GCA REPORT
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NEW DEVELOPMENTS

FAC 2005-01 Issued

The Federal Acquisition Regulation was amended March 9 in the form of Federal Acquisition Circular 2005-01. Significant changes include:

1. Cost Accounting Administration. *(Editor's Note. We intend to address the extensive changes in the next issue of the GCA DIGEST so we will briefly summarize the changes here.)* The final rule amends FAR Part 30, Cost Accounting Standards Administration and related contract clause at FAR 52.230-6 and adds a new one at FAR 52.230-7, Proposal Disclosure – Cost Accounting Practice. The changes have been five years in the making and are intended to provide "significant flexibility" to the often burdensome cost impact process to be followed by contractors to make sure the government does not pay increased costs when a CAS covered contractor changes its cost accounting practice. This flexibility includes (a) the ability to determine at any time the materiality of the contractor's cost accounting practice change with respect to costs paid by the government (b) if the cost impact is material, the ability of the contractor to submit in any form acceptable to the government either a general dollar magnitude (GDM) proposal reflecting the minimum data to resolve the cost impact or a detail cost impact (DCI) proposal and (c) the ability of the government and contractor to negotiate the cost impact by adjusting a single contract, multiple contracts or some other suitable method.

2. Elimination of Certain Subcontract Notifications. The change removes the FAR 44.201-2 requirement to notify the agency before the award of any cost-plus-fixed-fee subcontract exceeding the greater of the simplified acquisition threshold or 5 percent of the total estimated cost of the contract if the contractor maintains a CO-approved purchasing system for the contract.

3. Extension of Authority to Use Simplified Acquisition Procedures for Certain Commercial Items. Extends to January 1, 2008 the timeframe in which agencies may use simplified acquisition procedures (SAP) to purchase commercial items in amounts greater than the SAP threshold (currently $100,000) but not exceeding $5 million. For acquisitions in support of contingency operations or defense from nuclear, biological, chemical or radiological attach, the purchase amount cannot exceed $10 million.

4. Use of FAR Subcontract Clause for Commercial Items on Construction Contracts. The final rule requires that the FAR clause 52.244-6, Subcontracts for Commercial Items, be inserted in solicitations and contracts other than those for commercial items, thereby clearly including construction contracts that are not considered commercial items.

5. Improvements for Architect-Engineer Services. The rule clarifies that A-E services offered under multiple award schedule contracts or government-wide task and delivery order contracts be (a) performed under the supervision of a licensed professional architect or engineer and (b) awarded in accordance with the quality-based selection procedures at FAR Subpart 36.6. It also clarifies that task orders issued under indefinite delivery contracts must be issued under FAR 36.6 procedures.

DCAA Audit Guidance…

Recent guidance for auditors put out by the Defense Contract Audit Agency includes:

Controls Over Insurance Premium Purchases

In the light of recent insurance practice revelations where clients were steered to brokers having lucrative payoff agreements and solicited rigged bids for insurance contracts, DCAA has issued guidance to auditors to ensure improper insurance practices were not made by government contractors. Auditors are told to ascertain during their normal audits (e.g. proposals, incurred costs) whether contractors who have high insurance costs purchase insurance through brokers and if so, whether they have procedures in place to ensure premiums are fair and reasonable. The contractor's procedures should ensure the broker provides sufficient evidence for the contractor to establish reasonableness of the price (e.g. competitive quotes obtained by the

broker) and based upon data provided, the contractor should adequately document its basis for choosing a particular insurer. If the contractors do not have adequate procedures in place, auditors are told to issue a purchasing system flash report; if a company decided not to purchase insurance from a company with the lowest premium and does not provide an adequate explanation for its decision, then the auditor should question any costs it considers unreasonable (05-PSP-003(R).

