GCA Report

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NEW DEVELOPMENTS

Proposed Rule to Establish New Procedures for Single Responses to Bid Requests

A new proposal by the Defense Department to amend the Defense Federal Acquisition Regulation Supplement will establish new procedures that COs must follow if they receive only one contract bid in a procurement. The proposed rule would apply a tougher policy for determining adequate price competition which now under FAR 15.403-1(c)(1)(ii) states a CO can accept a single bid with the approval of a senior officer after judging it was submitted under an expectation of competition. The proposed rule will require the CO to resolicit for an additional 30 days if the original request allowed fewer than 30 days for submitting bids. If proposals were accepted for at least 30 days, a CO would have to determine if the price from the single offeror was "fair and reasonable" using price or cost analysis. If needed, the CO could enter into negotiations with the offeror. Proposals would require initial bids to supply price or cost data where the exceptions are for acquisitions below the simplified acquisition threshold (currently $150,000), supporting contingency, humanitarian or peacekeeping operations or facilitating defense against nuclear, biological, chemical or radiological attack. Initial comments by industry are critical of the new proposal where several representatives say a single response does not necessarily mean that bidding is noncompetitive.

Proposed FAR Change to Payments on T&M and LH Contracts

A proposed rule to revise payments on time and material (T&M) and labor hour (LH) contracts is providing an opportunity to obtain more money when a commercial T&M contract is terminated and would allow biweekly invoicing of all T&M and labor hour contracts. In contrast to noncommercial T&M contracts the FAR currently lacks provisions for terminations of commercial T&M contracts where the result is the government pays only for work "accepted by the government." To remedy this, the proposed rule establishes the government would pay contractors for work performed prior to a termination, including work "not delivered or accepted by the government" minus applicable profit. The proposed rule has some rather technical components to it but it also will authorize biweekly invoicing for all T&M contracts to align with FAR 52.216-7, Allowable Cost and Payment as opposed to the once a month payments for T&M and LH contracts. Finally, the proposed rule would require submitting vouchers for T&M contracts within 120 days after settlement of final indirect costs as opposed to the current one year provision (labor hour contracts would keep the one year provision) (*Fed. Fed. 44884*).

Public-Private Competitions Coming Back Into Favor

The trend we have seen in the last few years against outsourcing work performed by the government to contractors appears to be reversing. The House passed FY 2012 defense appropriations bill includes amendments that remove restrictions on the Defense Department's ability to contract out commercial functions by lifting the temporary suspension on DOD's initiation of public-private competitions passed in the 2010 bill. In a separate action DOD recently submitted a report to Congress that "supports the lifting of the moratorium" on Office of Management and Budget Circular A76 which provides the ground rules to have public-private competitions for government work not considered "inherently" governmental.

Reports on 2010 Contract Awards

The Small Business Administration gave the US government a "B" in its overall small business awards, giving 22.7% or $98 billion of contracts to small businesses. Some departments like Defense, Homeland Security and the General Services Administration earned an "A" while others such as the Office of Personnel Management and Housing and Development received a "D".

In a separate action, the Office of Federal Procurement Policy issued a report saying the federal government spent $1 billion less in FY 2010 on time and material contracts ($28 billion vs. $29 billion in 2009) while it increased spending on cost reimbursement contracts (up from $151 billion in 2009 to $162 billion in 2010). The report stated that permitting contractors to be paid for allowable costs rather than upon delivery of goods and services are "appropriately used in circumstances where an agency is not able to define its requirements sufficiently to allow for fixed price contracts" such as research and development and complex projects where the costs of performance cannot be reasonably estimated with a high degree of accuracy.

Prospects on Management Services

Jeffrey Zeints, the Office of Management and Budget Deputy Director announced a new directive at a White House July 7 forum on federal contracting calling on federal agencies to reduce spending on management services by 15 percent by the end of fiscal year 2012. He is also calling on agencies to "reform their contracting methods" by minimizing use of high-risk contracting vehicles such as cost plus and sole-source contracts. He cited statistics where obligations for management services contracts has quadrupled between 2000 and 2010, far outpacing the overall 12 percent growth in federal contracts, and that 74 percent of such management contracts were either cost reimbursable, T&M or labor hour contracts compared to 36 percent of government contracts overall. Zeints said the move to reduce contracts for management support services will center on 15 product service codes for knowledge-based, professional and technical services including information technology management and acquisition support. Representatives of industry cautioned after the forum that such numeric targets will have unintended consequences such as leading to poor acquisition choices that will simply shift costs from one line item to another and that will result in an already overburdened federal labor force providing these support services.

