GCA REPORT

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NEW DEVELOPMENTS

DCAA Issues Important Guidance to its Auditors

DCAA has lately issued several guidelines that can have a significant impact on government contractors.

- **DCAA Eliminates "Inadequate in Part" Opinion**

In a very significant departure from traditional practice, DCAA will no longer allow inadequate in part opinions on internal controls related to system reviews. In the past, when DCAA conducted a system review (e.g. accounting system, estimating, billing, purchasing) it would commonly assess the internal controls practices related to that system (e.g. written policies and procedures, training, division of responsibilities and authority) and would then express one of three opinions on the system – "adequate", "inadequate in part" or "inadequate." Now that second opinion will no longer be issued. From a practical standpoint, the "inadequate in part" opinion was not considered nearly as bad as "inadequate" and generally offered opportunities to fairly quickly make necessary fixes to receive an adequate opinion. Now, internal controls and evaluation of the system will receive only one of two opinions – adequate or inadequate. (*Editor's Note. We were uncertain whether the inadequate opinion is to apply only to internal controls of a system or the system as a whole so we made several inquiries to authoritative sources who all indicated that a negative assessment of internal controls during a system audit would result in an opinion of inadequate to the system itself, not just specific internal controls.*) Once a system is deemed inadequate, the audit report will recommend to the contracting officer they disapprove the system and pursue suspension of either a percentage of progress payments or reimbursement of costs. The guidance also states an opinion of inadequate internal controls does not have to have a direct relationship to charging unallowable costs to government contracts but can be any significant internal control where poor ethics and integrity controls are cited as an example. In addition, DCAA will no longer report on minor discrepancies that were entitled "Suggestion to Improve the System" because these practices caused "confusions." For now, the guidance appears to be applicable to only major contractors (*08-PAS-043(*R).

- **DCAA Emphasizes Flash Reports and Institutes Limited Scope Internal Control Audits**

On the same day the above guidance was issued, DCAA issued another set of guidelines on what auditors should do if they identify internal control deficiencies during one of their non-system audits (e.g. forward pricing proposals, incurred cost submittals). The auditors are told to (1) issue a flash report addressing potential deficiencies within seven days if they do not receive comments from the contractor (a long established though not often followed guideline) and (2) establish a limited scope audit assignment to review the cited internal control weakness and all other "related" internal controls, preferably within 30 days after the condition is identified. If the limited scope audit determines that internal controls are not adequate, the auditor is to issue a report stating the relevant system is inadequate and recommend the CO disapprove of the system and suspend progress payments or reimbursement of costs. The guidance states it is applicable "generally" to major contractors, a term that often is later extended to non-majors if significant "risk" is identified (*80-PAS-04(*R).

- **DCAA Eliminates "Quick-Closeouts" for T&M and Labor Hour Contracts**

Effective immediately, DCAA has decided to discontinue the Time & Material and Labor Hour Contract Closeout Initiative it began in 2005. The closeout initiative was established to allow for the closeout of low risk T&M and LH contracts of $1 Million or less prior to completion of the incurred cost audit. Though it did not specify why, the guidance states it was discontinuing the quick closeout practices "based upon a reassessment of the initiative and risk associated with closing T&M contracts prior to completion of the incurred cost audit" (*08-PPD-038(*R).

- **Contractors Will be Cited for Denial of Access to Records if There Are Delays in Providing Requested Documents**

In an apparent attempt to speed up provision of requested documentation during audits, auditors are now told if requested documentation is not provided in a timely manner they are to (1) follow procedures for denial of access to records (see below) (2) take appropriate actions to withhold any unsupported costs billed to the government until the data is received and (3) question the unsupported costs in the audit report if the documentation is not received prior to the completion of the auditor's fieldwork at the contractor. These procedures are to be followed even if the contractor concurs to the questioned costs resulting from lack of support. If the records are alleged to have been destroyed, lost or stolen auditors are to obtain a written statement from senior management (i.e. no lower than business segment vice president or CFO) detailing the circumstances. If the auditor concludes the contractor cannot support its assertions on a timely basis they are to consider whether an internal control deficiency exists (providing as an example if cost transfers or adjusting entries are not provided in a timely manner), the contractor's accounting system should be cited as a significant deficiency or material weakness.