Over-Ceiling Executive Compensation Caps Before 1998

Citing *General Dynamics Corp., v. U.S. 47 Fed. Cl. 514)*, auditors are reminded that Courts have ruled that application of executive compensation statute limitations before the effective date creates a breach of contract. The memo notes that the National Defense Authorization Act of 1998, effective January 1, 1998 that implemented FAR 31.205-6(p), prohibits reimbursement of contractors' executive compensation in excess of certain benchmarks which have changed each year since. The guidance notes the *General Dynamics* case did not invalidate the statute but ruled the application of the statute to contracts issued before January 1, 1998 created a breach of contract. Consequently, some contractors have submitted claims for payment of over-ceiling costs that were previously removed from allowable costs and other contractors may submit such claims in the future. Auditors who are asked to audit these breach of contract claims should determine the amount that would otherwise be allowable absent the FAR 31.205-6(p) executive compensation cap (05-PAC-009R).

Higher Contract Threshold for Imposition of Penalties

New guidance reminds auditors that the contract dollar threshold for assessing a penalty if the contractor includes expressly unallowable cost in its final indirect rate proposal should apply to contracts awarded after January 19, 2005 and has been increased from $500,000 to $550,000. Only cost type and fixed-price incentive contracts in excess of this limit will be covered by the penalty provisions of FAR 42.709 (05-PAC-011(R).

Overdue Incurred Cost Proposals From Non-DOD Contractors

Though DCAA recognizes the Department of Defense follows FAR Part 42 that provides significant incentive tools for contracting officers to encourage submissions of overdue incurred cost proposals for defense contractors (e.g. take unilateral action to establish indirect rates), the new guidance states many non-DOD civilian agencies do not agree they should apply these tools. Consequently, there is little recourse to resolving the late submission condition. The guidance establishes a proforma letter to be sent to non-DOD agency contracting officers and provides guidance on how to remove a non-DOD contractor from its list of audits if the letter does not generate actions to resolve the late condition (05-PPD-020(R).

Lee Issues Memo on Price Reasonableness of Orders Under FSS

In response to DOD Inspector General and congressional criticism of inadequate price reasonableness determinations in placing orders under Federal Supply Schedule contracts Director Of Defense Procurement and Acquisition Policy Deidre Lee instructed military services and defense agencies on how to ensure the requirements of FAR 8.404 are met. FAR 8.404 says, in part, that in placing orders against a schedule contract the government must conclude the order represents the best value (defined in FAR 2.101) and results in the lowest overall alternative, considering price, special features, administrative costs, etc. In her Jan. 28 memo the following should be adhered to:

- Though GSA has already determined rates for services offered at hourly rates under schedule contracts are fair and reasonable, contracting officers must not only consider labor rates but also labor hours and labor mixes when establishing a fair price.
- COs are required to consider proposed prices for both the services and products when awarding orders for a combination of services and products.
- COs are reminded to seek discounts for orders exceeding the maximum order threshold. When a discount is not obtained, they must explain why in the contract file and when one is obtained they are to explain how the discount was determined to be fair and reasonable.
- COs are encouraged to solicit as many contractors as practicable when using Federal Supply Schedules. When this is not possible, they must explain why in the contract file.

Controversy Over Health Insurance Comparability Heats Up

The 2005 Defense Appropriations Act provided that in public-private competitions the private sector offeror should not gain an advantage by offering less expensive health insurance coverage or require a higher percentage payment by employees than the public sector offerors. In November, Deputy Under Secretary of Defense Philip Grone called for repealing the provision maintaining it will decrease participation of the private sector by likely skewing competition in favor of in-house providers without necessarily improving health care if the private sector won the award. If repeal is not possible, the DOD asked the provision be grandfathered in so as not to affect in-progress competitions.

In response, twenty-two members of Congress February sent a letter to Defense Secretary Rumsfeld strongly opposing any repeal action stating the provision provided a level playing field for federal employees and contractor employees when it comes to health benefits and stated that any grandfathering would be illegal. Later a coalition of industry groups in a March 2 letter called on republican congressmen to repeal the provision stating it is an "unprecedented intrusion into the competitive process" by singling out one benefit element rather than total compensation packages and the provision would put small businesses at a particular disadvantage.

