GCA REPORT

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NEW DEVELOPMENTS

OMB Increases Executive Compensation Ceiling

The Office of Management and Budget has set the maximum "benchmark" compensation allowable for contractor executives in Fiscal Year 2003 at $405,273 for all applicable contracts no matter when awarded. The benchmark will apply to contract costs incurred after January 1, 2003 and should be used on all applicable contracts and subcontracts for FY 2003 and beyond until revised by OMB.

The new cap represents a 5 percent increase over the FY 2002 amount of $387,783. Contractors can, of course, pay their executives more than $405,273 but the additional compensation will not be allowable under their federal contracts. The cap covered compensation includes the total amounts of salary, bonuses, deferred compensation and employer contributions to defined contribution pension plans. The cap covered compensation does not apply to fringe benefits like health benefits and employer contributions to defined benefit plans where if they are reasonable they are allowed irrespective of the cap. The cap covers the five senior managers of a company as well as subsidiary business segments directly reporting to the corporate headquarters. The benchmark compensation amount reflects the median amount of compensation for senior executives of all surveyed corporations for the most recent year data is available. Since the benchmarked companies represent large publicly traded companies with revenue exceeding $50 million, lower caps are likely to apply to smaller companies (Fed. Reg. 23501).

DOL Revises What is a "White Collar" Exemption

(Editor's Note. Failure to distinguish between exempt and non-exempt employees can lead to trouble when companies confuse the two. Making such distinctions can be particularly troublesome for government contractors who need to understand the difference for cost and pricing purposes (e.g. uncompensated overtime).

Intending to update regulations on what constitutes a "white collar" exemption from the Fair Labor Standards Act (FSLA), the Department of Labor has decided to revise many of its criteria for what is an exempt employee, some of which has not been updated since 1940. Under existing rules, exemption status is not presumed but must be established against "duties", "salary" and "professional" tests specified in Part 541 of the FSLA. New sections of Part 541 have been extensively revised to define and interpret each type of exempt employee (e.g. executive, administrative, professional, computer, sales, highly compensated). The section substitutes current "long tests" and "short tests" for what is an exempt employee with shorter and more specific descriptions. New types of employees are specifically discussed where in the pre-computer era they did not exist. In addition, new salary criteria has been updated. Though too detailed to summarize here, the new proposal is presented in graphic form in the Federal Register, Volume 68, No 61 starting on page 15560.

GSA Issues Interim Rule Allowing FSS IT Purchases by State and Local Governments

Effective May 7, the General Services Administration issued an interim rule amending the GSA Acquisition Regulation (GSAR) to implement the E-Government Act. Section 211 of the Act authorizes state and local governments to use the Federal Supply Schedule to purchase Schedule 70 items that include "automated data processing equipment (including firmware), software, supplies, support equipment and services." In our last issue we described the proposed rule as providing a voluntary opportunity for contractors to sell their products and services to state and local governments at the same FSS prices, a new contract would be formed when the schedule contractor accepts an order from the state or local entity, the state's prompt payment laws would prevail and the federal government would not be liable for contractor nonperformance.

The proposal generated a great deal of comments from industry and the interim rule contains several changes from the January proposal. (1) The rule removes restrictions that preclude eligible ordering activities from adding additional terms and conditions to the state or local purchase contract. The rule now provides that ordering activities may add terms and conditions to state and local contracts meeting their requirements provided the additions do not conflict with the schedule contract terms and conditions. (2) The new rule deletes language from the proposed rule that required price reductions made by a participating dealer under the state or local contract would also result in overall price reduction for federal purchases. (3) The interim rule continues to authorize litigation in any state or federal court with jurisdiction over the parties but now encourages the parties to use alternative dispute resolution procedures. Because the contract does not involve the Federal Government the GSA rejected numerous suggestions to involve the GSA Appeals Board to resolve disputes (Fed. Reg. No. 24372).

FAC 2001-13 Issued

Federal regulation writers issued final rules effective April 17th contained in the Federal Acquisition Circular 2001-13. The significant rule changes:

1. Clarifies that award fees and performance or delivery incentives based solely on factors other than cost may be used in conjunction with firm fixed price contracts and fixed-price with economic price adjustment contracts while still keeping the fixed price nature of the contract. The changes to FAR 16.203 are intended to provide incentives commonly found in cost type contract vehicles for acquisition of commercial items where federal law prohibits use of cost type contracts and requires use of FFP and FP/EPA contracts to the maximum extend possible.

2. Requires that contractors working on indefinite-delivery contracts must account for and submit progress payment requests under individual orders as each order constitutes a separate contract, unless otherwise specified (Fed. Reg. 13201).

