
GCA REPORT

(A publication of Government Contract Associates)

March - April 2009

Vol 15, No. 2

NEW DEVELOPMENTS

New Contract-Related Interest Rate Set for First Half of 2009

The Treasury Secretary has set a rate of 5.625% for the period January through June 2009. The new rate is an increase from the 5.12% rate applicable in the last six months of 2008. The Secretary of the Treasury semiannually establishes an interest rate that is then applied for several government contract-related purposes. Among other things, the rates apply to (1) what a contractor must pay the government under the "Interest" clause at FAR 52.232-17 and (2) what the government must pay a contractor on either a claim decided in its favor under the Contract Disputes Act or payment delays under the Prompt Payment Act. The rate also applies to cost of money calculations under Cost Accounting Standards 414 and 417 as well as FAR 31.205-10 and when a discount factor is used to calculate the present value of future payments (e.g. deferred compensation) (*Fed. Reg. 250*).

DCAA Issues Guidance on Reporting Suspected Contractor Irregularities to Investigative Agencies

(Editor's Note. We have been seeing incidences where individual DCAA auditors have been referring contractors to governmental investigation agencies for possible criminal or fraud investigations when they have concerns about a contractor's cost allocation or screening of unallowable cost practices identified during an audit. We are particularly concerned about these because we have seen little DCAA management review of such referrals. A referral usually exposes contractors to significant potential liability and usually requires expensive legal efforts to counter. The following guidance encourages these referrals and does not seem to provide much management control over individual auditors submitting erroneous referrals.)

The Defense Contract Audit Agency issued an audit alert reminding their auditors of agency policy to report suspected contractor fraud and other contractor irregularities encountered in the performance of their audits. Suspect contractor fraud and irregularities

should be reported promptly using DCAA Form 2000 in accordance with the DCAA Contract Audit Manual 4-700 and DCAA Instruction No. 7640. Auditors are told, in bold letters, "There is no requirement for the auditor to prove the existence of fraud or other contractor irregularity in order to submit a DCAA Form 2000." The guidance also states that DCAA management reviews of Form 2000 prior to formal submission "should be limited to that necessary to ensure clarity. No attempt should be made to dissuade an auditor from completing and submitting a DCAA Form 2000." Examples of irregularities cited in the guidance includes labor mischarging, submitting false claims, repeated overbilling, falsifying labor charges, improper transfers of costs between contracts and bribes/kickbacks. Any other suspected irregularity may be referred (*09-OTS-004(R)*).

New FAR Amendment Implements SBA Recertification Rules; Raises Threshold of Modifying Commercial Item Contracts to TINA Amount

The FAR Council March 19 issued changes to the Federal Acquisition Regulation in the form of FAC 2005-31. Two significant contract related changes include:

1. Incorporates a rule issued by the Small Business Administration in 2006 that requires small businesses holding long-term federal contracts to re-certify their size before the beginning of the sixth contract year and before any options are exercised extending the contract beyond that period as well as following a contractor merger, acquisition or novation. Previously, a business's size standard was determined as of the date it submitted its initial offer and the size determination continued for the life of the contract. The interim rule before the final change to the FAR required COs to modify long term contracts (more than five years) to include a new clause FAR 52.219-28 and to modify contracts awarded to small businesses other than long term contracts to include the clause when an option was exercised. The new clause requires a contractor to "rerepresent" its size status 30 days after execution of a novation agreement, merger or acquisition and to rerepresent its size within 60 to 120

days prior to the end of the fifth year of the contract or exercise of an option after this period.

2. Harmonizes the thresholds for submitting cost or pricing data for noncommercial modifications of commercial item contracts with the Truth in Negotiations Act. The 2008 DOD Authorization Act called for a \$500,000 threshold for submitting cost or pricing data when modifying a commercial item contract with noncommercial changes. Since the current TINA threshold for submitting cost or pricing data is \$650,000 the FAR amendment calls for increasing the threshold for modification of commercial item contracts to \$650,000 (*Fed. Reg. 11,820*).