SDB Price Evaluation Adjustment Lapses at Civilian Agencies

The small disadvantaged business price evaluation adjustment expired December 9, 2004 for federal civilian agencies and will remain suspended at the Defense Department until February 23, 2006. Though the effect is the same, the reason for the unavailability of the adjustment differs. For civilian agencies, the authority for the SDB price adjustment was omitted from the SBA Reauthorization and Manufacturing Act resulting in no statutory authority to apply the adjustment at civilian agencies; for DOD, statutory authority to apply the adjustment must be suspended if in the preceding fiscal year the government achieved the 5 percent government-wide goal of contracting with SDBs. The SDB price evaluation adjustment requires the government to pay more than fair market cost in acquisition to which it applies because the agency must add a multiplier (typically, 10%) to the prices of all offers except those from SDBs.

SBA Alters HUBZone Program Requirements

The Small Business Administration is changing its Historically Underutilized Business program to help small business create more jobs in economically distressed areas. The changes include (1) level of ownership by U.S. citizens has been reduced from 100% to 51% for a small business to be HUBZone certified (2) agricultural cooperatives can now participate (3) the requirement for tribally owned businesses to have 35% of its employees residing in a reservation controlled by the tribe or an adjoining HUBZone can be met at the time of application or when the firm receives the HUBZone award (4) permits rural counties to qualify for HUBZone status if the local unemployment rate is higher than either the state's annualized unemployment rate or the national employment rate (rather than just the state rate before the change) and (5) small businesses that are either terminated or facing termination because their area is no longer considered economically distressed can continue to participate until the results of the 2010 census data is collected and analyzed.

Air Force Stresses Need to Assess Cost/ Price Risk to Source Selection Decisions

In action intended to obtain realistic cost proposals, the Assistant Secretary of the Air Force for Acquisition directed that source selection procedures be modified to emphasize the need to assess cost risk where probable cost analyses are performed. For major programs, a proposal risk rating will be assigned to the cost/price evaluation factor when a probable cost/price analysis – in which proposed costs are compared with a government probable cost estimate - is conducted. For non-major programs, a proposal risk factor may be assigned to the cost/price factor at the discretion of the source selection authority.

NASA Picks its SBIR and STTR Proposals

NASA has selected 290 Small Business Innovation Research (SBIR) and 40 Small Business Technology Transfer (STTR) Phase One proposals worth $20.2 million and $4 million, respectively. Only domestic, for-profit firms with fewer than 500 employees can make proposals which are intended to stimulate technological innovation and increase small business participation in meeting NASA's research and development needs. The STTR program differs from SBIRs principally by requiring collaboration between a small business and a research institution such as a university or research lab. The NASA SBIR and STTR

programs have three phases: Phase one tests the scientific and technical feasibility of the proposal where SBIRs limit funding to $70,000 while STTRs impose a $100,000 cap. The most promising phase-one projects (about 40 percent) receive a maximum of $600,000 in phase-two funding for further development that can last as long as two years. In phase three, proposals move from research and development into the marketplace where no specific SBIR/STTR funds are available for this phase. A list of selected companies appears at http://sbir.nasa.gov.

OMB and SBA Seek to Increase Disabled Vet Contracts; Huge Set-Aside IT Contract Ready to be Let

The Office of Federal Procurement and Small Business Administration heads issued a memo to all federal agencies in February to beef up their efforts to steer federal contract dollars to service disabled veteran-owned businesses, including reserving certain contracts exclusively for such businesses. The memo is intended to implement Executive Order 13,360 issued by President Bush October 2004. That memo took on dramatic meaning after the General Services Administration February 23 announced it will release a request for proposals for a new 10 year government-wide acquisition contract of $5 billion to be set-aside for service disabled veteran-owned businesses to provide information systems engineering and systems operations and maintenance services to include IT security.