In response to the OMB comments above the influential Professional Service Council EVP Alan Chvotkin stated at a July 20 industry gathering that even with proposed spending cuts the government market for professional services is "strong and robust, still north of a $200 billion market for services while though it is a challenge we are not headed toward zero." He stated contractors need to do a better job of demonstrating to the federal government that their services offer superior quality, they are committed to high standards and because of their services the taxpayer benefits. He stated there will soon be a wave of government retirements where government budget cuts will result in government hiring and salary freezes and disappearing signing bonuses increasing the demand for private services. He concludes there will be a bumpy road where contractors may take hits and cuts but government will continue to have a strong need for goods and services.

Higher Dollar Thresholds Established for Past Performance Evaluations

The Director of Defense Procurement and Acquisition Policy, Richard Ginman issued a class deviation addressing contract dollar thresholds for triggering past performance evaluations. FAR 15.304(c)(3)(i) and 42.1502(b) generally require past performance evaluations for acquisitions above the simplified acquisition threshold with heightened requirements for A&E contracts. Ginman said that in place of these thresholds contracting officers should evaluate past performance in source selections for (a) systems and operations support acquisitions above $5 million (b) services and information technology acquisitions above $1 million and (c) all other acquisitions above the simplified acquisition threshold (go to www.acq.mil/dpap/policy/policyvault/USA003585-11-DPAP.pdf).

Final Rule On Contract Closeouts is Issued

A final rule on contract closeouts that revised an earlier proposal was recently issued. The final rule sets forth a new description of an "adequate" final indirect cost proposal by including in the FAR clause 52.216-7, Allowable Cost and Payment, all schedules and supplemental information described in the Defense Contract Audit Agency's Model Incurred Cost Proposal. The final rule revised FAR 52.216-8, 9 and 10 to require contracting officers to withhold the lesser of $100,000 or 15 percent of the total fee pending submission of an adequate final indirect cost proposal. The final rule downplays significant negative comments received on the proposed rule stating the new rules impose no new requirements on contractors and state "information should be readily available from the contractor's books, records and systems." The final rule does revise procedures for quick closeouts to permit COs to close contracts with unaudited direct costs as well as unsettled indirect cost rates (previously, the FAR limited quick closeout procedures only when indirect cost rates remained unsettled). However, the final rule lowers the dollar threshold and percentage limitation for using quick close out procedures to the lesser of $1 million or 10 percent of the total contract, task order or delivery order amount. Lastly, the final rule permits COs in limited circumstances to close out contracts without a final patent report (*Fed. Reg. 31402*).

Compound Daily Interest to be Applied to Defective Pricing Penalties

The FAR Council passed a final rule to revise the FAR clauses covering the Truth in Negotiations Act to provide that price reductions due to defective pricing be required to add interest compounded daily. The rule follows a recent case that stated violations of the cost accounting standards should include in cost impact analyses interest calculated on a daily compound basis. The FAR rule, which replaces simple interest as a basis for computing interest, is intended to make TINA and CAS provisions equal (*Fed. Reg. 39242*).

CAS Applicability Threshold Increased

Effective Aug 11, the threshold for application of the Cost Accounting Standards (CAS) will increase from $650,000 to $700,000. This is in keeping with a recent corresponding increase in the Truth in Negotiations Act (TINA) cost and pricing data threshold that went into effect last October. The new rule will tie future CAS thresholds to reflect adjustments for inflation that have been made to TINA thresholds so as to "self-execute" changed TINA thresholds (*Fed. Reg. 40817*).

Rule Shortens HUBZone Reapplication Period

An interim rule amends the SBA's regulations pertaining to the Historically Underutilized Business Zone (HUBZone) program to shorten the time a declined or decertified HUBZone small business must wait to reapply from one year to 90 calendar days. Under current rules, once a HUBZone small business is declined or decertified it must wait one year to reapply. However the rule writers noted that some small businesses only need to hire a few additional HUBZone residents to be in compliance. In addition if a company is located in an area that no longer qualifies to be a HUBZone area the shorter reapplication period will encourage them to move more quickly to new designated HUBZone areas and hire HUBZone residents.

