
GCA REPORT

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NEW DEVELOPMENTS

DCAA Issues Guidance

The Defense Contract Audit Agency has recently issued an unusual amount of guidance to its auditors. The most significant are:

- **Security Clearance Bonus Guidance**

Recent DCAA guidance addresses the allowability of bonuses or premium pay as an element of compensation for employees with security clearances. Though FAR 31.205-6 does not explicitly address these expenses the FAR 31.001 definition of compensation is sufficiently broad to cover the expenses. Accordingly, additional costs – such as premium pay, special pay and bonuses – used to recruit and retain employees with a security clearance are allowable compensation costs if they are reasonable and allocable to government contracts. The guidance states that FAR 31.201-3 places the burden on the contractor to establish the reasonableness of these costs, namely for determining whether “external market considerations” – compensation surveys – demonstrate the reasonableness of the security clearance bonus and premium costs.

The guidance stresses that auditors are not to perform independent tests to determine reasonableness. Rather, the contractor’s compensation system is supposed to provide the auditor sufficient evidence to demonstrate reasonableness (e.g. use of compensation surveys). When the contractor’s system does not demonstrate reasonableness and the auditor does not have access to pay surveys that adequately represent the contractor’s market, they are instructed not to perform an independent test of reasonableness but instead the auditor should report the condition as a “significant system deficiency” and allow the contractor to take corrective action. Until the auditor can demonstrate the additional premium is reasonable, the auditor should coordinate with the ACO to determine whether other actions (such as withholding payments of amounts billed by the contractor) should be taken to protect government interests (05-PPD-035(R)).

- **Fast Closeouts of Low Risk T&M/LH Contracts**

DCAA has released guidance on closing out low risk time-and-material and labor hour contracts. Following a successful pilot project, DCAA is instructing its field audit offices to identify additional contractor sites that are suitable to participate. The guidance allows “low risk” contractors with several T&M/L&H contracts of \$1 million or less to close out their contracts “prior to completion of the incurred cost audit and without an audit of the final voucher.” The guidance includes criteria to be considered “low risk” such as (a) contractor has adequate accounting, billing, and labor accounting systems (b) labor floor checks have been performed with no significant exceptions (c) no significant exceptions have been taken on final vouchers and (d) the impact on T&M contracts of questioned G&A costs in prior audits was not significant.

Participant contractors will be required to submit an abbreviated final voucher to their ACO on all completed contracts within 30 days where the abbreviated voucher is the SF1034 which shows the summary information along with summary information normally contained on the SF 1035 (e.g. total hours, total labor dollars, material, ODCs, G&A, total accumulated amount, total amount due). Auditors will coordinate with the ACO to periodically spot-check abbreviated vouchers to verify accuracy of claimed amounts. The field offices should also continually monitor information that would have a bearing on contractor’s low risk-high risk status. The guidance has identified 20 contractor locations and encourages auditors to identify additional contractors (05-PPD-037).

- **CAS Cost Impact Rule Changes**

In the last issue of both the REPORT and DIGEST we reported on the significant revisions to FAR Part 30 affecting the process for determining and resolving cost impact on CAS covered contracts and subcontracts where a contractor makes a change to a cost accounting practice or fails to comply with the Cost Accounting Standards. Subsequently, DCAA has issued guidance on the change and we thought we would report on elements in the guidance that were not discussed in the prior articles.

Determinations. The guidance requires auditors to separately evaluate a contractor's disclosure statement for adequacy, requiring a revision if not adequate and then to conduct a compliance audit of the disclosed practices with CAS standards where a determination of noncompliance must result in a revised disclosure statement.

Required Changes. If a contract award requires a change to an accounting practice the contractor needs to disclose that the award requires the change, prepare a proposal using the changed practice and submit a description of the change with the proposal.

Unilateral and Desirable Changes. A unilateral change is a change from one compliant cost accounting practice to another one where it has not been determined by the CO to be desirable. In this case, the government will not pay increased costs in the aggregate resulting from the unilateral change. A desirable change is a unilateral change that has been determined by the CO to be desirable and not detrimental to the government and hence not subject to the prohibition of increased cost payment. Under a desirable change, the government will negotiate an equitable adjustment to the cost impact.