Shift From Outsourcing to Insourcing is Gaining Momentum

◆ AFGE Calls for Increased Oversight and More Insourcing

The American Federation of Government Employees (AFGE) Feb 9 released an issue paper outlining its agenda during the Obama Administration. The paper stresses that the “interests of contractors were substituted for those of taxpayers” during the last eight years stating sole source and limited competitions were responsible for the growth of the contractor workforce. Greater oversight over outsourcing activities and careful analysis of the benefits of using private companies should be conducted. In addition, “inherently government work” that has been “wrongly outsourced” should be reversed and be brought back into the public sector.

◆ New Bill Suspends A-76 Competitions

A recent \$410 billion omnibus appropriations bill signed into law March 11 includes a provision suspending any new public-private competitions under the OMB Circular A-76 through the end of fiscal year 2009 (Sep. 30). Under the new law all agencies except the Defense Department – they are subject to their own outsourcing restrictions – are required to not only cease A-76 competitions but are also required to establish guidelines for bringing outsourced work back into the hands of federal employees with particular attention to those determined to be inherently governmental that were wrongly outsourced, work contracted out without competition and contracted out work that has been poorly performed.

◆ DOD Examining Cost-Effectiveness of Outsourcing

The Comptroller and CFO of the Defense Department March 18 told a House Budget Committee they were

examining how many contractors the department is using and whether it would be more cost effective to bring those jobs in-house. Though no decisions have been made yet, “the issue is under active discussions.” The DOD representative stated the use of contractors are “probably more expensive” because of higher overhead costs but that such higher costs may be offset by the benefits of using the flexibility of contractors who can offer quick delivery of “labor savings technology” better than government employees. The comment about higher overhead struck a cord with the president of the Professional Services Council who later testified that DOD needs to more closely assess the costs of using its own in-house employees, stating comparisons of the two often “fail to account for all relevant costs.”

DCMA Guidance on Untimely Final Overhead Rate Submittals

The Defense Contract Management Agency issued new guidance on final overhead rate settlements in response to DCAA’s decision to discontinue participation in the DCMA Mechanization of Contract Administration Services (MOCAS) Priority Audit initiative. Under the initiative, DCAA prioritized its audits to DCMA targeted contracts where there were cost overruns or cancelling funds, even if the relevant contractors had not submitted timely, adequate incurred cost proposals. Under the new rules, which recognizes that DCAA will no longer prioritize or schedule final indirect rate proposal audits for contractors not submitting timely, adequate proposals, ACOs are to take aggressive actions to obtain adequate incurred cost proposals from tardy contractors that may include (1) establishing unilateral rates for late or uncertified proposals (2) decrementing provisional billing rates for unsupported costs and (3) establishing contract withholds for significant accounting system or related internal control deficiencies (*DCMA Memo No. 09-141*).

DCAA Issues Guidance on Documenting Judgmental Samples

(Editor’s Note. The following guidance to auditors on how to document sampling approaches should provide some good guidelines to contractors when they are using sampling techniques for screening unallowable costs.)

DCAA has issued guidance on how to document judgmental samples when testing transactions during an audit. As a reminder from our Statistical Sampling days, selection of sampling techniques involves either more precise statistical sampling methods or somewhat less precise though still valid “judgmental sampling.”

The guidance cites Generally Accepted Government Auditing Standards (GAGAS) where auditors are to prepare “attest documentation” in enough detail to provide a clear understanding of the work performed to support conclusions. The following are to be documented:

1. A description of the universe from which the items are selected, including specific information (e.g. contractor’s bill of material totaling \$2.5 Million).
2. Identification of the item to be tested (e.g. material parts with an extended value of over \$50,000) and the attributes to be tested.
3. An explanation that supports how the judgmental selection results provide adequate audit coverage of the universe to meet audit objectives (e.g. the 30 items selected represent 90 percent of the total bill of materials) (*09-PAS-003(R)*).

SCA Clauses Now Included in T&M Contracts

The FAR Council published a proposed rule that would require incorporation in time-and-material and labor-hour contracts Service Contract Act related clauses at 52.222-43 and 44. The clauses provide for increases in labor charges for fixed price contracts when SCA rates increase where additional costs related to applying overhead, G&A and profit to these increased costs are not allowed. Though in practice these clauses are often included in T&M and LH contracts, there is no requirement to include them so the Council wanted to make sure when SCA increases are included in these contracts overhead, G&A and profit increases are explicitly prohibited (*Fed. Reg. 872*).