CAS Board Eliminates Overseas Exemption from CAS

Effective Oct 11, the Cost Accounting Standards Board issued a final rule eliminating the exemption from CAS for contracts and subcontracts executed and performed entirely outside the United States. (We have found this exemption was always a little strange when, for example, the exemption was not valid if the contract was signed in the US.) In responding to assertions the new rule creates hardship for federal agencies, prime contractors and subcontractors the board stated there are "mitigating factors" such as the current provision of CFR 9903-201-1(b)(4) that limits contracts and subcontracts "with foreign governments or their agents or instrumentalities" to coverage by only CAS 401, consistency in estimating, accumulating and reporting costs and 402, consistency in allocating costs for the same purpose. The Board stated that these "minimal requirements" are not substantially different than those already imposed by the FAR. We have already seen some thoughtful comments on issues that are likely to arise such as whether to charge the costs of compliance (e.g. preparing disclosure statements) directly because they only benefit US work or indirectly and how prime contractors are ensuring their foreign subcontractors are being compliant with CAS (*Fed. Reg. 49365*).

Former DCAA Director Sought More Access to Records and Compensation Caps on All Employees

Intending to provide an insight into DCAA wish lists, the July 2011 issue of Government Contracts Insights reported on September 2009 emails sent by its then Director April Stephenson to Shay Assad, Director of Defense Acquisition Policy (DPAP) advocating legislative proposals that would expand DCAA authority to access contractor records and impose annual compensation ceiling on all contractor personnel, not just the five senior executives. Though the legislative proposals were apparently not endorsed by DPAP that year, they do provide insight into DCAA's thinking.

The proposal for expanded access to records, specifically broader DCAA subpoena authority, was targeted at gaining access to contractor management reviews and internal audit data. In its emails DCAA stated a 1987 *Newport News Shipbuilding v. Reed* case had significantly impaired DCAA's audit mission where the Court ruled that DCAA subpoena access to internal audit data was "not related to the negotiation, pricing or performance of a particular defense contract and were thus beyond the scope of DCAA's subpoena power" concluding the DOD Inspector General was the appropriate branch for DOD to get access. In its proposal, DCAA recommended verbiage to allow DCAA subpoena authority for any records (calling attention to management reviews and internal audit data) in connection with any flexibly priced prime or subcontract. In addition, the compensation legislative proposal would have expanded annual compensation caps from "only the five most highly compensated employees in management positions" to all employees. DCAA noted in its proposal that its audits had disclosed lower level employees and non-executives who were not subject to the cap as having compensation above the statutory caps. The 2009 proposal would have applied to contracts or subcontracts in excess of $500,000.

Expansion of Flash Reports

(*Editor's Note. "Flash" reports issued by DCAA used to be infrequently issued where they often were distributed to customers alerting them of problems and formed the basis for more harsh opinions of an inadequate system. The following observation by Darrell Oyer in his August 31 newsletter demonstrates what we are seeing as a significant expansion of flash reports being issued by DCAA and the need to address them quickly.*)

In his report, the client had undergone an internal control audit where there were four findings – lack of ethics training, background checks for directors and officers, independence of directors and documentation of monthly account reconciliations. The client responded to the draft audit report last year and heard nothing. Several weeks ago the client learned the report is now labeled a "Flash" report which is distributed to all customers. Due to that, all contract awards are currently being held up in spite of the fact that none of the findings have any cost risk to the government.

ABA Calls For Clarifying New WOSB Rule

The American Bar Association is calling for the revision of an interim FAR rule implementing the women-owned small business (WOSB) program. The ABA, stating the new rule provides "an ambiguous preference among small business programs", is calling for a clarification that the program set parity among other small business programs such as 8(a), HUBZone and service disabled veteran owned business. The ABA is stating that FAR 19.203 should be amended to clarify that contracting officers should first consider WOSB along with the other three types of small business when using a small business set-aside. The ABA is also calling for clarifying ambiguities in the definition of WOSB where in addition to being defined as a small business owned and controlled by women having 51 percent ownership and management and daily business operations controlled by a women, some section add the women need to be US citizens while in other sections that condition is not mentioned.