The guidance spells out what is considered to be reasonable expectations of timely support where the auditor has the obligation to clearly state what support is needed and when it should be provided and the contractor should be provided a reasonable time to provide the data. The assumption is that documentation supporting a contractor's assertions in a proposal or submission should be readily available (e.g. support for proposed hours should be provided the same day since the proposal is based on it) unless there is extenuating circumstances such as the data is stored off-site where additional time will be permitted. Costs that cannot be evaluated due to denial of access to data will be questioned and if unsupported costs are pervasive, the auditor should issue either a "qualified or adverse opinion."

The Denial of Access to Records process starts after the requested information is not provided by the due date and an explanation for the delay has not been made. A formal written request is made to the VP or CFO of the business unit within five days of the due date stating the information must be provided by a specific date (not to exceed one week) with a copy to the CO. If the information is still not provided the branch office is to notify the contractor, regional DCAA office and ACO that a formal denial to access to records exists and will be reported to appropriate government personnel. If still unsuccessful DCAA will determine if a subpoena should be requested and if still unsuccessful, the DODIG can issue an IG subpoena (*08-PAS-042(R*).

- **Auditors Must Reconcile Vouchers to Contract Accounting Records**

DCAA issued guidance stressing the need to reconcile costs reflected on interim public vouchers that are selected for audit to contractors' accounting records. The guidance alludes to DCAM 6-1008 that covers reviews of vouchers that are not authorized to be submitted directly to government disbursing offices under the Direct Bill Program. Sampling techniques are to be used to identify specific vouchers to be reviewed where the number selected will depend on results of internal control audits, audit leads, prior experience or other risk factors. To the steps for reviewing the vouchers the guidance adds one step requiring the billed costs be reconciled to the contractor's accounting records. For major contractors this step is performed prior to provisionally approving a voucher while for nonmajor contractors, auditors are allowed to perform this step on their next visit to the contractor, presumably after approval of the prior voucher, where adjustments will be made on future vouchers. For vouchers selected for review that relate to T&M or Labor Hours contracts, auditors are to ensure that labor hours and material costs reconcile to accounting records (*08-PPD-044(R*).

IRS Issues Proposed Rule on 3-Percent Withhold Rule

The Internal Revenue Service issued a proposed rule intended to implement the statutory requirement to withhold a 3 percent tax on government payments for goods or services. The proposed rule provides guidance to assist government entities to comply with the withholding requirement imposed by Sec. 511 of the Tax Increase Prevention and Reconciliation Act of 2005 that requires federal, state and local government entities making any payment to deduct and withhold a 3-percent tax. The Act applies to payments made after Dec 31, 2010. The proposed rule provides several exceptions such as (1) the withhold will not apply to payments less than $10,000 (2) will not apply to either classified contracts or tax-exempt entities (3) will apply only to government payments to prime contractors not to prime contractor payments to subcontractors and (4) would exempt withholds to existing contracts at the time the law becomes effective unless the contract is materially modified (*Fed. Reg. 74082*).

Industry and Experts Express Concerns Over New Disclosure and Code of Conduct Rules

There has been a flurry of commentary on a new rule that took effect Dec 12, 2008 requiring contractors and subcontractors to disclose to the government whether they have "credible evidence" of certain criminal or civil fraud acts and requirements to establish Contractor Code of Business Ethics and Conduct. We intend to discuss the basic requirements of the rules and summarize the concerns expressed by industry in the next issue of the GCA DIGEST, which we will distribute to all of our subscribers.