Travel…

OPM Authorizes Comp Time For Travel

(Editor's Note. Though OPM rules apply to government employees, such rules do represent "reasonable" compensation practices applicable to the private sector.) The Office of Personnel Management issued an interim rule requiring federal agencies to provide employees one hour of comp time for each hour they spend in travel status during non-business hours. The interim rule states employees must receive comp time off for time in a travel status away from their official duty station. The regulation does not allow compensation for time spent at a temporary duty station (TDY) between arrival and departure, bona fide meal periods during actual travel time or any extended waiting period during which the employee is free to rest, sleep or use the time for their own purposes. Employees who travel to a TDY directly from their home must deduct time that would usually be spent commuting to their official duty station. The time off must be used within 26 weeks after being awarded (Fed. Reg. 3855).

Employees Have Inherent Right to Drive

Cowan was authorized to attend a conference in San Antonio. The Army issued travel orders authorizing auto travel, establishing a travel time of July 17 through July 25. Due to the length of the ride, he had to stay overnight going both ways and when he submitted a voucher for $1,669 the Army reimbursed him $1,538 explaining the disallowed costs were outside the contemplated period of July 19 to July 23. The Board ruled Cowan was entitled to the funds. It noted employees may always elect to drive to a TD assignment. However, if they are authorized another mode of transportation, their reimbursement is limited to the constructive cost of such travel i.e. transportation and per diem expenses (*William T. Cowan, Jr. GSBCA 16525-TRAV*).

Employees Cannot be Required to Stay at "Closest Home"

Brady maintained an apartment near his duty station in Brush where he resided during the week and had a home in Highland Ranch. Brady attended training in Lakewood, which was 120 miles from Brush but only 23 miles from his Highland Ranch home. The agency refused to reimburse Brady for his lodging expenses, asserting his official residence was in Highlands Ranch and therefore he should have driven to the TDY assignment because it was only a short distance away. The Board sided with Brady noting there is no authority that permits agencies to require employees to stay at a second residence in order to lower TDY costs. Even though Brady could have returned to his Highlands Ranch home each night, the agency could not direct him to do so even if it would have resulted in substantial savings (*Daniel Brady, GSBCA 16580-TRAV*).

No Reimbursement for Travel Ticket Purchased With Frequent Flyer Credits

Richard used his frequent flyer mileage credit to pay for his flight for himself and family to his new duty station that included a fee of $65 for taxes. When he submitted his request for reimbursement for the face value of the tickets, the Navy refused to pay any more than the $65 paid for taxes. The Board refused the appeal emphasizing that employees who use frequent flyer credits, coupons, or vouchers cannot be reimbursed for the value of the transportation because the law states "only actual and necessary travel expense" may be allowed. It concluded frequent flyer credits involve no direct expense (*Richard J. Maillet, GSBCA 16446-RELO*).

CASES/DECISIONS

Contractor Must Prove Costs For Work Exceeding Maximum Quantity

Contractor had a five-year requirements contract for storage and distribution to specified shipping points of coupons for the food stamp program. By the 11th month of the fifth year the government had exceeded the maximum number of boxes and issued unilateral change orders to ship boxes to California – the shipping point in the contract – and other locations. The CO agreed to pay the contract unit prices for boxes distributed to California but denied payment at that price for boxes delivered elsewhere. The contractor rejected this offer, failed to provide any evidence of costs incurred and filed a $1.53 million claim based upon contract unit prices of all the deliveries. The Board rejected the claim, ruling that unlike deleted work where the government has the burden to prove how much of a *downward* adjustment in price should be, the contractor has the burden of proving the *upward* price adjustment resulting from added work. Though the contractor may have incurred costs to provide the work it failed to provide evidence. It concluded the contract unit price for the added work was not a reasonable reflection of the contractor's actual costs because it "substantially overstates" any additional expenses incurred since the unit price reflects various amortized and allocated costs that would have been fully recovered when the government ordered the maximum amount of boxes (*American Bank Note Co., ASBCA, No.2004-146-1*).

