GCA REPORT
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NEW DEVELOPMENTS

New Contract-Related Interest Rate Set for First Half of 2007

The Treasury Secretary has set a rate of 5 1/4% for the period January through June 2007. The new rate is a decrease from the 5 3/4% rate applicable in the last six months of 2006. The Secretary of the Treasury semiannually establishes an interest rate that is then applied for several government contract-related purposes. Among other things, the rates apply to (1) what a contractor must pay the government under the "Interest" clause at FAR 52.232-17 and (2) what the government must pay a contractor on either a claim decided in its favor under the Contract Disputes Act or payment delays under the Prompt Payment Act. The rate also applies to cost of money calculations under Cost Accounting Standards 414 and 417 as well as FAR 31.205-10 and when a discount factor is used to calculate the present value of future payments (e.g. deferred compensation) (*Fed. Reg. 78613*).

New Rule on Subcontract Labor Rates Under Noncommercial T&M Contracts

A final rule effective February 12 sets requirements for federal contractors proposing labor rates for time-and-material/labor hour (T&M/LH) contracts to be awarded as noncommercial item acquisitions. The new rule, in the form of a Federal Acquisition Circular (FAC) 2005-15, seeks to resolve a longstanding dispute whether subcontract services should be billed on an hourly basis at fixed hourly rates specified in the contract or as "material" or other direct costs (ODCs) that includes indirect handling costs when applicable. Payment for labor performed by subcontractors will be treated differently depending on whether the contract is awarded under adequate price competition or not.

If the noncommercial item contract *is not* awarded on the basis of adequate price competition, the contract must separately identify labor rate categories for each subcontractor and each division, subsidiary or affiliate of the offeror in addition to the labor rates for the contractor. In addition, affiliates may not include profit though the prime contractor may. The exception is if the item qualifies as a commercial item in accordance with FAR 2.101 in which case the transfer price (which presumably includes profit) can be the established catalog or market rate when that practice is established. If the noncommercial item contract *is* awarded on adequate price competition the contractor is given greater flexibility where it has three options: (1) separate rates that may include profit for each category of labor performed by the contractor and each subcontractor and affiliate (2) blended rates that may also include profit for each category of labor performed by the contractor, affiliate or subscontractor or (3) any combination of separate and blended rates for each category of labor. The FAR permits agencies to adopt procedures that allow selection of one of the three options as mandatory. Exercising this authority, the DOD published an interim rule December 12 making mandatory option number one that requires separate fixed hourly rates, that include profit, for the contractor and each subcontractor and affiliate (*Fed. Reg. 74469*). For acquisition of *commercial items* each offer will specify whether the fixed hourly rate will apply to labor performed by the offeror, subcontractors or affiliates.

Other related changes to the FAR include new definitions of "hourly rate" and "materials" and clarification of rules for indirect costs and ODCs. The FAR now defines "hourly rate" as the rate prescribed in the contract for payment of labor that meets the labor category qualifications specified in the contract, regardless of whether those services are performed by the contractor, subcontractor or affiliate. "Materials" now mean (1) direct materials, including supplies transferred between divisions (2) subcontracts for supplies and incidental services for which there is not a labor category specified in the contract (3) other direct costs which also may include incidental services for labor categories not included in the contract as well as travel and computer charges and (4) applicable indirect costs. The Payments Under Time-and-Materials and Labor Hours contract clauses are amended to permit the contractor to include in its material costs allocable indirect costs and other direct cost to the extent they are (a) comprised only of costs that are clearly excluded from the hourly rate and (b) are allocated in

accordance with the contractor's written policies and procedures. (*See our feature article below on material and subcontract handling rates.*) It adds these indirect costs may not be applied to subcontracts that are paid at the hourly rate (*Fed. Reg. 74656*).

New Rule Allows Use of T&M Contracts for Commercial Services

In the same FAC 2005-15, the FAR Council has passed a long-awaited government-wide rule allowing federal agencies to use time and material and labor hour contracts when acquiring commercial services. The final rule allows the use of T&M and LH contracts if the following four conditions are met: (1) the service is required under competitively awarded contracts or task orders (2) the CO executes a determination and findings (D&F) that no other contract type is appropriate (3) there is a ceiling price that a contractor may exceed at its own risk and (4) any subsequent change in the ceiling price is to be documented that it is in the agency's best interest. Following a controversial several year process the rule writers determined that the government should use T&M or LH contracts under the same conditions the private sector uses such vehicles – where it is not possible to accurately estimate the extent, duration or costs of the work required.

