GCA REPORT

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NEW DEVELOPMENTS

NEW FACs Issued

The FAR Council issued three sets of final rules amending the FAR as Federal Acquisition Circular 2005-9, 10 and 11. Of significance to our readers:

- **FAC 2005-11**

Required use of an EVMS system. A government-wide rule requires use of an earned value management system (EVMS) where all contracts for programs designated as major acquisitions must include a clause requiring the contractor implement an EVMS as described in the American Nations Standards Institute (ANSI/Electronic Industries Alliance (EIA) Standard 748. Recognizing some businesses may not have a compliant EVMS when they submit offers, the final rule clarifies that these offers would not be disqualified from contract award provided an EVMS implementation plan is included in the proposal. EVM is a method for objectively measuring the amount of work accomplished on a contract where cost, schedule and work measure provide for continuous measurement of different variables. The rule does not specify specific dollar thresholds, leaving it up to the individual agencies to establish, but major acquisitions have generally excluded those at or below $20 million in total cost *(Fed. Reg. 38250).*

- **FAC 2005-10**

1. *Exemption from cost or pricing data.* Finalizes and clarifies an earlier interim rule on an exemption from submitting cost or pricing data. The exemption applies when there are minor modifications to commercial item contracts. The clarification states (1) the exemption does not apply to noncommercial modifications to commercial item contracts if the cost of that modification is expected to exceed $500,000 or 5 percent of the total price of the contract, whichever is greater (2) the threshold amount applies to the particular contract action under consideration not to the total value of all contract actions of the contract (3) $500,000 will be the threshold, not the $550,000 FAR threshold requirement for submitting cost or pricing data because the FAR Council has no authority to raise the limit (4) the noncommercial modification will be subject to the Truth in Negotiations Act but only if the modification exceeds the TINA threshold of $550,000. Also to avoid any misunderstanding of the term "cost" – which the rule writers said refers to the "cost" to the government and does not require contractors to produce an estimated cost for purposes of applying the threshold – the final rule uses the term "price" instead of "cost" in referring to the required threshold.

2. *Depreciation following reacquiring assets after a sale leaseback.* Regarding the allowability of depreciation costs for assets reacquired by a contractor after a sale and leaseback arrangement, the final rule is based on the premise that a contractor should neither benefit from nor be penalized for entering into such an arrangement. Accordingly, the rule provides that the government will reimburse the contractor the same amount for the reacquired asset as if the contractor had retained title throughout the service life of the asset. In determining allowable depreciation the government will consider (a) any gain or losses resulting from the sale (FAR 31.205-16) and (b) depreciation expense included in the calculation of the normal cost of ownership (FAR 31.205-36 and 11). In response to assertions the new rules were inconsistent with GAAP and CAS, the Council responded that neither CAS or GAAP adequately covers what happens when an asset is reaquired after a sale/leaseback transaction.

- **FAC 2005-09**

1. Prime contractors must confirm that a subcontractor representing itself as a HUBZone small business concern is properly certified as such *(Fed. Reg. 20303).*

2. Cancel the authority for civilian agencies other than the National Aeronautics and Space Administration and the Coast Guard to apply the price evaluation adjustment to certain small disadvantaged businesses

in competitive acquisitions *(Fed. Reg. 20304).*

DOD Partially Lifts Moratorium on Processing Security Clearances

Responding to an uproar from both industry and government to a late April announcement that the Defense Department would discontinue processing all contractor security clearance applications until further notice, the Defense Security Service (DSS) announced it would resume processing some applications. DSS, which determines industry applicants' clearance eligibility for DOD and 23 other agencies, said it would immediately resume processing initial secret level requests after receiving additional funding but would continue the moratorium for initial requests for top secret clearances and periodic reinvestigations for secret and top secret clearances. The DSS took much of the blame stating it failed to accurately estimate the demand for security investigations and to understand the problems created by the suspension of investigations.

(Editor's Note. We intend to discuss the current status of processing security clearances in the next issue of GCA DIGEST.)

