judgment". The Government or prime contractor in a case against a subcontractor will usually argue the mistake was one of business judgment.

The case history points to the following as acceptable arithmetic errors: (1) mistakes in addition or dividing rather than multiplying (2) use of a wrong number when making a calculation (e.g. reversal of discount and cost rates, mistakenly transcribing prices from one page to the other) (3) omission of part of a cost estimate (4) zero omitted in transcribing a price to a bid (5) cost of several items omitted from a recap sheet and (5) one page omitted in final calculation of costs. Also, mistakes have been found when contractors or subcontractors make typographic errors such as (a) omitted work in an estimate due to misunderstanding with the prime contractor or (b) gave the contractor an erroneous quotation.

When a bidder makes a mistake as to resources required, a mistake in judgment rather than a math error will usually be found. Examples include: (1) error in cost of material (2) use of a higher rate of production than was attainable (3) underestimation of square footage of work due to lack of site investigation (4) inaccurate assessment of insurance cost (5) failure to obtain price from a supplier and (6) excessively low overhead rate.

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