Additional items in the final rule include:

1. Limits reimbursement of other direct costs to those listed in the contract or task order.

2. Excludes indirect costs such as material and subcontract handling as a type of cost that can be reimbursed as an actual rate but instead allows reimbursement of such costs at the fixed amount in the contract schedule to eliminate "use of a fixed rate that violates the cost plus percentage of cost" prohibition of the FAR.

3. Allows the CO to establish the type of ODCs that will be reimbursed at actual costs at the task or delivery order level

4. Allows modifications to items that meet the definition of commercial item on either a "price" or "cost" basis.

5. In the event of a termination for convenience the contractor will be paid for direct labor hours expended before termination at the hourly rates specified in the contract plus reasonable charges resulting from the termination.

6. Provides a broad access to records provision that allows the right to interview employees whose time is included in any invoice under the contract.

Items included in earlier versions that were excluded from the final rule include:

1. Eliminated language that would have precluded prime contractors from making profit on subcontractor labor under the contract unless the subcontractor was specifically listed on the contract. The rule writers were persuaded by arguments that this provision would significantly reduce the use of subcontractors, many of whom were small businesses.

2. Eliminates the proposed requirement for government consent to subcontractors.

3. The decision on whether T&M/LH commercial item contracts should be excluded from coverage of the Cost Accounting Standards was left open where the rule writers stated it should be left to the CAS Board to decide. (Firm fixed price and fixed price with economic price adjustment contracts are currently excluded.) (*Fed. Reg. 74656*)

SBA Alters its Re-Certification Rules

The Small Business Administration issued its long-anticipated final rule Nov. 15, 2006, effective June 30, 2007, on new contracts and solicitations on small business re-certification. Under current rules, a company's size is determined on the date it self-certifies its size status and that status continues throughout the life of the contract even if it outgrows the applicable size standard through growth, merger or acquisition. As small business organizations have often pointed out, which stimulated the change, once a small business wins a long-term multiple award contract it can continue competing for task orders reserved for small businesses even if it is acquired or outgrows the applicable size standards during the contract period. Under the new rule, small businesses must now re-certify its size status or inform a procuring agency it is large (1) within 30 days of an approved contract novation (which is required in an asset purchase) (2) within 30 days of a finalized merger or acquisition if a novation is not required (as in a stock sale) and (3) for "long term contracts" longer than five years, within 120 days before the end of the fifth year, and after that, within 120 days prior to exercise of any option. The CO will have the discretion to exercise the option or not.

These new provisions will be considered exceptions to the unchanged rule that allows procuring agencies to exercise options to companies that outgrow their small business status before the five year period and still count the award as an award to a small business. The five year re-certification requirement replaced an earlier version of the proposed rule that required annual re-

certifications. Also comments accompanying the new rule stated that re-certification should not have any effect on the applicability of cost accounting standards to the contract (e.g. the original small business exclusion would apply to the contract even if the business was no longer small). (*Fed. Reg. 66434*).

Proposed FAR Rule to Improve Performance-Based Payments

The FAR Council is proposing several changes to the use of performance-based payments (PBPs). PBPs, whose increased use has been urged for several years now, represents payments for contract work based on completion of agree-to actions or milestones. The proposed rule is intended to clarify that (1) PBPs are contract financing payments and therefore not subject to interest-penalty rules under FAR 32.9 (2) events not requiring meaningful effort or actions must not be included as events or criteria for PBPs (3) PBPs are not to be used in certain type of contracts such as cost-reimbursement line items, percentage of completion contracts such as A&E, construction or ship building and contracts awarded through sealed bid procedures and (4) actual cost verification is prohibited unless the purpose is to assist in establishing revised or new PBP milestones or values. The rule will provide that PBPs may be used for individual orders and contracts when the parties agree on PBP payment terms, the contract or order is fixed price and does not provide for progress payments. The rule would also not permit the contracting officer to limit the amount of a PBP to a percentage of incurred cost for the scheduled event.