Further, FAR 30.603-2 says: (1) until a change is determined by the CO to be desirable, it is considered unilateral (2) there are advanced notification requirements to the government for a unilateral change (3) a contractor may request a change be retroactive if a rationale request is submitted and (4) contract price adjustments do not apply to changes related to external restructuring activities.

Consistency with DCAM. The guidance notes that the requirements in the procedures related to demonstrating the cost impact to the government e.g. issuing cost impact analyses at the gross dollar magnitude (GDM) and detailed cost impacts (DCI) levels as well as the ability to adjust a single, several, all contracts or any other suitable method are consistent with the five steps of the cost impact process found at DCAM 8-503.

Subcontract Administration. The guidance specifies that remedies of cost impacts at the subcontractor level will be made at the prime contract level "if a subcontractor refused to submit a required GDM or DCI proposal."

- **Verifying Certain Incurred Costs**

Recent guidance indicates that increased audit scrutiny can be expected in reconciling labor cost reports to timekeeping data, verifying labor charges on T&M

contracts and internal controls adequacy. The guidance is in response to a President's Council on Integrity and Efficiency review that cited "systematic non-compliances" in DCAA's incurred cost audits. The review stated there was a lack of evidence that (1) incurred labor costs were verified (2) claimed costs in time-and-material contracts were verified against contract terms and claimed labor hours (3) internal controls at low-risk non-major contractors were sufficient and (4) supervisors were reviewing workpapers and reports. The guidance for correcting these non-compliances include:

1. *Audit of labor costs.* DCAA auditors should inquire to determine whether there were sufficient verifications of labor distribution reports reconciling with timekeeping records and if not, auditors are told to select a sample of transactions from labor distribution reports and trace them to "source documents" (e.g. timesheets).

2. *Audit of claimed T&M contracts.* Audits under T&M contracts need to include sample test of amounts to verify (a) claimed labor rates and related labor categories tie to contract rate provisions (b) claimed labor hours tie to labor distribution reports and (c) claimed reimbursable amounts tie to job cost ledgers and supporting documentation.

3. *Documenting an understanding of internal controls.* For nonmajor contractors with auditable dollar volume greater than \$15 million, auditors must be assured that DCAA's Internal Control Questionnaire discussed in the DCAA Contract Audit Manual 5-111.1 is completed.

4. *Indirect rate letter execution.* There should be no indirect rate agreement letter executed without a prior supervisor and field audit office manager's review of audit working papers and draft report (05PQA-045(R)).

- **Availability of Compensation Team Specialists**

DCAA has issued guidance reminding auditors that the executive compensation caps established by the Office of Management and Budget each year (currently \$473,318) should usually not apply to smaller firms where "reasonable" executive compensation should be lower. The Mid-Atlantic Region of DCAA has a special expert compensation team that has spent considerable dollars on compensation surveys and the guidance reminds auditors that they can refer questions related to reasonableness of compensation, bonuses, incentives, severance, fringe benefits and deferred compensation to the team (05-PPD-046(R)). *(Editor's Note. As a former auditor out of the Mid-Atlantic Region who has frequently used the services of the special compensation team, this reporter can*

vouch for their expertise where full time auditors serve long periods of duty with the team. We often find that local DCAA offices take positions on executive compensation that some contractors believe to be unreasonable and in those cases, we recommend you consider asking your local auditor to review their position with the Mid-Atlantic compensation team to get another opinion.)

FAC 2005-04 Issued

The FAR Council agreed to one interim and seven final FAR rule changes in Federal Acquisition Circular 2005-04. Significant ones are:

1. Revises the cost principles for gains and losses on disposition or impairment of depreciable property or other capital assets to address gains and losses on sale and leaseback transactions. The intent of the rule is to provide that for contract costing purposes, the government should neither benefit nor be harmed for entering into sale and leaseback arrangements. The revisions (1) define the disposition date for a sale leaseback arrangement as the date the contractor begins to incur an obligation for lease or rental costs and (2) recognize that an adjustment to lease or rental costs is required to ensure the total cost associated with the use of the assets does not exceed the constructive costs of ownership (Fed. Reg. 33,673, 6/8/05).