President Bush Signs Bill Easing Transition to New Pension Funding Mandates

President Bush signed the Worker, Retiree and Employer Recovery Act of 2008 that delays for one year increased minimum contributions to employer pension plans that are required under the Pension Protection Act of 2008. The PPA, which was effective Jan 1, 2008 amended the minimum funding requirements for contributions to pension plans and directed the Cost Accounting Standards Board to revise the two standards affecting pension costs (CAS 412 and 413) to "harmonize" the minimum contributions required under the PPA with computations required under CAS.

DOD Moves to Limit FAR Clauses in Commercial Item Buys

In an attempt to stop inclusion of non-commercial FAR or DFARS clauses in contracts for acquisitions of commercial products and services, the Air Force issued a memo instructing COs to refrain from using government-unique clauses or instructions incorporated into solicitations and contracts for commercial items. The memo cites the 2008 National Defense Authorization Act requirement to implement a plan to minimize the number of government-unique contract clauses used in commercial contracts except those authorized by law or regulation or that are relevant to a specific contract. Additional ones can be inserted but only if the agency can demonstrate that inclusion of the clauses are essential to comply with the 2008 DOD Act.

Government Agrees to Postpone E-Verify Contractor Rule

Following significant Industry opposition to an executive order and related federal procurements requiring federal contractors to use E-Verify, the electronic employment verification system, the federal government agreed to postpone implementation of the rule due to take effect Jan 19. The intention of the postponement is to give the new administration an opportunity to reevaluate it.

Proposed Rule Will Require Use of FAR Price Adjustment Clauses in Contracts

The FAR Council is proposing to amend the Federal Acquisition Regulation to require that time and materials and labor hour service contracts subject to the Service Contract Act contain appropriate price adjustment clauses set forth in FAR 52.222-43 and 44. Despite current prescriptions not requiring use of the clauses they still are widely used on T&M and LH contracts. There are other means of adjusting contract labor rates when the SCA requires an increase in pay such as allowing for wage/benefit escalations, equitable adjustments or economic price adjustment but these usually include profit, overhead and G&A add-ons to the pay increases. Rather than use a variety of means to adjust contract unit labor rates the Council states adoption of the proposed change will "achieve consistency…and resolve potential inequities where clauses have not been applied" (*Fed. Reg. 872*).

SAFETY Act Rule Now Permanent

The FAR Council agreed to convert a previously interim rule into a final rule amending the FAR to implement Department of Homeland Security regulations on the SAFETY Act. In November 2007 the council issued a government wide interim rule setting out the proper application of the Support Anti-terrorism by Fostering Effective Technologies (SAFETY) Act of 2002. The purpose of the act is to encourage the development of anti-terrorism technologies by insuring the threat of liability does not deter manufacturers or sellers of the technologies that can save lives. The system includes "risk management" and "litigation management" designed to limit the liabilities of companies providing "qualified" anti-terrorism technologies that are either "designated" or "certified" to be eligible for the act's protections (use our wordsearch function at our website for more information). The DHS rule also provides a streamlined review procedure for extending the act's liability protections to well defined categories of anti-terrorism technologies (*Fed. Reg. 2733*).

Comment Period on Women-Owned Firm Proposal Extended

In reaction to a recent Federal Circuit opinion striking down a Defense Department's small disadvantaged

business program (see the last GCA REPORT), the Small Business Administration announced it was extending a comment period on a proposed contracting program for women-owned small businesses (WOSBs). The SBA issued a finalized proposal last October to allow for various procedures to help women-owned small businesses procure federal contracts e.g. limit competition in industries where such businesses are underrepresented in federal procurement. The recent Court decision held that a 2006 statute establishing a defense contract set aside goal for SDBs violates the Fifth Amendment equal protection component asserting there was not enough evidence to support the affirmative action procurement program that discriminates on the basis of race. The SBA is extending the comment period of the WOSB proposal to analyze the effect of the ruling on women owned businesses.

Agencies Must Make Available J&A Documents for Noncompetitive Awards

To make noncompetitive awards more transparent, effective Feb 17, federal agencies will be required to make certain justification and approval documents for noncompetitive awards available to the public. The new FAR rule, implementing the 2008 defense authorization act, will require that all contracts awarded from a FAR 6.303-1, justification and approval document, will make the J&A documents related to use of noncompetitive contracting procedures available on the Federal Business Opportunities website (www.fedbizopps.gov) within 14 days of award. The rule contains provisions aimed at protecting confidential data (*Fed. Reg. 2731*).