Contractors Won't Necessarily Receive Increased Reimbursement From Pension Act Changes

The Defense Department issued a Dec 22 memo addressing the impact of recent changes to the Pension Protection Act of 2006 (PPA) on government contracts. The PPA, signed into law Aug 2006, changes the rules for computing the Internal Revenue Service code minimum and maximum pension contributions. The minimum will be computed using an interest rate assumption based on the corporate bond rates instead of expected return of pension assets and a seven-year amortization period for unfunded pension liabilities instead of the current 10 to 30 year period. Firms will be allowed to begin voluntary implementation in 2006 though the effective date is not until 2008. The changes to the minimum contribution are expected to significantly increase the amount of pension contributions and the memo is intended to address the impact of these increased costs on forward pricing rates for government contracts.

If and when contractors propose increased pension costs resulting from the PPA, the guidance instructs the DOD contracting officer to consult with the administrative contracting officer and the DCAA auditor before determining whether to include any proposed costs relating to the PPA in either the contract price or forward pricing rates. The memo also instructs COs not to allow increased costs in anticipation of Cost Accounting Changes to implement the act and not to agree to reopener clauses that allow contract price adjustments at a later date. Commentators have noted this appears to leave contractors in the lurch, requiring them to absorb any increases until the CAS Board, which currently is not operating, makes changes to the CAS pension standards at CAS 412 and 413 to reflect the PPA. The guidance states even if the CAS is changed, there will be no retroactive equitable adjustment but will affect only new awards after the effective date of the changes. The new guidance leaves unresolved the "very real conflict" between pension calculations under CAS and the PPA leaving those contractors with some contracts covered by CAS and others not in a "regulatory no-man's land."

Industry Group Takes Issue with FAR Bar on Combining CAS Cost Impacts

One of the most burdensome requirements of having contracts covered by the cost accounting standards is the need to provide a cost impact analysis of changes to cost accounting practices. In comments to a proposed change to CAS administration requirements the Aerospace Industries Association has taken issue with the government's position that FAR 30.606(a) requires preparation of a cost impact analysis for each cost accounting practice and prohibits combining in one cost impact analysis more than one cost accounting change. AIA states that "current statutory language permits aggregation of the impact of a unilateral change affecting more than one cost accounting practice rather than prohibiting the combining of cost impacts for two or more unilateral changes."

AIA urged that FAR Part 30 be made consistent with the 1976 Defense Department's guidance in this area that provides for combining, for offset purposes, several accounting changes within a business segment as long as they have the same effective date of implementation. The AIA asserted the guidance states that the "government's interests are adequately protected" as long as no overall price increase results from combining

the contracts and treating them separately while administrative costs are significantly reduced. AIA stated the statutory regulations do not conflict with this guidance and called for changing the definition of "unilateral change" in the FAR to be consistent with this guidance.

DCAA Issues Guidance on Whether an Offsite Location is a Business Segment

DCAA issued audit guidance on whether or not an offsite location represents a segment and hence whether a contractor's failure to treat it as a segment results in a misallocation of costs to government contracts. The guidance includes a revised audit program to be used for determining compliance with CAS 410, allocating general and administrative costs. The definition of a business segment at CAS 410-30(a)(7) is basically one of two or more subdivisions of an organization that reports directly to a home office which usually has profit and/or product/service responsibility. The examination is to be undertaken when the offsite location has $10 million worth of government business or less if there is "risk" to the government (*06-PAC-038(R*).

DOD Issues Memo on Berry Amendment Changes

The Berry Amendment, which restricts use of nondomestic parts for certain end products, was recently amended in the 2007 Defense Authorization Act. The Defense Department Dec. 6 issued guidance on the new DOD statutes. The memo:

1. Defines "component" to mean first-tier parts and assemblies incorporated directly into the end product and second-tier parts and assemblies incorporated directly into first-tier components. This means that parts and assemblies at the third tier and below are not considered components.