Draft Order on Political Contributions Draws Opposition

A draft executive order requiring disclosure of political spending by contractors is, not surprisingly, generating intense debate. The order, which has not yet been issued, will require contractors to disclose certain political contributions and expenditures in the proceeding two years as a condition of receiving a contract award. Many republican members of Congress and business groups are calling for the withdrawal of the order. The recently House past DOD defense appropriations bill includes a provision prohibiting the administration from requiring disclosure of political contributions by federal contractors.

DCAA Will No Longer Self Initiate EVMS Audits

(*Editor's Note. The following guidance coincides with what we are seeing as significantly more audit scrutiny of contractors' Earned Value Management System (EVMS) by the Defense Contract Management Agency. DCMA has a dedicated, growing staff responsible only for conducting these reviews where our consultants are being asked both to respond to deficiency reports as well as conducting our own "mock audits" to evaluate their EVMS practices.)*

The Defense Contract Audit Agency has issued guidance to its auditors to no longer self-initiate EVMS audits but will now have a subordinated, assistance role under the DCMA. The guidance acknowledges DCMA as the designated lead for EVMS audits where authority to evaluate contractors' compliance is in their hands. The guidance alludes to a May 2011 Memorandum of Understanding between DCAA and DCMA that provides DCAA's support will be limited to eight of the 32 ANSI/EIA-748 EVM standards which pertain to monitoring cost performance (PPS-011(R).

DCAA Will Now Require Another Level of Quality Assurance

(*Editor's Note. The following appears to be another step DCAA is taking to ward off criticism that its auditing practices do not conform to government auditing standards. Though both industry and government have been complaining about the emphasis on maintaining excessively high audit standards at the expense of failure to provide timely audit conclusions, this step may be helpful in overcoming supervisory resistance to changing an audit opinion of a subordinate auditor that we have been seeing in recent times.*)

New guidance now requires an Independent Reference Review (IRR) of reports and workpapers for certain types of audits before reports are issued to procurement officials. Now another DCAA employee of supervisory ranking (GS-13 and above) will verify all significant facts, calculations and evidential data to the conclusions identified in the workpapers and carried forward in audit reports. The reviewer will be someone qualified in relevant technical skills who is not directly associated with the completed audit workpapers and draft report and not under direct management of the supervisory auditor having responsibility for the audit. The list of audits subject to the IRR includes incurred cost audits with over $100 million of auditable contract dollars, certain high dollar forward pricing agreements and all internal controls, EVMS, cost accounting standards compliance and cost impact statements and defective pricing audits (PPS-012(R)

CASES/DECISIONS

Contractor is Entitled to Recover Mistakenly Omitted Costs

(*Editor's Note. The following case indicates that a final rate proposal and a subsequent final rate agreement on a contractor's costs can be modified.*)

Kearfott incurred allowable costs related to unamortized asset write-ups and facilities costs of capital but charged them to income statement accounts rather than its normal expense accounts where such accounting treatment resulted in inadvertently not recognizing them in its indirect cost rates in its ICE proposals. Thereafter, DCAA audited its relevant incurred cost proposals and issued letter agreements. When Kearfott informed its ACO it had omitted the costs, the ACO instructed it to submit a formal overhead rate proposal including the omitted costs and have DCAA review them. DCAA and the ACO agreed that the omitted intangible costs were not allocable to its government contracts because the letter agreement omitting the costs was negotiated in good faith. The Appeals Board sided with Kearfott saying the costs were omitted by reason of a bookkeeping entry mistake not by an established accounting practice and hence were allowable. It next ruled on whether the prior letter agreement was final and not subject to revision saying the parties entered into the letter agreement with the mutual mistaken understanding that Kearfott's allowable costs were included in its computation citing a prior Boeing case (ASBCA 52256) ruling the letter agreement was not a final contract close out and to not reform the proposal would result in an unfair government windfall (*Kearfott Guidance & Navigation Corp. ASBCA 55626*).