Contractor Can't Recoup Legal Costs Resulting From a Private Clean Water Act Suit

After Southwest unsuccessfully defended itself against a private suit charging it with violating the Clean Water Act where it paid a penalty of $799,000, Southwest sought recovery of the legal costs under its Navy contracts. It asserted that the suit was a private, not government, suit and it was entitled to recovery under FAR 31.205-33, professional services. The Board denied recovery concluding the result was controlled by a prior case, *Boeing North American Inc. v. Roche*. In *Boeing*, the court stated costs of unsuccessfully defending a private suit charging contractor wrongdoing are not allowable under federal contracts if "similar" costs would be disallowed under the FAR. FAR 31.205-47(b)(2) makes unallowable the legal costs incurred by a contractor in connection with a civil proceeding brought by a government entity for violation of law resulting in the imposition of a monetary penalty. The GAO ruled the legal costs Southwest sought were similar to those disallowed under the FAR regulation. The GAO stated the government and private actions for violation of the CWA were similar in many respects: (1) both government and citizen suits are authorized under the act (2) the objective of each suit is to enforce compliance with the act (3) for each suit, monetary penalties are prescribed and (4) a citizen has the right to intervene in a government suit and vice versa. The government's failure to take action under CWA does not reflect its intention for the costs to be allowable but equally plausible, the government recognized the public interest was adequately protected under the private action. As for FAR 31.205-33 which deals with professional services for the contractor, the court ruled the large portion of costs involved here does not relate to services for the contractor but were incurred by the contractor under a court order to reimburse the prevailing plaintiff's legal fees and expenses. The Court alluded the to subsection of 31.205-33 "but see 31.205-30 and 31.205-47" suggesting these latter subsections control when evaluating costs that specifically fall within their purview – for example, costs related to legal and other proceedings, under 31.205-47 (*Southwest Marine Inc., ASBCA 54234*).

Government Inspector Actions Constitute a Constructive Change

The government inspector misidentified a problem insisting that a contractor perform some work in a manner not required by the contract specifications. The Board ruled a constructive change had occurred – a contractor is entitled to an equitable price adjustment when a constructive change requires it to perform more or different work not called for in the contract – ruling that when inspectors with authority to accept or reject work, they are held to bind the government when they improperly reject work. The Board ruled the inspector was acting with the authority of the contracting officer in performing his inspection duties to obtain compliance with his interpretation of contract requirements (*A&D Fire Protection Inc., ASBCA 53103*).

(Editor's Note. Commentators on this case have pointed out that a contractor who relies on this case as well as another one with a similar ruling – Dan Rice Construction Co., ASBCA 52106 – would be "foolhardy" since there are numerous decisions where the government wins based on a lack of authority of government personnel that knew of a change or participated with the contractor to perform extra work. Contractors' personnel

need to be trained to bring these types of interpretation problems to the attention of the CO as soon as they become apparent. But these two cases do provide "hope" a contractor has a chance of prevailing on a claim that has not been brought to the attention of the CO in a timely manner. It will depend on whether a judge will see a form of delegation of authority or takes a firm position that only COs have contracting authority.)

Court Rules on Recovery of Overhead Expenses on Termination

The government terminated the contract for convenience before the work began but after the contractor ordered material for performance during certain periods of 1993 and 1994. In its termination settlement proposal the contractor requested direct costs of the project, overhead costs incurred during the two years and profit. The Court explained that a calculation of overhead should start with the total indirect costs for each fiscal year of contract performance divided by the contractor's total direct costs for the year to yield an indirect cost rate which is then multiplied by total direct costs of the contract to arrive at the indirect costs allocable to the contract for that year. However, the contractor never submitted evidence of its total direct costs for 1993 and 1994, arguing that since it did not have other business during the period covered by the terminated contract, it was entitled to all of the overhead costs incurred during the two years. The Court noted the contractor had other contracts during 1993 and 1994 outside of the contract period and ruled "it would be unfair" to let the contractor base its calculation of indirect costs on the overhead for the entire year but limit the direct costs to those experienced during a specific time period chosen by the contractor (*Singleton Contracting Corp. v. Secretary of the Army, Fed. Cir., No. 04-1119*).