DOD Wants to End Mandatory 5 Percent Withhold

A proposed rule would remove the requirement of the Defense Federal Acquisition Supplement (DFARS) that contracting officers withhold 5 percent of payments due under time-and-material or labor-hour contracts unless contracts specify otherwise. The proposed rule would permit, but not require, administrative contracting officers to withhold payment amounts if the ACO determines the withholding is necessary to protect the government's interest. DOD is proposing the rule because the current withholding rules are burdensome and may result in withholding amounts that exceed what is reasonably needed to protect the government's interests (Fed. Reg. 9627).

SARA Reintroduced

Having failed to pass a majority last year, Representative Tom Davis reintroduced the Services Acquisition Reform Act in late April which was recently approved by the House Government Reform Committee. Key provisions of the new bill will:

1. Expand the scope of contracts deemed commercial item contracts to include non-commercial items provided by firms that provide primarily commercial products and services.
2. Expand the use of share-in-savings contracts (in which companies receive a portion of the agency savings resulting from modernization) to all contracts, not just information technology contracts.
3. Allow use of time and material and labor hour contracts for commercial services.
4. Encourage greater use of performance-based services acquisitions.
5. Extend authority of government agencies to enter into other transactions – for both research and development and prototypes – in support of antiterrorism efforts.
6. Codify use of award-term contracts (extending the contract period as a reward for good performance).
7. Permanently allow emergency procurement flexibility.
8. Allow companies and agencies to work out misunderstandings regarding contract award at the agency level.
9. Require each agency to have a politically appointed chief acquisition officer.
10. Facilitate telecommuting by federal employees.

The controversial legislation has garnered both wide support and criticism from the administration, industry and Congress and will likely become a "hot topic."

Federal Escalation Assumptions Issued for OMB A-76 Competitions

(Editor's Note. The following higher escalation rates used by the government for preparing bids for OMB A-76 competitions exceed those government auditors commonly allow government contractors. It seems to us the higher rates assumed by the government opens the door to higher assumptions by contractors.)

Effective March 14, Transmittal Memorandum No. 25 updated the annual pay raise assumptions and inflation factors used for computing the government's in-house personnel and non-pay (equipment and supplies) costs reflected in the 2003 President's budget. The changes apply to all OMB A-76 cost comparisons in process where in-house estimates have not been publicly revealed before the memorandum's effective date. Federal pay raise assumptions range from 4.6% for civilian personnel (6.9% for military personnel) in January 2002 to 3.4% in January 2008. The inflation assumptions for non-pay categories range from 1.3% to 1.8% from 2001 through 2008 (Fed. Reg. 12388).

Final Rule on Inclusion of Clauses Relating to Federal, State and Local Taxes

The FAR Council passed a final rule amending FAR Part 29.401 that prescribes the use of the FAR clauses addressing how federal, state and local taxes are to be included in contract prices. The most significant amendments (1) clarify contracting officers are directed to insert clause 52.229-3 (Federal, State and Local Taxes) in fixed priced contracts that exceed the simplified acquisition threshold and (2) clarify that in "non-competitive" fixed price contracts COs may insert the FAR 52.229-4 clause (renamed Federal, State, and Local Taxes – State and Local Adjustment) that allows for adjustment of a contract price for later tax changes if the CO determines the contract price would include an inappropriate amount as a result of changes in state or local taxes (Fed. Reg. 13204).

DOD Issues Guide on Small Business Contracting Opportunities

The Office of Small and Disadvantaged Business Utilization in the Department of Defense has prepared "Guide to DOD Contracting Opportunities – A Step by Step Approach to the DOD Marketplace" intended to help vendors wade through the DOD business development process. It provides information and links to other sits on the whole gamut of contracting issues such as identifying NAICS codes, obtaining a DUNS number, registering on the CCR system, learning about products and services purchased by DOD, finding small business specialists, how to use the DOD "Business Opportunities" and the FedBizOpps web sites, learning about Federal Supply Schedule contracts, exploring subcontract opportunities and finding out about the DOD mentor-protégé program, business innovation research program and other topics. The guide is available at www.acq.osd.mil/sadbu/.

NASA Virtually Eliminates Use of Undefinitized Contract Actions

In response to a critical GAO report, NASA reported that it has dramatically reduced both the number and the dollar amount of undefinitized contract actions (UCAs). In the past, use of UCAs was quite common for NASA to modify or initiate new work on existing contracts. But the GAO and NASA IG has been highly critical of the practices, saying they are a "financially risky" way of doing business because contractors perform work before an agreement has been reached with the government on what the work will cost.