DOD Extends Waiver from FAR Asset Step-Up Disallowance

The Defense Department extended a rule though Sept 30, 2011 that prevents the disallowance of DOD indirect costs allocable to asset step-up valuations resulting from a contractor’s business combination. Prior to 1996, the Cost Accounting Standards called for the measurement and allocation of costs related to tangible capital assets acquired in a business acquisition under the purchase method of accounting to be at the fair market value of the acquired assets which generally resulted in higher costs being allocated to government contracts. FAR 31.205-52 was passed to disallow any costs resulting from this step up of asset values. Since indirect costs must be allocated over a base of all costs

including unallowable excess capital asset related costs, FAR 31.203(c) renders unallowable the share of indirect expenses that are allocable to the stepped-up amounts. However, the DOD reasoned that FAR 31.205-52 was meant to ensure such indirect costs as depreciation of tangible assets and amortization of intangible assets not be increased due to a business combination so making additional indirect expenses applicable to these disallowed depreciation and amortization costs would be improper. As a result, DOD established a class deviation from the requirements of FAR 31.203(c) in Sep. 2008 which is being extended here (*DOD memo ‘Request for Deviation from FAR 31.203(c), Indirect Costs’*).

President Obama Issues Executive Orders on Contractor Workers’ Rights

Pres. Obama issued Jan. 30 three labor friendly executive orders regarding rights of workers employed by federal contractors.

1. Requires, with certain exceptions, successor contractors having federal service contracts give right of first refusal to the predecessor contractors’ employees for work they are qualified for. The EO is intended to avert a new contractor from hiring a whole new workforce leaving the predecessor’s workforce out of work. Willful failure to abide by the regulations to be soon implemented can result in suspension in winning new awards for three years and “orders requiring employment and payment of wages lost.” The EO states the non-displacement of workers order is intended to promote economy and efficiencies in keeping on predecessors’ employees.
2. Contractors and their subcontractors are required to post workplace notices that the Labor Secretary will soon be drafting where failure to do so can result in cancellation, termination or suspension of contracts. As part of the order, Obama revoked a prior EO issued by Pres. Bush in 2001 notifying employees of their rights not to join a union and not to pay agency fees for non-representational union expenditures.
3. Instructs the FAR Council to amend the FAR to make unallowable costs incurred to persuade employees – whether they be contractor employees or of any other entity – to “exercise or not exercise the right to organize and bargain collectively through representatives of their own choosing.” However, costs are allowable if incurred for maintaining satisfactory relations between the contractor and its employees including labor management committees, employee publications and other related activities.

GSA Rejects Demands to Eliminate Price Reduction Clause

The General Services Administration recently proposed an overhaul to the acquisition regulations governing the Federal Supply Schedule program. Most notably it proposed changes to the price reduction clause required in contracts under the Multiple Award Schedule that require contractors to subsequently offer more favorable prices or terms to the government when they are offered to certain commercial customers. In making the changes the GSA rejected many government and industry recommendations to eliminate the clause saying it should remain “in keeping with the philosophy of the FSS Program.” However, the GSA did partially agree with recommendations to exempt from the price reduction clause discounts from a commercial pricing list and stated additional guidelines for relationships with dealers/distributors /resellers was not necessary because the rules already provided a sufficient mechanism for tracking customers (*Fed. Reg. 596*).

Bush Executive Order Requires Reciprocal Recognition of Clearances

Shortly before leaving office Pres. Bush signed an executive order directing federal agencies to, whenever possible, recognize security clearances issued by other agencies to federal and contractor employees. The EO, published in the Jan 22 Federal Register, requires agencies to grant “reciprocal recognition to prior favorable fitness or suitability determinations” when (1) the “gaining” agencies use similar criteria for fitness used by the Office of Personnel Management and (2) the individual has no break in employment since the favorable determination was made. Exceptions apply when (1) the new position requires a higher level of investigation than that previously conducted (2) an agency obtains new information calling into question the individual’s fitness or (3) the individual’s investigative record shows conduct incompatible with the core duties of the new investigation.