GAO Dismisses Protest Received at 9:00 PM as Untimely

Publication of the contract award was posted at FedBizOpps on December 17 where a protest had to be filed no later than 10 calendar days. The protest notification was filed at 9:00 PM on December 27 and the GAO dismissed the protest as untimely, ruling protests filed after business hours are considered filed the next day. In response to assertions that the GAO was "too strict", the Comp. Gen. alluded to *Peacock Myers & Adams, B-27937* where a faxed protest was ruled untimely that began before the 5:30 PM deadline but was not complete until 5:33 P.M. (*CBMC, Inc. Comp. Gen. Dec. B-295586*).

Disclosure of Vendor Price During Reverse Auctions is Not Prohibited

The GAO considered for the first time whether agencies may conduct procurements using the increasingly popular reverse auction process where an online auction Website displays the property to be acquired, the current lowest quotation (without divulging names of vendors) and time remaining. In its bid protest of an upcoming Department of Housing and Urban Development reverse auction procurement, MTB maintained the government prohibits government officials from knowingly disclosing contractor quotations or proposal information before award. The GAO denied the protest noting while the FAR does not expressly recognize reverse auctions it does not expressly prohibit their use. Further, HUD's planned use of the reverse auction was fully consistent with FAR Part 13 regarding simplified acquisition procedures. As for divulging prohibited information, the GAO stated federal law does not "restrict a contractor from disclosing its own quote or proposal information or the recipient from receiving that information" which is what occurs during a reverse auction because vendors disclose their own prices by entering them on the Website (*MTB Group Inc., GAO, B-295463*).

NEW/SMALL CONTRACTORS

Should We Establish a Separate Fringe Benefit Rate?

The following is an edited response to one of our clients inquiring into the advantages and disadvantages of establishing a separate fringe benefit rate. Our client is a professional services company with multiple offices across the country. The company has numerous overhead rates as well as a G&A rate and individual employees (both direct and indirect) are assigned to a particular overhead or G&A pool where the employees' fringe benefits are accumulated in the pool they are assigned. Though your firm is likely quite different, many of the issues discussed should be relevant.

Your question about having a separate fringe benefit (FB) pool versus including fringe benefits in respective overhead pools is a bit complex because there are a variety of FB pools that might apply to your company and each choice has its own advantages. We will discuss some of those alternatives below but let us stick to a simple alternative for now: either

include all company benefits in a fringe benefit pool divided by all labor dollars (direct and indirect) versus your current practice of assigning fringe benefits to the pools based on the individuals assigned to the pool.

Establishing a company-wide fringe benefit rate will allow you to have the fringe benefits follow the labor dollars. Direct labor charged to direct projects will include a FB component while indirect labor charged to indirect cost pools will have a fringe benefit component. The advantages of this approach are:

1. There would be a better alignment of costs. For example, overhead pools wouldn't include fringe benefits of direct labor.

2. Segregating FB costs will allow greater visibility for monitoring these costs rather than lumping them into indirect pools with other costs. Closer monitoring would allow greater management control.

3. Budgeting and project management control would be easier - since most fringe benefits are variable (except for health benefits) you can simply add a FB factor to every labor dollar.

4. Overhead rates would be lower. This is more of a "cosmetic" effect because the projects will have the same costs allocated to it but they would be in different "buckets". For example, rather than a 135% overhead rate, you'd have a 100% overhead rate and a 35% FB rate. The overhead rate might even be lower if the base included direct labor dollars plus FB dollars of direct labor. Certain government agencies are conducting studies of indirect rates and they may be putting pressure on contractors to "lower" their overhead and G&A rates based on their internal studies.

The advantages of your current practices are:

1. No changes are needed - its nice and simple.
2. Historical costs can be compared with current costs without adjustments.
3. Easiest acceptance by DCAA since no change has occurred.