Report Cites Increased Competition for Professional Services Contracts

A report issued June 5 by the Center for Strategic and International Studies said while the number of professional services contracts has grown dramatically in recent years, the total value of such contracts has not grown at the same rate, meaning that contractors, especially mid-sized firms, are having to compete harder for more awards in order to maintain their revenue. Between 1995 and 2004, the number of awards to professional services firms doubled to 6,700,000 but the average dollar value dropped from $383,000 to $270,000 while the median value fell from $63,000 to $30,000. The report indicates the change is a result of greater reliance on multiple award federal schedule contracts where contractors need to first win a position and then scramble to win awards, often under simplified acquisition procedures where awards are made to small firms. The study concluded that mid-sized firms are being "squeezed" where they are having a more difficult time than either of their large or small competitors. Large contractors, whose share of contract dollars has grown through acquisitions and mergers now make up 49% of the contract dollars. At the same time, small contractors, who have "held up fairly well" have maintained a steady 19 to 22% of the market.

Other finding of the report include:

1. The government awarded $167 billion in contracts for professional services, about equal with hardware awards. The fastest growing segments were information and communications services with a 14% annual compound growth and professional administrative and management (PAM) services with a 9% growth where research and development services and PAM each had the largest dollar value of federal contracts in 2004 at $41 billion with facilities-related services at $36 billion.

2. The Defense Department had 63% of the total with DOD, Energy and NASA taking three-quarters of the market

3. The professional services industry has become more integrated with the defense hardware-platform industry as large prime contractors have made "significant acquisitions" in the professional services market.

The CSIS report is available at www.csis.org/component/option.com-csis-pubs/task.view/id,3280/type.1/.

Air Force Says COs May, But Are Not Required to, Ask Contractors to Recertify Size

The Air Force May 10 issued guidance on whether contracting officers have the discretion to seek recertification of a contractor's small business status prior to awarding a task or delivery order or exercising an option under certain awards. The guidance was considered necessary in the light of a recent December 2005 decision in *LB&B Associates v. US (No. 05-1066L)* that has "caused confusion" in the contracting and small business community. In *LB&B*, the court held the Air Force was entitled to require a contractor to recertify its size as of the date specified in an RFP set-aside task order even though it had earlier qualified as a small business when it was awarded an indefinite delivery/indefinite quantity contract. *LB&B* subsequently relied on that original size certification in a later RFP even though it was no longer a small business. In its protest the Court ruled the the original ID/IQ contract did not guarantee *LB&B* any specific work but rather provided the firm, along with other firms, the opportunity to compete for future contracts. The Court stated the task order being protested involved a separate procurement, allowing the CO to require the contractor to recertify its small status. The Court noted that under ordinary contract situations a small business contractor retains that status for the life of the contract, whether or not its status changes, but under a multi-award contract, the CO retains discretion to require recertification of small business status as of the time of the new contract action.

The Air Force guidance said the ruling should not be interpreted as *requiring* recertification prior to awarding a delivery or task order or exercise of an option. Rather, the case stands only for the proposition that under appropriate circumstances, the CO retains the discretion to request recertification before the award of the delivery or task order or exercise of the option. In addressing these "appropriate circumstances", the guidance stated the basis for the decision that the awarded delivery order in *LB&B* was a separate procurement was the absence from the original contract of "pricing information, evaluation factors to be used for awarding future delivery orders, specific work requirements, contract type or a specified period of performance." The guidance further stated that the contract considered in the *LB&B* case did not guarantee award of a delivery order but was simply "an invitation to compete for future contracts."

DHS Finalizes SAFETY Act

The Department of Homeland Security June 8 issued a final rule intended to improve liability protections provided by the SAFETY Act for firms providing technology to fight terrorism. The Support Antiterrorism by Fostering Effective Technologies (SAFETY) Act of 2002 created a system of "risk management" and "litigation management" to provide incentives for development of antiterrorism technologies. The SAFETY Act provides two levels of protection for sellers. The first is for those technologies designated as "qualified antiterrorism technology" (QATT) that provides (1) lawsuit protection by suing only the seller and only in federal court (2) limiting liability to an amount of liability insurance coverage to be specified by DHS for each technology (3) limiting a seller's liability to that percentage of non-economic damages proportionate to its responsibility for harm (4) barring punitive damages and prejudgment interest and (5) reducing plaintiff's recovery by amounts received from collateral sources such as insurance and government benefits. The second protection is when DHS "certifies" a technology and places it on an "approved product list" where the "government contractor defense" applies. (These protections are detailed in the preamble to the new final rule.)