Contract Related Features of the New Stimulus Bill

The \$787 billion economic stimulus package signed by Pres. Obama Feb 17 as well as subsequent actions contain several contract related features.

1. Preference for Fixed-Price Competitive Procedures

The stimulus bill requires that contracts for which it provides funding will, “to the maximum extent possible”, be awarded fixed-price contracts through the

use of competitive procedures. Contracts that are awarded on an other than fixed-price basis or without the use of competitive procedures are to be posted in a special section of the new recovery website. It also requires that funds be distributed, whenever possible, through existing formulas and programs that have proven track records and accountability measures already in place.

2. Assuring contracting transparency and accountability

Provides for extensive reporting by those receiving funds directly from the government. Reporting requirements to be issued by OMB will be applicable to the prime and first tier subcontractors only and will include a report submitted 10 days after the end of each calendar quarter starting July 10 identifying (a) total amount of recovery funds received from the agency (b) the amount of recovery funds received that were obligated and expended on projects (c) details about projects including “completion status” and estimates of numbers of jobs created and retained and (d) detailed information on any subcontracts awarded. Receipt of funds will be contingent on meeting these reporting requirements.

Posting of pre-solicitation and contract awards notices on the Federal Business Opportunities website at fedbizopps.gov and there will be public access to information about government spending posted on a new website at www.recovery.gov. There is also expanded access to contractor records by the GAO and agency inspectors general and a requirement that not less than prevailing wages are paid under the Davis-Bacon Act to all laborers and mechanics.

Development of risk mitigation plans to prevent waste, fraud and abuse that partially includes (a) using audits and investigation of stimulus funds (b) ensuring qualified personnel oversee the stimulus funds, especially for non-fixed price contract vehicles (c) maximize use of competitive awards (d) minimizing cost overruns and improper payments (d) determining what award method allows recipients to commence expenditures quickly, consistent with prudent management and statutory requirements and (e) using weighted selection criteria to favor applicants for assistance.

3. Whistleblower Protections

Private employers may not fire, demote or otherwise discriminate against employees who reveal information on mismanagement, waste, dangers to public health or safety or violations of law related to contracts and grants. The bill will require an agency inspector general

to investigate all claims of reprisals within 180 days and within 30 days of receipt of the IG report the head of the agency must determine if the contractor engaged in prohibited reprisal and if so, the employer must reinstate the employee and pay all costs incurred in bringing the complaint. If the agency head denies relief or fails to take action within 210 days, the employee can seek damages in court.

4. Drops E-Verify Requirement

The Stimulus Bill purposely does not include a rule requiring federal contractors to use E-Verify, the government electronic employment verification program. In June 2008, Pres. Bush issued an executive order requiring contractors verify the work authorization of all new hires and existing personnel to perform work on federal contracts. The FAR Council followed up with a proposed FAR amendment that would require a contract clause requiring mandatory use of E-Verify on all contracts valued above \$100,000 with a contract performance period longer than 120 days. E-Verify is now voluntary among contractors. Under the new Obama administration the government agreed to delay implementation of the EO which, in turn, was preceded by another delay from industry and HR organizations claiming the EO was illegal because it violated other Immigration Reform acts. In spite of the current drop, there is considerable support within Congress to extend the E-Verify process.

5. Delays 3 Percent Withholding of Contract Payments

The bill includes a provision delaying until Jan 1, 2012 the implementation of a 3 percent tax withholding on federal, state and local government payments for goods and services. Currently, the provision in the tax code requiring withholding of 3 percent tax, was scheduled to go into effect Jan 1, 2011. The rule has generated considerable opposition from many fronts.

CASES/DECISIONS

Equipment Certification Not Required at Time of Bid Submission

(Editor's Note. Certifications of products and even services can be quite expensive and require extensive lead time. The following decision addresses timing issues of when certifications are required which can significantly affect decisions on whether to bid.)