(*Editor's Note. We read an interesting comment on this case that said the ruling here may unintentionally provide a justification for the current trend of DCAA to rescind rate agreement letters when its reviews of its audits indicate they were not conducted in compliance with audit standards, allowing for a re-audit.)*

"But-for" Logic Does Not Justify Direct Costing

In its ship repair and alteration contract, Todd decided it needed to enlarge its steel dry dock before it could meet the certification requirements of its contract. Though it had been Todd's establish practice to treat the dry dock costs as indirect costs and then allocate those costs to its government and commercial contracts it decided to reclassify the costs direct to the Navy contract reasoning it would not have refurbished the dock but for that contract. The government disallowed the cost as direct and the appeals board agreed stating Todd had not met its burden of proving the costs were solely for the Navy contract. The board ruled that its company documents, website and usage logs showed the dock refurbishments benefitted other contracts as well as the Navy contract (*Todd Pacific Shipyards Corp., ASBCA Nos. 55126. 56910*).

ACO Determines Whether a Car is Expressly Unallowable and Must Waive Penalties for Unallowable Costs Under $10,000

DCAA disallowed several categories of costs including $2,400 for an insurance premium on the life of the contractor's president and $23,506 for a jeep given to one of the employees and recommended imposition of penalties due the fact they were all expressly unallowable. The Board ruled the insurance costs were expressly unallowable because FAR 31.205-19(e)(2)(v) provides that the costs of insurance on officers' lives are allowable only if they represent additional compensation which was not the case here while the jeep was not expressly unallowable because the contractor had treated it as a form of fringe benefit and included it in the employee's gross income. As for whether or not the expressly unallowable insurance costs (and other expressly unallowable costs all of which were under $10,000) were subject to penalties, the Board ruled that FAR 42.209-5(b) provides for the waiving of penalties for individual items of expressly unallowable costs if the portion allocated to covered contracts is less than $10,000, even if the aggregate amount of such costs is greater (*Fiber Material Inc. ASBCA 53616*).

Parent and Subsidiary Operated as Single Entity

(*Editor's Note. Though the following case addresses affirmative action issues, it is instructive for identifying elements that lead to the conclusion that two entities are one. To avoid such a conclusion, one can conceivably alter these factors.)*

A Parent had no federal contracts but met the 50 employee threshold to be subject to affirmative action and record keeping requirements while the subsidiary had federal contracts but did not meet the 50 employee threshold to be subject to the requirements. The Labor Department's Office of Compliance ruled the two entities were a single entity because (1) they shared common directors and officers (2) de facto control existed because the parent managed the sub's funding (3) they shared a "unity of personnel policies" (4) shared human resources department (5) employees moving from one entity to the other maintained their seniority and (6) the parent had the power to strip the sub of its federal contracts (by moving them to another sub). As a single entity, the parent and subs had a joint and individual liability to meet compliance standards (*OFCCP v Mannheim Auctions, DOL OALJ No. 2011-OFC-00005).*

Termination of Commercial Contract Allows Recovery of Upfront Costs

(*Editor's Note. The following case clarifies some of the murky rules covering the termination of a commercial-item contract as discussed above*)

Red River appealed a decision not allowing recovery on capital and fixed costs when its commercial-item contract was terminated for convenience. Quoting FAR 52.212-4(l) that provides a contractor is entitled to "reasonable charges that…have resulted from the termination," the appeals board ruled this quote allows for recovery only for costs incurred after a contract is terminated (i.e. settlement costs) and not for costs incurred in preparation for contract performance. A district court stated on appeal that the commercial item termination for convenience regulations are "ambiguous" where the specific section quoted above does not indicate precisely what type of costs constitute "reasonable charges…" Since the regulation "adds little clarity" the court turned to case law noting a handful of cases have explicitly and implicitly rejected the argument that reasonable charges are only those incurred subsequent to the termination (i.e. settlement costs). Citing a prominent case, a commercial item contractor whose contract is terminated is entitled to (1) payment of a percentage for the contract price reflecting the percentage of work performed prior to termination and (2) a payment as compensation for settlement costs *or costs reasonably incurred in anticipation of contract performance* provided such costs are not adequately reflected as part of the payment of work performed and that such costs could not have been reasonably avoided (*Red River Holdings, LLC v US, 2011 WL2160887*).