The new rule is intended to improve the administration of the SAFETY Act following three years of implementation with particular emphasis on providing incentives for increasing the number of applicable technologies. Some of the significant changes include: (1) better reflect DHS's presumption that all SAFTTY Act applications, studies and decisions are to be treated confidentially, expanding "appropriate exemptions" to the Freedom of Information Act (2) make clear that modifications to QATTs that do not cause it to be outside the scope of designation will not adversely affect its SAFETY coverage (3) define technology to state it includes "any product, equipment, service (including support services), device or technology (including IT) or any combination" (4) clarify that DHS will extend SAFETY Act liability protections to well-defined categories of antiterrorism technologies by issuing "block designations" and "block certifications" (5) specify that the liability insurance required to be obtained by the seller of a QATT need not provide coverage for seller's subcontractors, suppliers, vendors or customers (6) retain the requirement that the seller of a QATT certify in writing its required insurance is obtained but discontinue annual certifications unless DHS specifically asks for it (7) streamline the application process by revising the application kit that will reduce the amount of information and (8) provide greater information on the nature of the "government contractor defense" in light of recent court cases. *See Fed. Reg. 33147* or go to the DHS Web site at: www.dhs.gov/interweb/assetlibrary/OGC_SAFETYACT_FinalRule.pdf"

SBA Proposes Rule on Set-Asides for Women-Owned SBs

Responding to criticism it has not acted fast enough and has failed to meet the Federal Acquisition Streamlining Act's goal of awarding 3% percent of all government contracts to women owned businesses (WOSBs) or economically disadvantaged women owned small businesses (EDWOSB), the Small Business Administration June 15 proposed a rule to establish the Women Owned Small Business Federal Contract Assistance Program. The proposed rule implements Section 8(m) of the Small Business Reauthorization Act of 2000 which authorizes COs to restrict competition for federal procurements of up to $3 million ($5 million for manufacturing) to eligible WOSBs in industries the SBA has determined are underrepresented in federal contracting. Set-asides would be governed by the "rule of two" – procurements will be set-aside when the CO determines there is a reasonable expectation that two or more WOSBs will submit offers at a fair market price. To qualify as a WOSB, a small business must be at least 51 percent unconditionally and directly owned and controlled by women who are US citizens. To qualify as an EDWOSB, at least 51 percent of the owners must also show an impaired ability to compete due to diminished capital and credit opportunities as well as a personal net worth of less than $750,000, excluding ownership in the business and equity in homes.

A business must demonstrate it meets the relevant criteria and must be recertified by the SBA before submitting an offer for a set-aside procurement. Self-certification is considered prohibited and applicants must apply through the SBA's website and recertify every three years. The SBA must conduct a study every three years to identify industries that are underrepresented. The proposed rule also provides that a WOSB or EDWOSB may subcontract out part of it its work provided at least 50 of the personnel costs go to it or other WOSBs (15% on construction contracts) *(Fed. Reg. 34550).*

DOE Says it Will Delay Changes to Pension and Health Benefit Payments

Following considerable criticism by members of Congress and industry representatives over plans to reduce reimbursement of certain fringe benefits on Department of Energy contracts, Energy Secretary Samuel Bodman June 21 announced it was delaying the changes for one year. On April 27, DOE announced a new policy that would phase out reimbursement to contractors for the cost of their new employees' defined-benefit pension plans (defined contribution plans would still be paid) and medical benefit plans that were not consistent with "market-based medical benefit plans."

EPA Allows COs to Provide Financing for Low Value Commercial Items

The Environmental Protection Agency revised its EPA Acquisition Regulation, effective June 5, to allow contractors to invoice for advance and interim payments "in accordance with commercial practices" when authorized by the contracting officer and identified in the clause for payment. The rule allows COs to authorize advance and interim payments on commercial items ordered that are at or below the micropurchase threshold, currently $2,500. For commercial items above the micropurchase level but below the simplified acquisition threshold, currently $100,000, similar authorization is allowed when approved at one level above the CO *(Fed. Reg. 32282).*

Government-Industry Panel on Procurement Unveils some of its Findings

The Commercial Practices Working Group, a government-industry group tasked with identifying private sector procurement practices that would be applicable to government acquisitions, unveiled its preliminary findings. The group noted that commercial buyers tend to streamline the acquisition process by quickly eliminating offerors with little chance of winning a contract in contrast to the government who, in efforts to avoid litigation, negotiates with many companies that are unlikely to win. Even though the commercial sector may initially open up competition to everyone to find qualified suppliers, they very quickly narrow it while the government leaves more competitors than they need to. One participant stated "there is no reason to go through discussions with 10 or 11 offerors if it is clear that there are two or three that are highly rated."