The RFQ for a communications equipment contract referenced the necessity of the equipment being certified by the Joint Interoperability Test Command (JITC). When the award was given to another vendor whose equipment was JITC certified, SMARTnet protested the award arguing that JITC certification was not needed until the equipment was installed and to require such certification at the time the solicitation was issued severely restricted competition. The Army argued that it required "an immediate networking solution" from the equipment and that it should not have to bear the risk of conducting another procurement if SMARTnet's equipment was not certified in time to meet the project's needs. The Comp. General sided with SMARTnet finding the Army's concerns related to the need for certified equipment at the time of installation not at the time of quotation submission. Although an agency's certification requirements may be legitimate, they may not be enforced before such qualifications are relevant. Since the Army did not show why the proposed equipment had to be certified at the time of submission of quotes was reasonable, the Comp Gen. sustained the protest (*SMARTnet, Inc. Comp. Gen. Dec B-400651.2*).

HHS Evaluation Failed to Consider Price

In a competition for custodial services at the National Institutes of Health buildings, three of 10 proposals – but not Arc-Tech's – earned technical scores placing them within the competitive range. Arc-Tech protested arguing the agency failed to consider price in determining the competitive range and instead based its decision on an arbitrary technical cutoff score. The GAO agreed stating the competitive range determination was unreasonable. The GAO stated an agency may exclude a technically unacceptable proposal from the competitive range and may even exclude a technically acceptable proposal that is not among the most highly rated if the number of highly rated proposals is too high to conduct an efficient competition. However, the GAO said an agency may not exclude a technically acceptable proposal from the competitive range without first taking into account the relative cost to the government. In this case, HHS removed Arc-Tech's proposal from the competitive range based on its technical score only while failing to consider price or documenting that the proposal was technically unacceptable (*ArcTech- Inc. GAO, B-400325*).

Potential Tax Increase Must be Included in Proposal

(Editor's Note. Obscure, revenue based taxes are proliferating throughout the country at local and state levels so pricing people, often centrally located at distant offices, need to make sure these taxes are carefully considered in proposals.)

Cillessen was awarded a \$12 million fixed price contract to renovate a health care center. It had learned that a tax increase might go into effect within a year after award but between the time it submitted its proposal and was awarded the contract a local Business Activities Tax based on gross receipts was raised where Cillessen during contract performance asked for an equitable adjustment in price to cover the additional taxes. In its appeal Cillessen claimed it was entitled to the increase in contract price or as an alternative argument, the contract price should be reformed because a mistake had been made. The Board noted the contract contained FAR 52.229-3 that requires a contractor to ensure the appropriate taxes are included in its bid where it ruled the contractor assumes the risk to the contract as of the contract's effective date. In response to Cillessen's contention that the clause requires a contract to be increased by the amount of any after-imposed tax the board ruled the tax was not after-imposed because it was made public 10 days before the effective date of award. As for the mistake argument, the board concluded Cillissen simply made an error in judgment that the government should not have to pay (*B&M Cillessen Constr. Vs Dept. of HHS, CBCA, No. 1110*).

Agency Deviated from Evaluation Criteria in the Solicitation

In a competition for implementation and business support for the Secure Flight program, Section M of the proposal stated “all proposed life cycle costs (base costs plus all option costs) will be evaluated via a cost and price analysis to determine reasonableness and realism.” The agency determined that Accenture and Deloitte’s proposals fell into the competitive range and then awarded the contract to Accenture because of the company’s lower cost. In Deloitte’s protest claiming the agency failed to follow the RFP’s evaluation criteria the agency admitted it did not follow the criteria but explained the CO never intended to evaluate the life cycle costs because the proposal did not request information for option years and hence was required only to evaluate the base year, not the option years. The Office of Dispute Resolution disagreed asserting the solicitation clearly stated the agency would evaluate “base costs plus all option years” and that to accept the agency’s position would amount to reading specific language out of the contract, essentially rewriting Section M (*Deloitte Consulting LLP, ODR4, No. 80-TSA*).

Court Upholds Fraud Penalties of \$50 Million

(Editor’s Note. Though estimated future costs are quite valid elements to include in a request for a price adjustment, care should be taken to ensure these estimates do not include potential fraudulent elements.)