2. Addresses the one-time waiver that allows a period for "suppliers at all levels" to become compliant after past "inadvertent" noncompliance with domestic source requirements that were produced prior to November 16, 2006 and where the government accepted the items later. The waiver was implemented in the form of a deviation. The drafters of the legislation recognized that many suppliers were "inadvertently noncompliant" and left it up to COs to determine on a case-by-case basis whether the noncompliance was inadvertent or willful.

3. Addresses an exception applied to "de minimus" electronic components where de minimus values are defined as not exceeding "10 percent of the overall value of the lowest level electronic component containing specialty metal." In an example of the 10% rule, when a contractor provides an aircraft end product along with radio communication equipment provided by a subcontractor, the value of the radio communication equipment is the basis against which the 10 percent de minimus value of the specialty metal content would be calculated. The electronic parts assembled into the radio communication are not the electronic components against which the de minimus value of the specialty metal must be calculated because they are not produced by the subcontractor. The memo adds it is not necessary to know the exact value of the specialty metal but only to reasonably estimate that it is less than 10 percent.

Also the new guidance ends the practice of DOD conditionally accepting items that contain noncompliant metals while withholding payments.

CASES/DECISIONS

A Clerical Omission on a Proposed Price Justifies Reforming the Contract

In its comparison analysis of bids for library management services at various Air Force bases, the CO found between 1 and 10 percent differences between the bids at most of the bases but found the winning bidder was 33-39 percent lower than the next lowest bid at one of the bases. Pointing out that the Courts have held that a government contract may be reformed where the CO had actual or constructive knowledge that the bid was based on a clear clerical or mathematical error, the Court sustained the request to reform the contract ruling the CO should have been alerted to a possible error in the winner's bid due to the disparity in price. The Court found that the disparity was due to a clerical omission of wages on its spreadsheet computations (*Information International Assocs. Inc v. US, Fed. Cl. No. 04-1489C*).

Normalization of Costs Is Inconsistent With CAS

(*Editor's Note. The following is relevant not just to CAS covered contractors but all contractors covered by the FAR since the cited cost standards are essentially duplicated in FAR Part 31.*)

In the best value solicitation for a cost type award, offerors were required to submit a "cost model" in the form of a Navy-supplied spreadsheet where offerors were instructed to "plug" numbers for all direct costs as

well as indirect rates in accordance with their established accounting system and provide the details of costs in the allocation bases and pools. In their cost evaluation the evaluators determined that treatment of project management expenses differed between offerors where most treated it direct while ACC treated them as indirect. In performing its cost realism analysis, the Navy "reclassified" some program management costs from ACC that were originally classified as indirect in accordance with its normal accounting practices to direct costs in order to be consistent with other offerors. The Navy claimed this reclassification or cost "normalization" was necessary to allow a more equitable comparison of cost proposals. In its protest of the award to ACC, the GAO ruled the "normalization" was inconsistent with cost accounting standards because CAS 401 requires a contractor's practices in estimating be consistent with its accumulation and reporting practices and that CAS 402 requires all costs incurred for the same purpose in like circumstances be either direct or indirect. To be consistent with CAS, ACC was required to propose its costs in a manner in which it accounts for them and hence the agency could not reclassify costs that ACC treats indirectly as direct costs (*Kellogg Brown & Root Svcs Inc. GAO B-298694*).

Successful Completion of SBIR Phase I and II Work Does Not Guarantee Phase III Award

Under the Small Business Innovation Research (SBIR) program there are three phases: Phase I involves determining scientific and technical merit and feasibility, Phase II is designed to further develop proposals that meet particular needs and Phase III involves commercial applications of SBIR-funded research. Night Visions successfully completed Phase I and II of a project to develop prototypes of night goggles where it subcontracted much of the work to Insight and the government conducted a Phase III competitive procurement where it awarded a production contract for the goggles to Insight. In its protest of the award to Insight, Night Visions asserted regulations require the government to award Phase III contracts to small businesses who successfully performed Phase 1 and II work. The Court disagreed concluding the government has the discretion to determine the type of procurement to take on any follow-on contract and that neither the Phase I or II agreements contained an explicit commitment that if Night Visions successfully completed the first two phases it would receive a Phase III contract (*Night Vision corp. v US, Fed. Cir. No. 06-5048*).