During discussions before passage of the above rule, DCAA raised the issue of what happens to depreciation costs when the asset that was sold and leased or any asset, for that matter, that was disposed of and later repurchased. As a result of this discussion, the FAR Council has proposed an amendment to FAR 31.205-16, depreciation that would provide allowable depreciation of reacquired assets shall be based on the net book value of the asset as of the date the contractor originally became a lessee of the property in the sale and leaseback arrangement, adjusted for any allowable gain or loss and less any amount of depreciation expense included in the calculation of the amount that would have been allowed had the contractor retained title (Fed. Reg. 34,080, 6/13/05).

2. Currently, the FAR provides an exception to the requirement for submission of cost or pricing data for minor modifications to commercial item contracts awarded by DOD, NASA or the Coast Guard. The change to FAR 15.403-1 adds a section that provides that the exception does not apply when noncommercial modifications to a commercial item contract are expected to exceed \$500,000 or 5 percent of the total price of the contract (Fed. Reg. 33,659, 6/8/05).

3. A new rule amends FAR Parts 2, 22 and 52 and implements Executive Order 13201 which now requires government contractors and subcontractors to “post notices informing their employees that under Federal law they cannot be required to join a union or maintain membership in a union to retain their jobs” and that employees who are not union members can object to the use of their dues for certain purposes (Fed. Reg. 33,655, 6/8/05).

4. As an incentive to increase use of performance-based contracts, a FAR change authorizes agencies to treat performance-based contracts and task orders for services as commercial items if the following conditions are met: (a) it entered into it before 2013 (b) has a value of \$25 million or less (c) meets the FAR 2.101 definition of “performance-based contracting” (d) includes a quality assurance surveillance plan (e) includes appropriate performance incentives (f) specifies a firm-fixed price for specific tasks to be performed or outcomes to be achieved and (g) is awarded to a firm that provides similar services to the general public under terms similar to those in the contract or task order (Fed. Reg. 33,657, 6/8/05).

5. Implementing a Services Acquisition Reform Act change, agencies will be prohibited from including in a solicitation a requirement that an offeror cannot permit its employees to telecommute or can unfavorably evaluate an offeror’s proposal that includes telecommuting unless it would adversely affect the contract requirements (Fed. Reg. 33,656, 6/8/05).

6. Implementing Labor Department regulations, the FAR now requires contractors to pay Davis-Bacon Act wages at a secondary site of work located in the US and established specifically for the performance of a contract or project covered by the act (Fed. Reg. 33,662, 6/8/05).

Proposal to Expand Acquisition of Commercial Services

A task force representing several influential industry groups issued May 17 a report calling for regulatory and law changes to give the federal government “full and free access” to all services available to the commercial sector. The report said in spite of the fact that total federal contract dollars spent on services exceeded 50 percent of the Defense Department’s budget, the rules covering acquisition of services continue to impede entry of commercial firms providing services to the government. Legislative changes called for include:

1. *Redefining commercial services.* The definition of commercial services does not need to be conceptually different from the definition of commercial item. The current distinction between “ancillary” and “non-ancillary” services as well as language such as need to demonstrate that services are sold competitively in substantial quantities and are based on established catalog or market prices are “unnecessarily restrictive” and should be eliminated.

2. *Expand use of T&M/LH contracts.* Use of time and material/labor hour contracts and subcontracts for acquiring services are very common in the commercial world. The restriction of use of T&M/LH contracts to only competitively awarded ones and prohibiting their use to sole-source awards is erroneously based on the assumption that competition is the only way to secure price reasonableness whereas market surveys and reviews of past contracts are equally effective at obtaining price reasonableness. Also statutory language should make clear that prime contractors are entitled to subcontract on a T&M/LH basis for services where the prime assumes responsibility for justifying contract type, terms and conditions.