Alternative methods of computing fringe benefits all have the disadvantage of requiring more record keeping and computations than the two methods discussed above while they provide greater precision of costing. Here are a few alternatives that come to mind that might be relevant to your firm:

a. Separate rates for different types of labor (e.g. full time-full benefit labor; part time-limited benefits labor and temporary-no benefits labor). If you expect to use different types of labor to, for example lower contract labor prices or provide greater flexibility, then you'd apply tiered rates to each type of labor so you'd want to separately compute fringe benefits for each type of labor.

b. Separate rates by geographic locations. If there are significant differences in various state and or labor agreements then you may want to compute FB rates by geographic location and then apply company wide overhead rate(s). This has the advantage of greater cost precision and flexibility in applying different indirect rates by geography.

c. Separate rates for direct and indirect labor. This is particularly attractive if certain categories of employees (e.g. senior level) receive significantly different fringe benefits than other categories. You could get greater cost precision and, for example, be able to lower rates applied to direct labor employees if their fringe benefits are lower.

d. Separate rates for variable fringe benefit costs (e.g. payroll taxes) allocated on a labor dollar base versus rates for fixed fringe benefit costs (e.g. health) allocated on a labor hour base. If the company prefers to separate and account for variable versus fixed expenses for costing, budgeting and management purposes, this approach might help.

QUESTIONS & ANSWERS

Q. Our business consists of 80% DoD/NASA federal contracts and 20% commercial products. We will be entering into an agreement with another company that will give them the right to market/sell one of our commercial products for which we have patents. This company will pay us a royalty on sales of this product. Question we have is on receipt of the royalty income, should the royalty income be a credit to our G&A (or other indirect) Cost Pool for purposes of calculating our indirect rates used on government contracts?

A. Normally, you need not credit your indirect pool for income including the royalty income you ask about. After all, the indirect rates are based upon costs incurred and the amount of revenue obtained from those costs is irrelevant for incurred cost purposes.

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The only exception is if the costs associated with the income is included in the pool (which I doubt is the case here). So, for example, if you include reproduction costs in your indirect cost pool then the reproduction costs associated with reproduction revenue needs to be credited (remember only the cost portion of the revenue not the entire amount of the revenue).

Q. We have a kind of a hybrid time-and-material and fixed price contract where we provided certified cost and pricing data to the government when we were negotiating prices. Can we use the same employee for two different job categories? Do we have any exposure doing so?

A. As long as the employee meets the education and technical criteria for the job categories, there should be no reason why you cannot use the same individual for different skill categories and charge different skill rates. As for potential exposure, there could be defective pricing problems if you knew you would be using lower paid employee(s) for higher paid work and based the prices for the higher paid work on higher paid employees.

Q. You frequently refer to "micropurchases" and "simplified acquisition procedures." What are they?

A. FAR Part 13 addresses your question. Purchases not greater than $2,500 are called micropurchases. Such purchases may be made without obtaining competitive quotes provided the CO does not find the resulting price to be unreasonable. Evidence of "reasonableness" includes prices recently paid, the CO's knowledge of the product or service market prices or more explicit evidence such as quotes, published catalogs, newspaper ads, etc.

Purchases more than $2,500 but no more than $100,000 come under the category of simplified acquisition procedures (SAP). The stated purpose of SAP is to lower administrative costs and burdens and improve opportunities for small businesses to receive a fair share of government business. FAR Part 13 primarily addresses competition requirements. Competition for SAP purchases is encouraged and the administrative requirements are less stringent than for larger purchases. The buyer, whether it be the Government, prime contractor, or higher tier subcontractor, should seek a "reasonable number of sources" to promote competition. A solicitation of three or more is presumed to promote competition, two are acceptable when fair competition can be demonstrated, and one source can be allowed if only one source is reasonably available (e.g. urgency). Oral requests may be substituted for written formal requests for quotations and solicitations need not be sought outside the local area if electronic means are not used. Price alone or other factors (e.g. past performance, quality, etc.) may be used.

Documentary evidence of seeking adequate competition can be limited to notes in the file. When oral requests are used, informal records may be kept that show companies contacted, prices quoted and other terms. If selection is based on other than price, the basis of selection should be identified. If only one source was used, the file should contain an explanation of the absence of competition.

As mentioned in an article above, there are currently pilot programs in effect that have raised the SAP threshold to $5 million for certain items that are considered commercial and even $10 million for certain anti-terrorism contracts. Also, the micropurchase threshold is $7,5000 for certain anti-terrorism efforts.

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