Contractor Can't Recoup Legal Costs Defending Private Clear Water Act Suit

In a dispute about the allowability of legal costs incurred in an unsuccessful defense against a citizen's suit for violation of the Clean Water Act (CWA) the appeals board ruled the costs are unallowable. The Board cited a prior case - *Boeing North American Inc. v. Roche* – that held the costs of unsuccessfully defending a private suite charging a contractor with wrongdoing are unallowable if "similar" or "related" cost would be disallowed under specific FAR provisions. In the current case, the Board held that these legal costs were "similar" to those of defending a CWA lawsuit brought by the government which would be unallowable under FAR 31.205-47(b)(2) - legal costs incurred by a contractor in connection with a civil proceeding brought by a government entity for violation of law that results in imposition of a monetary penalty is unallowable. In its appeal Southwest argued that another statute - 10 U.S.C. 2324 – precludes application of the "similar or related to principle" or alternatively, even if the principle can be applied the Board mistakenly concluded the legal fees in question were "similar" to the unallowable costs set forth in FAR 31.205-47. The Court affirmed the Board ruling. It held the statute cited by the contractor did not preclude application of the "similar" principle. As for the Board mistakenly applying the principle, it stated that FAR 31.204 provides for determination of the allowability of cost not specifically addressed in the FAR of "similar or related selected items" concluded the costs in question are similar to the legal cost provisions of FAR 31.205-47 (*Southwest Marine Inc. v. US, S.D. Cal., No. 05-CV-1189*).

VEQ Clause Applies to Contract As a Whole Rather Than Task Order

The firm fixed price requirements contract included a Variation in Estimated Quantity (VEQ) clause that provided for an equitable adjustment in price if the quantity actually ordered varied more than 15 percent above or below the estimated quantity – that is, when orders fell either below 85 or above 115 percent of the estimated quantity. Because the government ordered only 33 percent of the total estimated quantities Emerson sought an equitable adjustment. The government contended that because a requirements contract does not actually purchase supplies or services, which are purchased only though individual delivery orders, the VEQ clause applies only to the individual delivery orders that create the fixed price contracts. The Appeals Board sided with the contractor ruling the VEQ clause applies to the contract as a whole not to individual

delivery orders. The government also claimed there should not be an equitable adjustment if problems related to funds availability contributed to the government's failure to issue further task orders against the contract. The Board disagreed saying there was no authority for the proposition that it would make a difference if the ordering shortfall was attributable to lack of funding (*Emerson Construction Co., ASBCA, No. 55165*).

SMALL AND NEW CONTRACTORS

Adopting a Material and Subcontract Handling Rate

Whether or not to adopt a material/subcontract handling rate is becoming a "hot" issue these days. There are several reasons why. Reduction of firms' business activities to core specialties, need to incorporate diverse input and technologies from a broad range of companies, increased emphasis by government to encourage use of more (e.g. small businesses) firms and increased level of mergers and acquisitions have expanded use of subcontractors and subsidiary companies for providing both supplies and services. In spite of greater use of subcontractors there is considerable emphasis from many quarters to limit the "pyramiding" of costs on purchases of supplies and services provided by subcontractors, teaming partners and intra-company providers. Such concerns translate into greater reluctance to allow normal G&A mark-ups to these direct costs, resulting in strong encouragement to lower or even eliminate such add-ons. Though attempts to add typical G&A rates in the 15-35% plus range to purchases of materials, subcontracted items and several categories of other direct costs are increasingly resisted, there is the recognition that it is fair to add some small amount of mark-ups, say in the 2-10% range. Consequently, we are seeing a lot of acceptance of small add-ons (usually called handling fees) to subcontract and material costs, which often include space in RFP provided cost models. These mark-ups are usually accompanied by an important qualifier - they are allowed "if they are a part of your accounting practices." This qualifier means that if you propose a handling fee, you generally must have one established as part of your accounting system. That is, in addition to other indirect rates you compute, maintain and monitor (e.g. overhead, G&A) you usually need to demonstrate you also have an indirect subcontract or material handling rate in order to qualify for the proposed add-on.