3. *FAR Changes.* In addition to eliminating “outmoded” references to substantial quantities and catalog or market prices, other FAR changes should include (a) recognition that a commercial item acquisition can be either competitive or sole source if properly justified (b) provide guidance on a full range of methods for assessing reasonableness of prices for commercial services (e.g. market survey information including reviews of active and past commercial contracts) (c) establishing an obligation for vendors to provide supporting information to the CO to allow assessment of the reasonableness of proposed prices and (d) clarifying that vendor prices can be established through electronic or company Web pages.

4. *Past Performance Information.* There needs to be further attention to a mechanism for developing past performance information for services since the cost and schedule metrics currently collected for hardware contractors may not be the best measurement for services deliveries.

DOD Puts New Restrictions on Use of Non-DOD Contracts

The Defense Department issued a new interim rule May 24 that places additional restrictions on use of contracts awarded by another agency. Under the new rule, DOD may not procure goods or services through a contract

or task order of more than \$100,000 and entered into by an agency other than DOD without: (1) evaluating whether the non-DOD contract is in the best interests of DOD, considering customer requirements, schedule, cost effectiveness and contract administration (2) determining whether the tasks to be done or supplies to be provided are within the scope of the contract to be used (3) ensuring the funding is governed by appropriate limitations (4) ensuring the contract complies with all uniquely DOD statutes, regulations and requirements and (5) collecting data on the use of assisted acquisitions. These requirements apply to all orders, whether they are placed through a direct acquisition (by a DOD official under a contract awarded to a non-DOD agency) or an assisted acquisition (placed on behalf of DOD by a non-DOD agency).

Some commentators on the new rule expressed concern it restricts the ability of DOD agencies to use the General Services Administration Federal Supply Schedule Program and other multi-agency contract programs and that it will delay acquisition of necessary products and services. In response to such concerns the Director of Defense Procurement and Acquisition Policy Deidre Lee issued a June 17 memo stating such concerns are “incorrect.” Ms. Lee said “the use of non-DOD contracts is encouraged when it is the best method of procurement to meet DOD requirements,” adding that DOD is working with the GSA and assisting agencies to make sure all acquisitions made by or on behalf of DOD comply with applicable statutes and regulations.

New Electronic Reporting on Subcontracting Activities

Federal contractors will soon have access to a new governmentwide electronic subcontracting report system (eSRS) that will relieve them from having to file paper submissions and standardized forms updating their progress in meeting small business subcontracting goals. The new reporting system was rolled out to industry representatives June 30 and is expected to be in full use by Oct. 1, 2005, the start of the 2006 fiscal year. Civilian agency contractors will probably begin using the system this summer while for DOD contractors the goal is to deploy the new system in time for reporting FY 2005 contracts.

The new Web-based system for entering the data is expected to eliminate the numerous subcontracting reports filed manually. The system will require contractors to file electronically the information they now include on SF 294, Subcontracting Report for

Individual Contracts and SF 295, Summary Contract Report. The new system is expected to appeal to contractors with features such as electronic information input and extraction, electronic interface with current systems, measurements of progress in meeting subcontracting goals, notification regarding failure to file timely reports, links to facilitate reporting of subcontracting data at lower tiers and breakdowns of subcontracting data down to the buying level. Find information about eSRS at “www.esrs.org.”

Proposed Rule to Make Subcontracting Practices an Element of Past Performance Evaluation

The FAR Council is proposing to amend the FAR to require past performance evaluation of certain orders and to ensure that subcontracting management is addressed during evaluation of a contractor’s past performance (Fed. Reg. 35601, 6/21/05).

CAS Board Amends Capitalization of Assets Standard

The Cost Accounting Standards Board made some technical corrections to CAS 404, Capitalization of Tangible Assets.” In 1996, contractors’ minimum cost criteria for capitalization of assets was increased from \$1,500 to \$5,000 in the body of the text but the change was not made in the illustrations so the recent amendment seeks to correct this (Fed. Reg. 37706, 6/30/05).