State Taxes and Penalties and Interest are Allowable

Westech's cost plus fixed fee contract to provide material, equipment and tools included the allowable cost payment clause providing that it would be reimbursed for all allowable costs of supplies and services purchased for the contract including federal, state and local taxes except those for which exemptions were available. Arizona imposes a transaction privilege tax (TPT) on certain transactions where the contracting officer first authorized payment of it and then instructed the contractor to seek ways to avoid the tax. Later the CO told the contractor the TPT would be unallowable after which Westech submitted a claim under the Contract Dispute Act for $69,179 in TPT taxes. The government denied the claim asserting the TPT tax was not allowable under FAR 31.205-41(b)(3) because tangible property tax in research and development is exempt from the TPT Arizona tax and the interest and penalties paid on the delinquent TPT tax were not considered taxes and hence were unallowable. The Appeals Board sided with Westech explaining the Supreme Court has upheld the validity of the TPT as applicable to federal contractors and further, FAR 31.205-41(a)(1) provides that the costs of state taxes are generally allowable if they are required to be paid or are accrued in accordance with generally accepted accounting principles. The Board stated if the government believed the property was exempt from TPT under Arizona law it could have instructed the contractor to litigate the issue in Arizona which the CO clearly did not do. As for the interest and penalties, because Westech refrained from paying the tax at the direction of the CO they were expressly allowable costs (*Westech International Inc., ASBCA No. 57296*).

NEW/SMALL CONTRACTORS

New Developments on Incurred Cost Proposals

(*Editor's Note. We help a lot of clients prepare their incurred cost proposals and have recently expanded our services to auditing prime contractors' subcontractor incurred cost submittals so we are quite interested in changes to the rules and scope of audits to expect from DCAA and other auditors. Maybe because of DCAA's backlog of audits (2006 is now the typical period being audited) or their increased emphasis on auditing subcontractors the requirements of incurred cost proposals are being widely discussed (e.g. Contract Management March 2011 had a good* *article on incurred cost audits) so we decided to update our readers on some of the more common rules they will be encountering. The primary source of our information is our own experience, Chapter 6 of the Defense Contract Audit Agency's Contract Audit Manual and DCAA's audit programs.*)

Probably the most significant change is the new requirement to precisely follow DCAA's Incurred Cost Estimate (ICE) proposal format (see article above). Though DCAA has always put forth a recommended format, this format was only suggestive where contractors submitted their incurred cost proposals in a wide variety of formats. *(This writer remembers when he was an auditor 20 years ago receiving an incurred cost proposal from a billion dollar company on one page.*) DCAA offices now require strict adherence to the ICE forms where minor differences are rejected and sent back to be corrected. These days it is not uncommon to go through four or five of these give and take actions until a proposal is considered adequate by DCAA. The required ICE can be prepared in either an electronic form where many exhibits are linked to others or on a manual basis where the manual forms must precisely match the electronic versions. DCAA fairly frequently alters formats of exhibits or adds new ones so you need to make sure you have the most recent models available (we simply Google "DCAA ICE" to download the models). As of today there are 21 exhibits that contractors may complete. A few recent additions – Schedule S, contract briefing and Schedule T, executive compensation must be completed while for now the new Q series that compares current and prior year data and the R exhibit that reconciles claimed costs with federal income tax returns is often not completed but still accepted.

There have been a few changes over the years on what ICE proposals are audited and the scope of those audits. Now, there are three categories that an ICE proposal falls under:

1. Low risk proposals. If a proposal has an ADV of less than $15 million (ADV is auditable dollar volume which includes "flexibly priced" contracts such as cost reimbursable, time and material, labor hour or redeterminable fixed price contracts). These low risk proposals will either go through a desk review (two thirds) or an audit (one third) for non-majors discussed below.

2. Low and high risk proposals of non-major contractors. One third of the low risk proposals are in this category where they are selected either on a sampling basis or ones requiring an audit because the prior two years have not been audited. (The auditor will select for audit either one of the three years on a random basis or increasingly, we are seeing them select the ICE that has the highest ADV value contract.) If low risk proposals are submitted late or prior audits were found to pose a risk to the government (e.g. high amount of questioned costs, significant accounting deficiencies) then these proposals go in the high risk pile. In addition, all proposals with an ADV between $15 million and $90 million fall under this category. These proposals will be audited using what is called a non-major standard audit program.