OGE Memo Highlights Impact of New Ethics Laws on Hiring Former Feds

The Office of Government Ethics (OEG) issued a memo citing the impact of recent legislation raising the salary cap of senior level (SL) and scientific and professional (ST) government employees on post-employment restrictions of former senior employees. The new legislation raised the SL and ST salaries to be in line with members of the Senior Executive Service and the OEG memo states that the restriction of waiting one year to hire former government executives will apply to the SL and ST employees since they meet the one year restriction applying to those whose basic pay exceeds 86.5 percent of the pay rate for SES employees Level II (currently $148,953).

DOD Releases Final Rule on Use of T&M Contracts for Noncommercial Services

The DFARS was changed Nov 24 to make the same determination and findings (D&F) for the award of time and material contracts for both commercial and noncommercial services. The rule writers note that current rules at FAR 12.207 specify minimum content of D&F necessary for awarding T&M contracts for commercial services and ID/IQ T&M contracts. Now, to promote the same level of oversight, the new rule amends DFARS 216.001 to establish D&F requirements for DOD non-commercial T&M contracts that are similar to the FAR Part 12 provisions. The expansion of the oversight is part of DOD's goal to have T&M type contracts be appropriately awarded and overseen since such awards are seen as subjecting the government to greater risk than fixed price contracts (*Fed. Reg. 70912*).

CASES/DECISIONS

Software Costs Did Not "Benefit" the Government and Hence are Unallowable

Teknowledge developed its TekPortal software program at is own expense and then later proposed use of TekPortal in response to three solicitations but the government never purchased the software program. Teknowledge sought $285,000 of costs on a cost type contract by amortizing what it called a "reasonable percentage" of its development costs. Teknowledge argued that FAR 31.201-4 allows a contractor to charge the government allocable contract costs that are allowable provided it is "assignable and chargeable to one or more cost objectives on the basis of relative benefits required or other equitable relationship." The Court held that the costs at issue were not allocable because they did not meet one of three criteria: (1) be incurred specifically for a contract (2) benefit both the contract and other work or (3) be necessary for the overall operation of the company. Though Teknowledge conceded the first criterion was not met because it never entered into a contract to provide TekPortal it asserted the second prong was satisfied because the government benefited from the amortized costs because it enabled Teknowledge's commercial segment to absorb G&A costs that would have been otherwise allocated to government cost reimbursement contracts.

The Court disagreed stating a government benefit requires "some showing that the cost relates to a government contract, not that it promotes the government public policy interests" and that the "remote and insubstantial" benefits to the government that Teknowledge cited failed to meet this standard.

As for the third prong, the Court held that Teknowledge failed to show how the TekPortal program kept the company viable or explained how the program kept Teknowledge solvent or would bring in new business. The Court concluded since the costs at issue were not allocable to a government contract they were not allowable as a matter of law (*Teknowledge Corp. V United States, Fed. Cl. No 06-310C*).

Government is Immune from Negligent Audit

After the GSA Office of Inspector General conducted audits and investigations asserting Sun defectively disclosed information to the government when it negotiated its contracts Sun responded with a countersuit alleging, in part, that the audits were conducted negligently. In determining whether the negligent audit was immune from the Federal Tort Claims Act (FTCA) the Court explained that the government has no liability under certain claims (i.e. under "discretionary actions") while under others it has waived immunity. The Court ruled the audits were discretionary since they involved the government's choice to investigate Sun in its capacity as a party to government contracts which were "the very type of action that the discretionary function" is designed to shield (*United States ex rel. Rille v Sun Microsystems Inc., E.d. Ark*).