DOD Mentor-Protégé Program Gets Five More Years

The Defense Department has issued an interim rule amending the DFARS to extend the DOD pilot mentor-protégé program for five additional years. Section 842 of the DFARS expands the program to permit service-disabled veteran-owned small business concerns and HUBZone small businesses to participate in the program as protégé firms.

DOL Raises Minimum Health and Welfare Benefit Rate

The Department of Labor has increased to \$2.86 per hour the prevailing minimum health and welfare benefits under the Service Contract Act (SCA). The SCA was established in 1965 to ensure prevailing rates were met in federal service contracts where the wage determinations include wages, vacation and holiday benefits and a prescribed minimum rate for other benefits not required by law. DOL adjusts the rate

annually based on Bureau of Labor Statistics. The new rate, announced May 20, concerns only health and welfare benefits and is effective for contracts awarded on or after June 1. SCA wage determinations previously contained high and low health and benefit fringe benefit levels. The low benefit level, measured “employee by employee” was adjusted annually and the high benefit level, based on a contractor’s average fringe benefit costs for all service employees working on the contract, was set at \$2.56 per hour. In 2004, when the low benefit reached the same level as the high benefit, DOD started setting a single rate, though different methods of measuring compliance was maintained. The average fringe-benefit wage determination will be issued only for contracts that qualify for the “formerly grandfathered high benefit rate.”

House Limits Corps of Engineers Authority to Award Continuing Contracts

The House passed legislation May 24 that would limit the Army Corps of Engineers’ ability to award continuing contracts. The Corps has long had authority to award continuing contracts, which are used for large public works projects that may take many years to complete, before Congress appropriates the full amount necessary to cover the work. The House Appropriations Committee cites its concern over the Corps’ “liberal use” of continuing contracts and its “inadequate budget” for them.

CASES/DECISIONS

Contractor Pays \$2.75 Million to Settle Improper Charging Allegations

(Editor’s Note. The following should provide some insight into judgments on when it may not be appropriate to charge otherwise allowable costs to a contract.)

The contractor asserted it had a fully compliant Earned Value Management System (EVMS) – a system required to track cost and scheduling performance data on large DOD contracts - in its proposal for a cost plus contract when, in fact, it had none. After award, it subsequently developed a compliant EVMS and DCAA found that it had charged the contract more than \$1.4 million to develop it. The Air Force not only agreed the charges were improper but also took steps to file a claim under the False Claims Act. The contractor agreed to settle the matter for \$2.75 million with no acknowledgement of wrongdoing.

Awardee's Misrepresentation of Key Personnel Availability Sustains Protest

In its proposal, AMSEA submitted commitment letters for six key personnel and based on the commitments and other factors was awarded a contract. Following award five of the six employees listed on the proposal declined to accept their engineer assignments and PCS filed a protest alleging the proposal was a "misrepresentation" and "bait and switch" arrangement having a material impact on the award. In testimony AMSEA admitted it had not discussed the location of the positions nor salary and benefits and the Comp. Gen. ruled that whatever agreement it had with the engineers, it fell short of the commitment required in the solicitation stating "an agreement to work for a successor offeror, without reaching an agreement on salary and benefits, is not a binding commitment." The Comp. Gen. also ruled the misrepresentation had a material effect on the award since the competition between AMSEA and PCS was close. However, the Comp. Gen. rejected the bait and switch claim ruling a protester must show, among other things, that is was "foreseeable" the individuals named in the proposal would not be available to perform (*Patriot Contract Services, Comp. Gen. Dec. B-294777.3*).

Board Rejects Claim the Government Constructively Exercised Option

The government made an oral request to ISI to continue performing certain work under its one year with a two year option contract. Despite no written notice to extend the term of the contract, ISI asserted the oral requests meant the government "constructively exercised" its contract option and hence owned it \$324,000, the sum of the amounts set out in the option. The Board disagreed stating the contract clearly required the government to provide ISI with written notice to extend the term of the contract. In rejecting the claim, the Board noted the option clause does not obligate the government to exercise an option but gives it "nearly complete" discretion to do so. It emphasized that the government's exercise of an option must be "unqualified, absolute, unconditional, unequivocal, unambiguous...and strictly according to the terms of the option." Here the terms of the contract unambiguously required the government to provide ISI with a written notice to extend the contract and the Board could find no legal authority to support ISI's position that the government can exercise an option by doing something other than strictly complying with the terms of the contract (*Integrated Systems, Inc. GSBCA No. 16321-COM*).