Other findings include commercial buyers (1) spend the time and apply resources to clearly define their requirements, often bringing together multidisciplinary teams that collaborate during the competition and contract performance (2) use well defined requirements and effective competition to reduce prices and obtain innovative products and services (3) prefer fixed-price contracts as opposed to time-and-material or cost-based agreements (4) use short term contracts and (5) require sellers to use standard terms and conditions set by the buyer which allows offerors to compete from a common baseline. For more information on the panel go to "acquisition.gov/comp/aap/index.html".

DECISIONS/CASES

Industry Group Urges Reconsideration of AM General CAS 418 Case

(Editor's Note. We have addressed a recent important case – AM General LLC, ASBCA – in both the GCA REPORT and the last issue of the GCA DIGEST. The following addresses an important new development of that case.)

The influential National Defense Industrial Association has filed a brief in support of a request by AM General LLC to have the ASBCA reconsider its decision that AM General violated CAS 418 by including in a single cost pool all manufacturing overhead for both commercial Hummers and its military versions (HMMWVs). The request for reconsideration asserts that important arguments were not put forth about the meaning of "homogeneous" and "beneficial" used in CAS 418 which NDIA asserts will confuse the law of an important issue which will prejudice all contractors, whether CAS covered or not.

While the overhead pool contained costs of a facility used to assemble both HMMWVs and Hummers the board reasoned in its decision that a separate building that provided painting to the commercial Hummers did not relate to production of HMMWVs and thus none of the cost of the commercial building benefited the government. As a result, the board concluded the cost pool including that building was not homogeneous as required for the purpose of allocating costs to government contracts. NDIA argued that this analysis ignored the government's burden to prove, under two criteria prescribed by CAS 418, that the indirect cost pool was not homogeneous. To establish a pool is not homogeneous, the government must prove *both* that the activities in the pool do not have a similar relationship to the base *and* that a different allocation of costs would produce a materially different result. NDIA asserts the decision misapplied the first criteria and did not address the second. The brief asserts if the cost of all painting equipment is included in the indirect cost pool and the number of units painted is in the base, then the pool is homogeneous unless there is a significant difference in the two painting processes. The fact that each set of painting equipment happens to be used exclusively for one type of production does not mean both sets of equipment cannot be included in the same pool. Citing *Litton* (ASBCA No. 37131) there is no requirement in CAS 418 or elsewhere that every element of cost included in the pool must "benefit" every activity in the allocation base. Such a requirement would create "insurmountable" administrative burdens. The brief also argues that even if the indirect pool did not meet the first test of homogeneity, CAS also requires the government to show that excluding the costs of commercial-only or government-only activities would produce a materially different allocation, an inquiry the board completely failed to make.

Agency Held Improper Discussions After Submission of Final Proposal

(Editor's Note. The meaning of appropriate discussions is evolving, usually through board and case decisions. Here's an interesting one.)

Palmetto and CIGNA submitted their final revised proposals for a health benefit services contract where they included a "level of effort template" following requests for clarification on proposed effort. Subsequently, the selection board chair telephoned Palmetto and asked for confirmation of labor hours on its template after which Palmetto sent an email to the contracting officer stating its hours were "grossly" inaccurate and attached the correct hours along with another email identifying other errors in its final proposal. Based on these corrections Palmetto won the award and CIGNA protested after learning that the data on its template differed from the data the agency said it based its decision on. The GAO sided with the protester noting that communications between an agency and offeror that permits the offeror to materially revise or modify its proposal generally constitutes discussions where discussions must be held with all offerors. It ruled the discussions with Palmetto required the agency to give GIGNA a similar opportunity to revise its proposal *(CIGNA Government Services, GAO B-297915).*

Board Rules Conditions for Estoppel Not Met

(Editor's Note. The following decision addresses the equitable estoppel basis for challenging the government's ability to recoup unallowable costs when there is a clear history of government acceptance of the costs in the past.)