Only Contracting Officers Have Authority to Modify Contracts

(Editor's Note. Though people actually performing contract work have extensive contact with project people as opposed to contracts administrators, the two decisions below make clear that contractors need to make sure that changes to a contract must be approved by a CO, not project people, if they hope to be compensated for the change.)

Under a fixed price janitorial contract CEI sought an equitable adjustment in its contract price of $194,000 price after its project officers ordered it to do new work. The Board ruled against CEI asserting the contract provided that project officers could not issue new assignments, change contract terms or authorize either an increase in price or extend delivery dates. Since the contracting officer did not approve the changes, they were unauthorized and CEI was not entitled to the price adjustment (*Corners and Edges, Inc. ASBCA No 55767*).

The Navy identified various safety concerns at its construction site where the roofer contractor, SRC, discussed these concerns with the Navy's resident officer in charge of construction (ROICC) after which it provided a full time safety officer at what it claimed was the Navy's request. After having its equitable adjustment request for costs of hiring the safety officer rejected, SRC appealed. The Navy argued that even if the supervisor of general engineering in the ROICC office directed SRC to provide a full time safety officer it did not act on behalf of the CO. The Board sided with the Navy stating the contract provided that only the CO could bind the government to modifications or give verbal instruction to the contractor. In agreeing with the Navy position the Appeals Board stated that a prior case, *Winte v Cath-Dr/Balti Joint Venture* established that the CO's limited delegation of authority did not include the authority to make contract modifications (*States Roofing Corp. ASBCA No. 55500*).

Court Says A Contractor's Request for Change of its Evaluation is a Claim

After Todd completed two task orders for roof repair, the Army Corp of Engineers issued a proposed final evaluation rating as unsatisfactory. The Corp rejected Todd's appeal and the negative evaluation was made a part of the Construction Contractor Appraisal Support System (CCASS). Todd then filed a lawsuit asserting the agency did not follow proper procedures and the evaluation was erroneous where the Court had to decide whether a proper "claim" under the Contract Disputes Act was filed. The Court said that whether a contractor has made a claim depends on whether a CO has made a decision on a written demand which was made as a matter of right under a contract which is satisfied here. The Court ruled Todd could seek a ruling that the Corp's final decision was unlawful and could order the evaluation be removed from the CCASS (*Todd Construction, Fed. Cl. No 07-324*).

No Public-Private Competition Required Because Federal Jobs Are Unaffected

The Veterans Administration changed the "window fill" method of filling prescriptions to "mail-out" procedures for certain types of prescriptions and provided the mail-out procedures to a private firm. Four VA employees affected by the change remained in their current positions with no changes in job descriptions, grade or performance standards but Hardison, the President of the local union representing the four employees, protested the award stating a pubic-private competition was required. The GAO ruled against Hardison stating he was not an interested party because no federal jobs were at risk and thus there was no prejudice against the four employees. In addition, the GAO asserted the Office of Federal Procurement Policy Act requires a

public-private competition before converting public sector jobs to a private contractor when 10 or more employees are involved so no such competition was required (*B.R. Hardison, GAO, B31275*).

SMALL/NEW CONTRACTORS

To Bid or Not to Bid

Though the question may not have occurred to Hamlet, it is almost a weekly one for government contractors. We see a wide range of bidding habits from the "bid on everything" approach to the "no-bid blind" approach that limits bidding only to very select opportunities e.g. they know the RFP was coming, had a significant input into determining what requirements of the contract would be. The first approach generates a low win percentage and high bid and proposal costs (B&P) but expands award opportunities while the second approach lowers B&P costs and yields great win ratios while it limits opportunities and usually involves a great deal of expensive business development effort to generate sufficient intelligence about timing of awards and having an impact on defining the contract requirements. Most large companies we have worked for or consulted with have a fairly formal way of making the bid-no bid decision, often using some variation of a matrix score card where each consideration receives a score and the resulting overall score helps provide a basis on whether to bid. Most small to mid-size companies are less formal, commonly reliant on "feel." We have always admired an article in the April 2007 issue of Contract Management by Gregory Garrett of Acquisition Solutions and have used it as the basis of this report, augmented by our own experiences. We particularly liked the fact the article was not limited to only government contracts but provided the basis to analyze opportunities and risks of all types of projects.