Army Fails to Explain Why Proposal Was Overpriced

In its proposal to provide information management services, CITI initially planned to staff the effort with 37 full time equivalents (FTEs) which resulted in a price of \$110 million. The Army's cost estimate was \$13 million and the Army told CITI its price was "overstated" after which CITI lowered its final price to \$89.9 million based on 27 FTEs. Because it considered CITI's price as "unreasonably high" and "unrealistic" it made a best value award to two other companies whose prices were based on nine and 3.75 FTEs respectively. In sustaining CITI's protest the GAO said while an agency need not "spoon feed" an offeror during discussions each and every item that could be revised to improve its proposal, it must provide sufficient information to give offerors a fair and reasonable opportunity to identify and correct deficiencies, excesses or mistakes in their proposals. Here, in characterizing the issue simply as one of price, the agency had failed to address the underlying cause of CITI's unreasonable price – the company's misconception of the staffing level required. The GAO concluded the agency's discussions were not "meaningful." The GAO also rejected the Army's argument that CITI was not harmed because its price was significantly higher and its technical rating lower. It ruled that when an agency fails in its duty to hold meaningful discussions and then argues the protester was not prejudiced (e.g. harmed), then the GAO will resolve any doubts concerning the prejudice in favor of the protester (*Creative Information Technologies, Inc. GAO, No. B-293073*).

NASA Mechanically Applied Staffing Estimate to Proposal

NASA chose to consolidate test operations at two facilities into one contract with the intention to improve efficiency and safety and lower costs and increase staffing flexibility. In its RFP it asked offerors to "propose innovative techniques and methods that would benefit the government." However, when NASA developed its independent staffing estimate it merely added up the existing staffing levels at the two facilities. When Honeywell proposed a staffing level 45 FTEs below the government's estimate, NASA increased Honeywell's proposed FTEs by 45, thereby increasing its proposed price and awarded the contract to a lower priced offeror. In Honeywell's protest, the GAO noted that the government's independent staffing level determination may have limited applicability to a particular proposal since, for example, skill levels and

innovative work methods may result in lower FTEs. GAO concluded that NASA's automatic adjustment of Honeywell's staffing proposal suggests that NASA's staffing estimate was used in a "mechanical way in the cost realism evaluation" in spite of the RFP's encouragement to propose innovative approaches. Instead, the agency should have independently analyzed the realism of Honeywell's proposed costs based upon its particular approach (*Honeywell Technology Solutions Inc. GAO No. B292354*).

NEW/SMALL CONTRACTORS

Mistakes New (and Some Old) Contractors Often Make

We are frequently asked what source selection officials are looking for when evaluating different offerors. We came across an article we wrote that was based on an article from an obscure journal written for contracting personnel by a very experienced source selection official. We can't remember why we did not publish this but we think it would be a good idea to summarize what the government is teaching their acquisition people. The source article was written by Deanna J. Bennett, in *Acquisition Review Quarterly* (Vol. 4, No. 4) entitled "What Contractors Should Know" and seeks to identify "what contractors do wrong".

Face time doesn't count. In spite of industry perceptions, presenting informal briefing and getting "face time" with project managers, source selection officials or anyone else provides little advantage. It is your proposal, not your marketing personnel or project managers that talk.

Play by the rules. Attempts to get additional or insider information usually get back to source selection personnel which often hurts offerors.

Get as much information as possible. In spite of the warnings above, have project managers not just marketing personnel attend all presolicitation conferences or pre-proposal conferences, regularly access the agency's web page for updated information and ask questions at whatever forum is available.