New DCAA Guidance

- **Compliance with New Sarbanes-Oxley Act**

As part of its routine internal control audits DCAA will be requesting information on how contractors plan to comply with the new requirements issued under the Sarbanes-Oxley Act passed to mitigate recent revelations of corporate wrong-doing. Though it has not issued formal guidance on the Act and new SEC rules, DCAA has informally told contractor groups it is interested in finding out how companies plan to comply with the new sections. DCAA has identified the following provisions of the Act that are most relevant to government contractors:

Section 208, relates to timely reporting of critical changes in accounting policies and practices and significant written communications between outside auditors and the company audit committees.

Section 302, requires the CEO and CFO to certify financial statements.

Section 410 requires all material off-balance sheet transactions to be disclosed in a separately captioned subsection in the "Management's Discussion and Analysis" section of its SEC filings.

Section 404 requires (1) an internal control report stating the responsibility of management for establishing and maintaining an adequate internal control structure and procedures for financial reporting and (2) an assessment by an independent auditor of the effectiveness of the internal control structure.

Section 407, requires a company to disclose whether it has adopted a code of ethics that applies to its CEO and CFO (MRD 03-PPD-128(R).

- **Guidance on Pension Plans No Longer Fully Funded**

As a result of poor stock market performance in recent years, many contractors are anticipating that previously fully funded pension plans will no longer be fully funded. As a result, they are forecasting pension costs in their forward pricing rates "some for the first time in years." DCAA is concerned that if a contractor's pension plan goes back into a fully funded status subsequent to negotiating prices on fixed price contracts the projected pension expenses will not materialize resulting in overpricing of the contract and generating windfall profits to the fixed-priced contracts. Auditors are reminded that such contracts should include an advanced agreement to protect the government and if contractors refuse to enter into such an agreement auditors are told to follow its Contract Audit Manual (CAM 7-606) and question the related pension cost projections. DCAA auditors are told to request the assistance of pension specialists in the Defense Contract Management Agency (MRD 03-PAC-026(R).

- **Contractor Compliance with Contract Billing**

(Editor's Note. Though explicitly oriented to major contractors, we find the following billing audit guidelines are frequently applied to non-majors.)

DCAA is instructing its field offices to ask major contractors to provide a list of all contracts (cost type and fixed price) awarded in the last 18 months where the office will select three large value DOD contracts to ensure that billings on these contracts comply with Section G of the contract provisions. The guidance is intended for auditors to verify that contractors are complying with contract billing instructions. The guidance alludes to sections 5-1107 and 1108 of the DCAM that discuss the procedures and controls contractors need to follow and alludes to specific sections of its Billing System Audit Program. Specifically:

Step G.1.a. – the contractor should have policies and procedures for monitoring the billing process such as compliance reviews to ensure billing requests are in accordance with applicable regulations, contract provisions and contractors' own policies and procedures.

Step H.1.b. – review the contractor's written policies and procedures and assess their adequacy for briefing (i.e. summarizing salient points required of the contracts) contracts to identify billing requirements including all modifications and updating the briefs for subsequent contract changes.

Step I.3. Selectively compare the contractor's contract briefings to the applicable contracts and billings to determine if the contracts were adequately briefed and the contractor reflects unique contract requirements in their billings (MRD 03-PPD-020(R).

Travel Expenses…

(Editor's Note. Allowability of travel and relocation expenses is one of the most common types of questions we receive. Though private contractor employees as opposed to government employees are not explicitly covered by all the Federal Travel Regulations, most contractors as well as auditors use them as guidelines for allowability.)

Several shorter trips can equal a single long one. Patricia had two temporary duty assignments (TDY) approved with three days in-between. Both trips required transportation through Atlanta. Rather than take a plane from Atlanta to her home town, she decided to stay in Atlanta for the three days in-between trips and then left for her second TDY from Atlanta. She incurred $144 for the two day stay in Atlanta where the agency received a $433 refund from the airline for the ticket home she did not use. On her appeal to the agency's rejection of her reimbursement request, the board stated Patricia should be reimbursed for the hotel and "then some", noting her stay in Atlanta between the two TDY assignments resulted in combining two separate trips into a single longer one which saved the government money. The Board stated the JTR does not specifically prohibit combining smaller trips into a large one, even if it happens to coincide with the desires of the traveling employee (GSBCA 15847-TRAV).