Daewoo’s \$88 million contract to build a 53 mile road in Palau was delayed where Daewoo submitted a certified claim of \$64 million for more time to perform and adjustment in price where \$14 million represented incurred costs through Dec while \$50 million represented projected future costs to perform. The government asserted that the \$50 million represented a false claim with the intention of being paid and hence should be liable to the government for an amount equal to the false amount in the claim. Daewoo claimed the \$50 million of future costs were not really a certified claim where it did not seek the amount as a matter of right (conditions for a valid claim) but were mere estimates provided to encourage the government to change its specifications. There was some uncertainty whether the amount asked for was a valid claim – on the one hand, the certification clearly stated the \$64 million represents the amount of contract adjustment the contractor asserted it was entitled to and clearly showed the breakdown of the claim into prior incurred costs and future estimated costs; however, other language indicated the claim sought was only for the \$14 million of actual incurred costs and the other costs are merely “provided as a guide to the government for considering alternative specifications.” The Court ruled that evidence clearly showed that Daewoo intended to make a claim for \$64 million and while future costs are an allowable component of a claim, they must be properly supported and if not they are considered to be false and fraudulent. The Court ruled the request was a valid claim where \$50 million was fraudulent and merely a negotiation ploy and hence was liable under the False Claims Act for penalties of \$50 million (*Daewoo Engr & Constr. C. vs US, 2009 WL 415490*).

NEW/SMALL CONTRACTORS

Close Out Those Contracts

(Editor’s Note. Though we have addressed quick closeout procedures in the recent past, we have received several inquiries

related to closing out contracts in general. We have put together something below that addresses the basic rules.)

With the passage of time and normal employee turnover closing out contracts is one of those administrative chores that seem to get delayed. Recent negative reports on agencies' delays in closing out contracts and pressure to do so has put contract closeouts on the front burner. In addition, under cost type fixed fee contracts 15 percent of the fixed fee is withheld when 85% is reached (FAR 52.216-8, Fixed Fee) and under T&M or Labor Hour contracts 5 percent of amounts due for labor up to \$50,000 are also withheld (FAR 52.232-7, Payment under T&M/LH Contracts) unless the relevant clauses were waived. These withholds are not returned until the contract is officially closed out so substantial profit from the contract is not recovered that also puts a strain on cashflow. It is usually a good idea to try and get these withhold requirements waived, usually shortly before or after contract award so as not to have these funds held hostage until the contract is closed.

If you have cost type contracts you must submit incurred cost proposals within six months after your fiscal year-end to your ACO where usually DCAA or some other audit group reviews them after which it submits a determination of what your direct and indirect costs are. You are required to submit your final invoice within 120 days after settlement of your costs (longer if approved in writing) for all years of a physically completed cost type contract. It is this last step that often gets delayed or lost in the cracks so some encouragement to complete it is needed.

Quick Close-Outs. As we have previously reported, quick closeout procedures described in FAR 42.708 is an alternative for closing out cost type contracts before waiting for a final report from the auditors. To apply the procedures four conditions must exist (1) the contract is physically completed (2) the amount of unsettled cost allocated to the specific contract(s) must not exceed (a) \$1 million and (b) 15 percent of the estimated total indirect costs allocable to cost type contracts for that fiscal year and (3) agreement can be reached on a reasonable estimate of allocable dollars. Both the \$1 Million and 15 percent thresholds can be waived if there is a perceived "low risk" – e.g. accounting, estimating, billing and purchasing systems are not considered inadequate, incurred cost proposals are submitted on time.

What events trigger a closeout. For non-flexible type contracts the triggering event is when the contract is

physically complete as defined in FAR 4.804-4. Completion has occurred when the supplies are delivered and the government has inspected and accepted the item and for services the contractor has performed all services and been accepted by the government. In addition, all options have expired or the government has given the contractor notice of a complete termination.

An exception to this completed contract event can occur if the contracts are flexibly priced (e.g. cost reimbursable, T&M/LH). Under the Limitation of Cost/Limitation of Funds clauses applicable to cost type or the Payments clauses under T&M/LH contracts, the contractor does not have to continue performance once its costs equal the established cost ceiling of the contract. Under these types of contracts if the government does not provide additional funds the contract is considered to be physically complete once the cost ceiling has been reached.