The Appeals Board ruled in 2001 that there was no CAS 418 violation where Pratt and Whitney excluded certain "consigned" items from its G&A base, concluding the "economic substance" of the relationship between P&W and its foreign collaborators meant the items were consigned rather than sold to P&W. In 2003 the Federal Court reversed the decision saying there was a CAS 418 violation because the "consigned" items should be considered "costs" and hence should be included in its G&A base. The Board now was asked to decide whether P&W owed the government $250 million for damages related to the CAS 418 violation. P&W asserted the government was estopped (e.g. prevented) from seeking damages citing *Litton Systems* (449 F.2d 392) that ruled the government may not disallow retroactively historical costs where the accounting method in question was accepted and approved, the contractor reasonably believed the acceptance and approval would continue and detrimentally relied upon these prior acceptances. P&W argued its CAS disclosure statement made clear its allocation practices and DCAA had access to whatever information or documentation it considered relevant to evaluating its accounting practices and should have asked for information including the collaboration agreements.

The board ruled against P&W stating there was no evidence the government understood the contractor was proposing an accounting system that would exclude collaboration material from its G&A base. As for DCAA, the board stated that to the extent its documentations contained information relevant to the determination of CAS 418 compliance, it was the contractor's responsibility to make such information available to the government. The Board further stated the criteria for estoppel in the Litton case was not satisfied because unlike P&W, Litton involved "long and consistent use" of the disputed accounting method "with the government's knowledge, approval and acquiescence" which did not exist with P&W's practice. The Board also ruled, citing two cases, that to permit estoppel against the government the contractor had to provide there was government "affirmative misconduct" or "extreme circumstances" which did not exist here, disagreeing with P&W that such affirmative misconduct was not necessary for estopping the government. United Technologies Corp, the subsequent buyer of P&W, announced June 6 if would pay $283 million to settle the allegations *(United Technologies, Pratt & Whitney, ASBCA No. 47418).*

Specific Staffing Requirements Prevail Over General Language in Solicitation

(Editor's Note. The following addresses the common occurrence when different sections of the solicitation may have apparently conflicting requirements.)

The protester to a best value information services contract award said the solicitation required that two Web page developers be located at the Arlington facility while the agency pointed to a section of the solicitation stating that at least one of the developers must be located on-site. The solicitation said the best value award directed offerors to submit resumes for key personnel where the agency "expected that at least six of seven contract staff personnel will be located on site" in Arlington, VA, including the two Web page designers. The Comp. Gen ruled that inconsistencies between solicitation terms should be resolved in a manner that gives effect to the "whole of the solicitation" where a specific term prevails over a general one. The Comp. Gen. ruled that the solicitation required two on-site developers in its staffing requirements and the specific requirement prevailed over the general language cited by the agency. Hence, the Comp. Gen. sustained the protest stating the awardee had failed to include two on-site Web developers *(Low & Assoc., Comp. Gen. Dec., B-297444).*

NEW/SMALL CONTRACTORS

What Incurred Cost Proposals Get Audited?

(Editor's Note. We are frequently asked about whether contractors' incurred cost proposals will be audited and whether DCAA rules on this issue have changed. Except for a few modifications (e.g. dollar threshold defining high and low risk proposals, auditing the highest dollar proposals over a three year span) the process of selecting which proposals to audit have not changed in the last few years. We have used Chapter 6-104 of the DCAA Contract Audit Manual as well as our experience as consultants to government contractors as sources.)

In their effort to get the "greatest bang for the buck", the Defense Contract Audit Agency significantly revised its procedures a few years ago on what incurred cost proposals will be audited. First, it makes a determination of whether a proposal is high or low risk. All high risk proposals will be audited. Approximately one third of low-risk proposals will be selected for audit using random sampling techniques. Desk review procedures will be applied to the remaining two-thirds of the low-risk proposals. If a contractor does not have a proposal selected for audit in a three year cycle, the local DCAA office is to select the high risk (e.g. highest dollar of auditable contracts) year and audit it. How proposals are classified as high or low, how a low risk contractor is selected and what are "desk reviews" follows.

Determining Risk

Once a proposal is determined to be adequate, the local DCAA branch office will determine whether each proposal is high or low risk. If a contractor's auditable contracts (essentially cost-type and time and material contracts) are less than $500,000 and there are no audit leads with a high probability of significant questioned costs (e.g. $10,000, applicable on flexibly priced contracts), then that proposal for that contractor's fiscal year (CFY) is put into the low risk pool. No other risk factors are considered.
If a contractor's auditable contracts for a CFY is between $500,000 and $15 million (this figure has increased from $5 million when the guidance was first introduced) and meets the following criteria, that proposal goes into the low risk pool:

1. DCAA has audited other incurred cost proposals.

2. There were no significant questioned costs in the prior audit. "Significant" is defined as either $10,000 on flexibly priced contracts or if they existed, they are immaterial in other circumstances (e.g. isolated and nonrecurring).