The following will address a brief summary of the accounting rules that can be expected to by applied in the use of a handling fee, the dollar amounts to include in the pool and some of the cost elements that might be part of the handling pool.

- **Basic Rules**

First thing to understand is that there are no specific rules that determine how many indirect pools a contractor should have or what are the required elements of costs to be included in the pools (numerator) and allocation bases (denominator). Rather contractors and government auditors are given general guidelines to follow when establishing and evaluating contractor choices. So, for example, in the Defense Contract Audit Manual (DCAM) Chapter 6-606 there is a discussion of indirect cost allocation methods where DCAA quotes FAR 31.203(c) "Indirect costs should be accumulated by logical (homogeneous) cost groupings (pools) with due consideration of the reasons for incurring such costs, and allocated to cost objectives in reasonable proportion to the beneficial or causal relationship of the pooled costs to the final cost objective." Whereas you might expect specific references to the types of costs that must be included in pools and bases under consideration, DCAA rather alludes to the same FAR section and "applicable cost accounting standards (e.g. 418, 403, 410)" where these standards apply if your contracts are fully CAS covered. Though too detailed to recount here, even these cost accounting standards applicable to only some large contractors provide little additional guidelines where the terms "homogeneous cost groupings" and "causal beneficial" relationships between pools and bases are prescribed.

The DCAM guidance does address a few rates – use of a single plant-wide rate can be acceptable if there is "equitable" results, a separate engineering rate "may be necessary", separate indirect rates for different geographical locations "may be better" than one company-wide rate – but does not explicitly address material or subcontract handling. In a discussion of appropriate allocation bases, it does indicate that direct material may be used to allocate "material handling (purchasing, receiving or shipping) departments." The key prescription found through-out DCAA guidance is to evaluate for "equitable" results.

This lack of specificity can be good and bad. The good part lies in the fact that general guidelines rather than specific requirements for what indirect rates are appropriate and what cost elements must be included

in the pools and bases provide contractors considerable latitude in what practices they will adopt. The lack of specificity can also be bad in as much as it provides more than ample grounds to question a contractor's practice if an auditor or contracting officer believe the practice in question is "inequitable" or a different practice is more "equitable" – usually meaning less or more benefit to the government (i.e. lowest cost result).

- **Amount of Costs to Include in the Handling Pool**

Once a decision is made to apply a "handling fee" to material and/or subcontract costs, the next issue is to decide what costs are to be included in the pool of costs to be allocated by the material/subcontract allocation base. As in most indirect cost decisions, the practical aspects of pricing takes precedence over strict cost accounting theory. For example, if you believe the government would agree to only a small material/ subcontract add-on, say 2-3%, then there would likely be less incentive to maximize the handling pool costs than if you can negotiate a rate of say, 10%.

Consideration of the impact on your other indirect rates is paramount. Since the costs to be included in the handling pool and base are excluded from the pools and bases of your other rates, the more costs in the handling pool means less costs in your other pools. So, for example, if the relevant government contracts use a greater mix of direct labor versus direct material than other contracts, then you may want to minimize the costs taken out of overhead (which normally is allocated on direct labor) and assigned to your handling fee pool. However, if a greater mix of direct material or subcontracts versus direct labor is utilized on the relevant contracts, then you may want to transfer a higher amount of overhead costs to the handling pool.

- **Types of Costs to Include in the Handling Pool**

The type of business – manufacturing, research and development of prototype products, services – and type of direct costs that will have a handling fee applied will dictate which costs to include in the handling pool. The following is a sample of costs that have been adopted by our clients at certain times. They are oriented to a manufacturing environment that intends to establish a material and subcontract handling fee. Other types of firms (e.g. professional services) will need to whittle down the list of possibilities to meet the nature of their handling costs.