Most bid-no bid decisions make the tradeoffs between opportunities to win lucrative business against the risks of not being successful. The article identifies ten elements for each that we believe is quite comprehensive:

Opportunities

We briefly describe below each opportunity and provide an example of how to score it – from low to high (higher the score the more attractive the opportunity).

1. Corporate match. Refers to how consistent is the opportunity with either the core business or direction for new business the company has established. Counter aligned to perfectly aligned.

2. Competitive environment. If my company or my competitor(s) is perceived by the customer as the solution leader and hence favored to win. Competitor is clear lead while my company is clear lead.

3. Revenue value. Is the opportunity a "small" or "large" revenue booster. Less than $500K to more than $5 Million.

4. Potential profitability. How good are the profit margins. Do they meet company goals. Profitability is negligible to over 100% of company requirements.

5. In-house content. Will the work utilize more profitable in-house personnel and resources or will it require substantially less profitable subcontracting and materials purchases. Less than 50% of revenue is generated in-house while 90% is.

6. Future business. How will it impact additional business beyond the specific opportunity e.g. open up a new account or protect an existing account. Little to no connection to future business while there is an assured link to future business.

7. Resources to bid. The amount of resources required if successful so on one extreme a win would drain resources used on other projects while on the other end it would utilize resources that would otherwise be idle.

8. Probability of success. The likelihood of winning. Probability is near zero while success is almost certain.

9. Collateral benefits. Refers to the degree that skill levels will be improved or new skills will be developed. Little or no benefits to other projects while there are significant benefits.

10. Overall strategic value. Values the importance of winning the contract. Low importance our company wins the business to it is critical we win.

Risks

Again we provide examples of lowest to highest scores (here, the lower the score the better).

1. Customer commitment. The degree the customer has demonstrated a solid commitment to implement the proposed solution we are offering. Customer has

assigned a budget and personnel to our solution while no budget or personnel has been assigned.

2. Company competence. Refers to company's experience and core competence in delivering the solution. The project is a replication of past projects while there is no replication at all.

3. External obstacles. Existence of roadblocks beyond our control (e.g. customer does not have committed funds for project). No obstacles to significant ones.

4. Opportunity engagement. Measures the degree our company or our competitors were involved in establishing the customers' requirements. Normally the more involved we were in defining the requirements of the project the better our chances of success so either we developed it or our competitors did.

5. Solution life-cycle match. How much does our solution involve existing mature products or services versus new products or technology. All requirements can be met by our mature tested products and services while 70% will involve new products/services and technologies.

6. Period of performance. Length of contract where the longer it is the greater the chance of risky changes. Contract is less than six months while it is over 3 years.

7. Delivery schedule. When is delivery required and who controls the schedule. The delivery schedule is flexible and will be set by my company while delivery schedule is set and imposes penalties for missed dates.

8. Resource coordination. The number of internal groups or external suppliers that must be engaged to deliver the solution. Need to coordinate less than five groups inside the company while there is the need to coordinate several groups inside and three outside suppliers.

9. Nonperformance penalties. The degree of penalties for failure to deliver. No penalties to fixed monetary penalties for nonperformance with no limits.

10. Overall feasibility. Degree of feasibility measure by representative(s) responsible for delivering. Project is feasible and risks are manageable to project has questionable feasibility and very high risks.

Putting it Together

As mentioned, the list above is quite comprehensive so reduction or consolidation of the 20 items is certainly reasonable e.g. combining Nos. 1, 6, and 10 under Opportunities. (Many companies we work with, including large ones, use 6-10 evaluation items.) Though a smaller list is nice and simple, a more comprehensive list has the advantage of identifying more elements to possibly negotiate better terms with your customer which, if successful, can increase the attractiveness of an opportunity.