3. There are no audit leads with a high probability of significant questioned costs.

4. There is no contracting officer request that identifies significant risk. If one is issued while there is no apparent risk, the auditor is asked to contact the requester and if after discussion no risk is identified, then the proposal is to be considered low risk.

Contractors' proposals with auditable contracts for a CFY over $15 million are considered high risk.

What Low Risk Contractors Will be Audited

Field offices are instructed to establish random selection procedures where all high risk proposals and one-third of low-risk proposals are audited using normal audit techniques for incurred cost reviews. Desk reviews are applied to the other two thirds not selected. If the local office has two or more unaudited cost proposals for a contractor and the proposals are high risk, auditors are encouraged to conduct multi-year audits. If the office has three or more unaudited cost proposals and the contractor is considered low risk, the riskiest one of the three proposals (e.g. usually the one having the higher dollar amount of flexibly priced contracts) will be considered high risk and audited. Hence, contractors face a high probability of the their highest dollar proposal being audited. If there are no significant questioned costs, the other two low risk proposals may be closed out using desk procedures. If the proposal audited contains significant unallowable costs, then the other proposals should be audited on a multiple year audit basis.

Desk Reviews of Low Risk Proposals

The following procedures are to be performed on proposals in the low-risk pool that are not selected for audit.

1. Ensure that a "Certificate of Indirect Costs" has been executed.

2. Scan the proposal for unusual items, obvious potential significant questioned costs (e.g. entertainment, interest, bad debt, etc.), compliance with special contract terms or prior audit leads that need follow-up.

3. Scan the proposal to determine if there are any significant changes from the prior year's proposal.

4. Verify the mathematical accuracy of the proposal (e.g. exhibit totals are consistent, claimed costs reconcile with general ledger, payroll records tie to cost records, etc.).

5. For proposals with significant corporate or home office allocations, incorporate home office audit results.

6. Execute a rate agreement letter with the contractor for the review-determined rates.

7. Direct the contractor to adjust its provisional billing rates for the reviewed year(s) to match the audit determined rates and submit an adjustment voucher.

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QUESTIONS & ANSWERS

Q. One of our teaming partners' policy is to charge their sales and marketing people to G&A only even though they work on bid and proposal (B&P) work often. They only charge B&P by direct employees when they occasionally contribute to a proposal. Is this the norm?

A. It really is not the norm. The norm is to not distinguish between direct and indirect people when determining whether they work on B&P or sales and marketing. By limiting B&P labor to direct personnel only, there may be some challenges by the government asserting you are understating your overhead base and hence overstating your overhead rate. This is because normally B&P labor is included in the overhead base applied to direct labor dollars where B&P labor is then charged to G&A with a corresponding overhead burden charge going to the G&A pool but sales and marketing are simply a straight G&A charge and is not included in the overhead base.

Q. We mistakenly ordered too much material on a cost-type contract. We cannot return it nor can we use it on our other work. Will the cost of the excess material be considered unallowable?

A. Probably not. As a general rule, mistakes or omissions by a contractor's employees, even if negligent, are not disallowed unless the mistake is a result of "willful misconduct" or "bad faith". The "nobody is perfect" observation recognizes that it is a fact of life that even careful employees sometimes are negligent and make mistakes. The Armed Services Board of Contract Appeals has ruled that proof of negligence does not prove "willful misconduct" or "bad faith" but requires an employee to be "recreant" to their duty, deliberately refuse plain well understood obligations or demonstrate "a conscious failure to use necessary means to avoid peril" *(Morton Thiokol Inc., ASBCA 32629).*

Q. Until recently, following requests by our DCAA auditor, all of our employees were required to complete detailed time sheets including those who charge indirect, administrative, sales, etc. We have been acquired by a company who tells us only our direct employees need to complete time sheets. Are they wrong?

A. Neither of you are wrong. As for requiring indirect people to use time sheets, DCAA has not issued clear guidance on this matter. In our experience, as long as employees are 100% indirect and there are policies on whether they are charged to overhead or G&A (or other pools, if relevant) then most auditors will not have a problem with this. However, a few do, who believe timekeeping requirements should apply to all employees and it seems like you may have had one of those recommend time sheets for everyone. However, if individual indirect personnel are assigned to different indirect cost pools depending on tasks worked or they sometimes work direct, then time sheet requirements should apply to them.