The personnel in typical support functions are normally indirect and the following are indirect cost candidates to include in the handling pool: clerks, material handlers, receiving and shipping personnel, stockroom employees, tool-crib attendants, janitors, maintenance men, packers and contract individuals. Individuals associated with the following tasks are also candidates for the handling pool – correcting nonconforming material, determining material and subcontract requirements, defect prevention efforts, engineering design costs, materials cost estimating, pricing of material, evaluation of compliance with policies and procedures, purchasing, contracting and subcontracting, storeroom and warehouse, small storerooms and tool cribs, inspection, quality control, storing and issuing, obsolete tool, rework, waste, spoilage, warranty expenses and indirect material. All of these costs can be accumulated into cost centers where not only personnel related costs but all costs associated with those cost centers can be assigned to the handling pool such as fringe benefits, facilities costs, depreciation, etc.

In addition, portions of more general indirect functions may be allocated to the handling pools such as accounting, human resources, legal, engineering, research and development, finance and even portions of more senior management cost if a significant amount of effort is related to the material/subcontract/other direct costs included in the handling base of costs. Timesheets for these individuals will be preferable. If timesheets are not practical, then other bases could be devised to assign a portion of these functional costs to the handling pool. For example, human resources could be allocated to various indirect pools (including handling) on a headcount or personnel cost basis, accounting on vendor payments processed, etc.

Lastly, a portion of other costs incurred by the company may be allocated to the handling pool on some reasonable basis. For example, if facilities costs (e.g. rent, depreciation, utilities, telephone, janitors) are assigned to individual cost centers that are, in turn, assigned to the handling pool, fine; if they are not or there is a significant amount of general facility costs not allocated to individual cost centers, then a surrogate basis (e.g. square footage utilized, headcount) can be used to allocate a portion to those costs to the handling pool. Remember the method used to compute the amount of costs allocated to the handling pool need not be consistent with the method used for internal or financial accounting purposes but can be done on a separate "memo" basis for government contract costing purposes.

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QUESTIONS & ANSWERS

Q. The Internal Revenue Service has come out with new mileage rates applied to auto use that is 48.5 cents per mile but I have not seen any guidance on what to apply to government contracts. What should I use?

A. The government generally follows IRS guidelines but there is often a delay (often significant) for them to publish the changes. When they finally do, they say it is retroactive usually from the time of the IRS change. In that light, I would think it would be safe to use the IRS rates unless someone objects.

Q. We submitted a proposal to the Navy and after considering several factors, we learned we did not win. We requested a debriefing and the response was "we are not providing debriefings for this award due to the large number of proposals received." What does the FAR say about this? What should we do?

A. FAR 15.505 and 15.506 address debriefing which say they are required to do so. I'd also take a look at the RFP where there is usually a part that addresses debriefing procedures. In practice, if the award was made purely on a comparison of price then there are usually no significant debriefing requirements but if it is a best value award where several factors were weighed then a debriefing is required and the fact there were a large number of proposals received is no excuse.

I am worried about the time limit you have to file a protest (I think it is 10 days after award notification). If you are against that limit, I would file a protest basically stating you requested a debriefing as required and because it was denied we are filing a protest. If you have some time, I would notify the CO that you are entitled to a debriefing according to the FAR and/or RFP and will be forced to file a protest if we are unable to obtain a debriefing.

Q. We receive billings from our Subcontractor on their travel and other direct cost expenses. Though we now add our G&A add-on to anticipated travel and ODC costs when pricing our fixed price task orders, we did not do so on over 50 prior fixed price task orders. Would this be considered an inconsistent accounting treatment and if not can we collect for the G&A costs we inadvertently failed to include.

A. The fact you include G&A markups on current and future TOs while not doing so in the past does not constitute an accounting practice change that would be prohibited. However, as a practical matter, the government may not like having to pay a markup they did not have to pay before and they may resist doing so now and in the future. As for recouping them on prior fixed price TOs, I am afraid you are out of luck unless there was some unusual reopener clause or cost reimbursement feature in the contract (which I doubt).

Q. Is there a maximum hourly rate for an employee working on a government contract? When we worked on some SBIR they actually spelled out a maximum hourly rate.

A. Though an individual contract vehicle may specify an upper limit (I also have seen SBIR grants specify a limit but it was usually a cap rate consistent with the proposal). However, I am unaware of any general limit other than the senior executive ceiling established each year by OMB (currently $546,689). Of course smaller firms may have a lower cap applied to them and if one is asserted by the government, then the hourly rate applicable to that cap will be the limit you can charge.

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