3. High risk proposals. These include all proposals where the ADV totals more than $90 million. The proposals will be subject to major standard audit programs which as we discuss below is generally broader.

♦ Scope of Audits to Expect

Desk review. If the low risk proposal is not selected for an audit, it will require what DCAA calls a desk review. This review will often be accomplished without a visit to the contractor but at the "desk" of the auditor. Auditors can be expected to first determine if the proposal follows the ICE format and if deviations are identified it is returned to the contractor to be corrected. Questions asked include: Is the mathematical accuracy of the proposal verified (e.g. exhibit numbers add up, numbers in various exhibits consistent with each other in other exhibits such as direct labor or overhead pool totals.)? If the electronic format is used, do the individual exhibits link together? Are unallowable costs identified and removed from appropriate pools and included in appropriate bases? Also, are federal contracts properly briefed?

Non-major audit. A selected low risk proposal or a proposal with ADV under $90 million will be audited where DCAA will use the non-major standard audit program. The steps under a desk review will be followed and the following additional steps can be expected: items identified in the desk review will be followed up, interviews with preparers of the proposal is likely and most of the focus can be expected on indirect cost pool and base costs as opposed to direct costs. Since there is a greater focus on strict adherence to generally accepted audit standards these days, you can expect more transaction testing than in the past where selection of transactions will likely follow statistical sampling applications.

Major audit. By definition, all proposals with ADV more than $90 million are to be audited using DCAA's major standard audit program. The standard incorporates all MAARs (Mandatory Annual Audit Requirements – a set of 19 separate audit steps ensuring permanent files are updated, accounting records are reconciled, transaction testing occurs, other audits are up to date),

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other DCAA audits are incorporated (e.g. CAS, system reviews), testing of paid vouchers can be expected where direct costs will be reviewed, contracts will be briefed and separate audits by specialists may be called for such as pension and insurance costs.

QUESTIONS AND ANSWERS

Q. I have included in our overhead pool office rent, phones, office equipment and office repairs. The Overhead base is total direct labor. DCAA told us that rent belongs in our G&A pool along with office repairs. This greatly increases our G&A rate above our proposed budget of 10%. Why would DCAA state that office rent must go in G&A? Do you normally see rent in the overhead pool?

A. I commonly see rent treated in various ways - all included in overhead, all in G&A or split out and I rarely see DCAA object. I have no idea why DCAA insists it must be G&A and I would ask them why. As for being included in overhead, that makes more sense than G&A since the majority of office space is usually for direct labor and overhead labor people where the direct labor base provides a good "causal and beneficial" relationship with the pool. Probably the best way to treat it is to lump rent with other facilities costs and allocate to overhead and G&A on a per usage basis. For example, if direct labor plus overhead labor represents 80% of usage space and corporate labor represents 20% usage, then the facilities costs would be allocated 80/20 to overhead and G&A.

Q. We have a joint venture arrangement with another firm where each participant incurs its own costs as a subcontract to the JV or other times as a prime/subcontractor to each other. I have a question about how our bid and proposal costs associated with our joint venture should be accounted for in our firm's incurred cost proposal. By common sense it appears that B&P costs associated with potential JV contracts (or at least a proportionate portion of that) should be taken out from our own incurred cost proposal because those costs benefit JVs. However, it also appears that each JV participant should be able to claim all their B&P costs (although they are related to the JV) on their own claim as long as there is no "explicit" requirement in the JV agreement for preparing a proposal. What is your opinion on this? Should we claim full B&P costs on our own claim or should we take out a portion of the B&P costs from our claim?

A. I would side with your second interpretation since each participant flows through its own costs to the joint venture. I would treat it like it was another final cost objective where direct costs are tracked for the JV contracts and your firm's indirect costs are allocated to all relevant direct costs including those for the JV. As such, the costs should be included in your incurred cost proposal.

Q. My company follows the federal travel regulation rules. My hotel is asking for an advanced deposit for my lodging. Since my credit card will arrive prior to my trip, can I bill the company which will charge the government before I take the trip?

A. Yes you can. Your question is addressed in the FTR section 11.32 which states in part "your agency may reimburse you for an advance room deposit, when such a deposit is required by the lodging facility to secure a room reservation, prior to the beginning of your scheduled official travel."