Understand Section L. Avoid simple mistakes commonly made by not reading Section L (proposal instructions) thoroughly. Common mistakes include:

1. Exceeding page limits – common strategies such as alluding to other pages do not work because evaluation teams will usually evaluate only the specified pages in their assigned section
2. Putting information in the wrong place – strategies that use footnotes, for example, in the cost section that clarify technical or management points will have no effect on those sections
3. Assume evaluation team "osmosis" – for example, assuming a new process that affects both the management and technical sections that is described only in one section often means the other evaluation team will be unaware of it
4. Not addressing all proposal requirements – preparing a matrix of all requirements should be referenced against the proposal to make sure everything is there
5. Ignoring personnel qualification requirements – though actual contract performance may allow for waiving certain requirements in education or experience, the proposal is not the place to ignore any requirement for each category.

Don't pass oversight along with tasking to subcontractors. Though it may be effective to assign certain parts (e.g. tasks) of the proposal to subcontractors, make sure that as the prime contractor their product is put to the same rigorous review (e.g. management, "red team") as the prime contractor's sections.

Plan on working during the holidays. Funding authorization requirements make the March to June time frame the most common time to award contracts so a high percentage of solicitations are issued in the September to December time frame.

Understand Section M. A thorough understanding of Section M (evaluation criteria) will allow you to invest your time and effort in the sections that count most if, for example, time gets unexpectedly short.

Respond fully to questions. Questions are usually intended to clarify your proposal or enter into formal discussions to amend or correct deficiencies so evaluators can clearly evaluate your proposal.

Give yourself flexibility at orals. Use your oral presentation for details while you provide the government higher level advanced information beforehand. For example, pre-oral advance slides might say "large personnel database" while at orals you can specify the number that may have subsequently changed after you prepared the slides.

QUESTIONS & ANSWERS

Q. We own several pieces of equipment, long ago depreciated, that we charge our commercial clients for using. We understand we have to charge the government "costs of ownership" for assets but since we have no depreciation expenses we do not see how we can charge the government. What do you think?

A. FAR 31.205-11(f) does provide for "use charges" on fully depreciated assets. To do so, you usually need to negotiate a forward pricing agreement and when deciding on the amount to charge you need to consider (1) the replacement cost and estimated useful life at the time of negotiation (2) the effect of increased maintenance costs and decreased efficiency because of the age of the asset and (3) the amount of previous depreciation charges made to government contracts and subcontracts. The fact you seem to already have a "commercial" usage charge may also be taken into account. Several cases have held that usage charges are allowed even if they were never recorded in the financial records. For example, S.S. White Dental Manufacturing Company (ASBCA No. 4012) allowed a use charge on fully depreciated assets that was not recorded and the Board stated a reasonable use charge amount would cost less than depreciation on newer assets, even though older assets would probably be less efficient and would require more maintenance.

Q. Are costs associated with fees paid to collection agencies allowable for such items as bad debt and late payments by clients.

A. The costs associated with bad debts are clearly unallowable. FAR 31.205-3 says "Bad debts..., and any direct associated costs such as collection costs and legal

costs are unallowable." It is based on the premise that the bad debt related costs are not allocable to government contracts because the government always pays its just debts.

The costs associated with late payments are something else. There is no prohibition we are aware of against recovering costs related to collecting late payments as opposed to strictly bad debt collection. It would be a normal cost of doing business where there is no FAR prohibition. The efforts related to collection of late payments would also include efforts related to collecting government late payments. Of course, costs related to collection agencies may be challenged by government auditors so you would need to demonstrate the costs are related to late payments as opposed to bad debt collection.

Q. We are trying to find cost of money rates going back through 2001. We are in the process of researching prior issues of your publication for cost of money rates and have located certain of these and the Federal Register reference. However, other than reviewing prior issues of GCA and daily reading of the Federal Register, is there a readily accessible common resource that can be accessed to provide this information?

A. For current rates we review the Federal Register and report them in the GCA REPORT while for historical ones we use the DCAA Contract Audit Manual Chapter 8-414.2 for cost of money factors going back to 1982. For your convenience find below the factors 2001 thru the first half of 2005:

	1st Half	2nd Half
2001	6.375	5.875
2002	5.5	5.25
2003	4.25	3.125
2004	4.00	4.5
2005	4.25	