Each element selected should be reduced to an electronic sheet or score card where there would be a four point scale for each. Since not every one of the 20 elements have equal importance within a company, each should be assigned a weight (the author's example provides for 3 being least important and 6 being most). That way each score can be multiplied by the assigned weight to achieve a weighted score for each element and then each weighted score can be added up to obtain a total weighted opportunity score. It is best for each member of an integrated project team to fill out their own scores where the team might consist of members of sales, business development, contracts, accounting/finance, technical staff, operations or project management, proposal manager, etc.

When multiple projects are being considered the resulting total weighted opportunity scores can be plotted on an Opportunity-Risk axis where there are four quadrants – High Opportunity-Low Risk (A), High Opportunity-High Risk (B), Low Opportunity-Low Risk (C) and Low Opportunity-High Risk (D). Those with the most scores in say the A and B quadrants would be the best candidates while those falling in the D quadrant would be least favorable. While the scores have the advantage of objective measurement they should be seen as aids for judgment and further analysis.

QUESTIONS & ANSWERS

Q. We are an EPA contractor and hold a T&M contract where we are tasked to perform scanning of contaminated documents using two laptops and three scanners to do the job. We believe we should be reimbursed for the equipment as direct cost of the contract but EPA doesn't want to provide us with the funding to purchase all the equipment for this job. The Task Order states that we will charge the EPA only a daily usage rate. If the equipment can not be decontaminated, we will be reimbursed for the actual equipment cost less the daily usage charge rate. EPA also didn't specify who will pay for the decontamination if needed. We expect to have a huge argument at the end of the job and feel that this job is very risky and we

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can loose a lot of money if EPA doesn't pay for the equipment. Is there a FAR clause regarding this kind of equipment? How can we establish this "daily rate"? How can we protect ourselves so we don't end up with a huge loss and bad rating from the government?

A. It seems like you need to recover both the equipment and decontamination costs in your daily usage charges. From your note, it does not appear that the government is prescribing any particular method of computing the daily rate so you seem to have some flexibility there. Two possibilities come to mind: (1) charge a "commercial daily rate" - a rate that would be consistent with that charged in the commercial world which would presumably cover, at the least, the equipment and decontamination charges (be prepared to document the "reasonableness" of the charge) or (2) a cost based approach that would include capitalizing the equipment cost plus anticipated decontamination costs where the monthly charges to the government would be the amortized value of those costs over the expected period of performance.

As for FAR quotes, the closest thing I am aware of is FAR 31.205-11(f) that addresses usage charges when equipment is fully depreciated. Though your equipment is not fully depreciated, the method described for computing a usage charge is instructive in your case e.g. useful life, increased maintenance costs, etc. If at all possible, I would urge you to establish an advance agreement sooner than later to avoid unpleasant surprises later (they usually occur). See our last issue of the GCA REPORT for a discussion of advance agreements.

Q. I would like to make sure all our company's executives use timesheets and record total time. Is it required?

A. As long as they do not charge direct projects, total time recording by executives should not be required – after all, what's the difference how many hours they work, their salary still gets assigned to their respective indirect rate pool However, if you want to encourage them to record their total time you could put forth a few reasons to do it: (1) auditors sometimes, erroneously, insist on total time reporting for everyone (2) there is a need to verify unallowable time, especially if some executives spend a significant amount of time on unallowable activities such as M&A, long term financing, entertainment, etc. – it is more accurate to point to timesheets rather than estimates, for example, claiming that 10% of time and salary costs are spent on M&A activities and (3) many companies follow total time recording by all employees including executives.

Q. Our firm's revenue has doubled over what it was budgeted for but we have still used the higher budgeted rates this year for proposal purposes. We are bidding on a rather large job and I was wondering whether we should change the proposed rates to be closer to actual projections.

A. If you do not change them, you are vulnerable to defective pricing allegations (i.e. not divulging current cost data) if your contracts are covered by the Truth in Negotiations Act. Of course, you need to be cautious how you broach this because you may have used inappropriate higher rates for the other work and could be vulnerable to defective pricing and possibly fraud allegations for earlier work.

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