Also other factors may delay a closeout even though the contract is complete. If the final amount due to the contractor has not been determined or if there is an outstanding claim either by or against the contractor then the contract may not be closed.

Timeframes for close-outs. Finally, what are the time frames normally applicable to closing out the contracts. FAR 4.801-1 sets forth the time frames standard for various types of contracts.

- Simplified acquisition procedure (SAP) awards (normally under \$100K or \$5 Million for commercial item acquisitions under a pilot program). Contract files are considered closed when the CO receives property and the final payment is made unless there are specified conditions.
- Non-SAP firm fixed price contracts. Should be closed within six months after the date the CO receives evidence of physical completion.
- Contracts requiring settlement of indirect cost rates and direct cost (Cost type, T&M/LH, fixed price redetermination features). Should be closed within 36 months of the time the CO receives evidence of physical completion.
- For all other contracts, the files should be closed within 20 months of the CO receiving evidence of completion.

March - April 2009

GCA REPORT

QUESTIONS AND ANSWERS

Q. You stated that in a Grant Thornton survey you were reporting on that a 240% multiplier was the norm. How correct is that?

A. Since many of our clients are mid-sized to large companies, that multiplier seems about right. However, I would not rely too much on that number as a predictor of what you can expect on all competitions and I would especially not consider the survey as an alternative to good market intelligence. We are seeing more and more competitions being won by firms bidding significantly lower multipliers, including those same mid-sized and larger firms with higher cost structures. More and more, firms are turning to more creative means to lower their direct and indirect costs to be competitive with lower bids. *(By the way, talking about the Grant Thornton survey, we are planning on reporting on its new findings in the next issue of the GCA DIGEST.)*

Q. We are certainly hearing a lot about the evils of cost type contracting in the media which represent the majority of our government business – are you seeing less awards.

A. We agree, the rhetoric against cost type contracts is reaching a fevered pitch. (We tend to see this about every ten years.) You can expect to see contracting officers making doubly sure that flexibly priced (cost, T&M) contracts are justified but I can't logically see a significant shift since most flexibly priced contracts that we see being awarded today meet the standards for using such vehicles e.g. uncertainties, high performance risk. (I would argue that much of the time government

actually saves money in awarding cost type contracts because fixed price work would require high prices to cover uncertainties that may not occur.) One definite area we are seeing a shift in is orals - COs seem to have the intention of awarding more fixed price rather than flexibly priced task and delivery orders on ID/IQ contracts so they are quizzing potential contractors on their abilities to administer and deliver fixed price work so you should be prepared to respond to such inquiries.

Q. Our company provides for an annual get-together where our employees are invited, with their spouses. Discussions and meeting are held for many business related topics but it is primarily intended for employees and their wives to know each other better. We usually disallow all the costs related to this event. Are we being too conservative?

A. Yes, maybe. The event you are describing is one of those gray areas that you can make a reasonable case on either side. Do you consider them as business meetings or events for enhancing employee morale (allowable) or primarily entertainment (unallowable). Though both the FAR and DCAA guidance refers to many specific activities as allowable or not, the type of event you describe is not specifically addressed (unless it is a holiday celebration). The way the costs are handled vary widely. All costs may be considered as allowable business related (except for explicitly unallowable costs such as alcohol) while others take a more conservative approach and disallow them. More and more, we see companies taking a hybrid approach, identifying allowable and unallowable activities at the event – seminars and meals awarding employees versus sporting events and night clubbing - where then a percentage of each is computed and then applied to the related costs (e.g. travel, lodging).

GCA REPORT · P.O. Box 1235 · Alamo, CA 94507 · (tel) 925-362-0712 · (fax) 925-362-0806 · Email: gcaconsult@earthlink.net
website: www.govcontractassoc.com

This publication provides general information and is not a substitute for accounting, legal, or other professional advice.

Duplication of this publication, without written permission, is prohibited.

Subscription: \$175 for one year, \$325 for two years.