You can be reimbursed for "taxi" expenses even if vehicle does not quality as a "taxi." Jonathon drove his car to the airport for his flight where the car broke down in the airport garage. On his return from his TDY assignment, he towed the car to a service station and then had the tow truck drive him home. He sought reimbursement for round trip mileage but the agency rejected the return trip. The Board ruled in his favor noting that section 301-10.420(b)(1) of the FTR generally authorizes the cost of a fare plus tip for use of a taxi or shuttle service when an employee is traveling to and from an airport. Here, he would have been qualified for taxi fare reimbursement if he elected to take a taxi and his request for only a mileage rate represented a bargain for the agency (GSBCA 15854-TRAV).

Must reimburse employee for sleeping regardless when it occurs. Raymond negotiated a late check out at half the normal hotel rate to obtain some sleep before his evening plane to another TDY location. Though admitting the JTR did not expressly prohibit such half day charges the agency still refused reimbursement. Citing its earlier opinion in another case, the Board sided with Raymond noting federal travel regulations should be interpreted in a "common sense way taking into consideration normal human needs…to conduct the government's business." Here one of those "human needs" is sleep and if he was to obtain any rest Raymond needed to sleep in the later afternoon to take the evening flight. Alluding to the dictionary's definition of lodging as a "temporary place to sleep" the board ruled lodging should not be interpreted as only a place to sleep at night. Rather, it is immaterial when the sleep occurs (GSBCA 16033-TRAV).

Travel reimbursement need not start at employee's permanent duty station (PDS). Delner originally planned to fly from a TDY assignment in Memphis, TN back to New York City (her home) then fly from NYC to Syracuse, NY and back for another assignment. Because she could not return to NYC to meet her Syracuse assignment on time, she flew from Memphis to Syracuse. Her agency reimbursed her only for what the NYC-Syracuse-NYC round trip would have been stating FTR 301-10.8 limits reimbursement for indirect routes by what a direct route (i.e. NYC-Syracuse-NYC) would cost. The Board sided with Delner stating travel to a TDY assignment from locations other than a PDS is well established. When this occurs, FTR 301-11.3 governs stating agencies must pay employees for travel while on official travel (GSBCA 15905-TRAV).

DECISIONS/CASES

Failure to Properly Disclose, Contractor Forfeits Patent Rights

(Editor's Note. The following case both sheds light on protecting patent rights and demonstrates the general proposition that specific notice clauses in contracts will be strictly enforced when they are clearly written and the penalty is expressly stated. Contractors need to be aware of notice requirement and follow them to the letter.)

Campbell's $1.2 million cost plus fixed fee contract to design and fabricate tooling for aircrew masks included FAR 52.227-11, Patent Rights-Retention by the Contractor. The clause required Campbell to disclose to the government any "subject invention" conceived or first reduced to practice while performing work on a contract and to disclose all inventions on DD Form 882 within two months after disclosing the invention to contractor personnel "responsible for patent matters." Failure to submit the required form provided the agency "may" request title to the invention. During contract performance, Campbell submitted and the Army approved a new sonic weld process for assembling some of the parts. It did not submit the required form identifying the new process and several years later, Campbell contacted an attorney to apply for a patent, which the Board said triggered the 60-day notice requirement. Two years after contacting the attorney, a patent was issued and Campbell notified the Army it had a paid up license to the process but title to it belonged to Campbell. The CO disagreed stating title belonged to the Army since Campbell failed to disclose the invention on the proper form within the timeframe mandated by the clause.

In its appeal Campbell admitted it failed to provide the required disclosure but argued the Army had constructive notice of the invention and under the circumstances the forfeiture was an unwarranted "draconian" penalty. The Appeals board sided with the government contending the clause clearly required Campbell to disclose the invention and its failure to do so resulted in forfeiting its rights to the patent. Even though the Army did have sufficient information before the two month notice expired that is "irrelevant" because the contract is "unmistakenly clear" concerning the disclosure requirement and the forfeiture (Campbell Plastics Engrg & Mfg., Inc. ASBCA 53319).

Agency's Cost Realism Analysis Should Have Included Planned Uncompensated Overtime

Labor costs comprised the vast majority of expenses for a cost-plus-fixed-fee, level of effort contract. The solicitation instructed offerors to identify current labor rates, related cost rates and annual escalation rates consistent with the proposed staffing matrix and management plan and stated after a cost realism analysis was conducted, the agency might adjust the offeror's proposed costs to identify the most probable costs for evaluation purposes. SRS's proposed labor rates were lower than Sparta's because SRS assumed the performance of uncompensated overtime (i.e. hourly rates for salaried employees were reduced because their work week would exceed 40 hours) while Sparta did not. In conducting its price evaluation, the government assumed each company would provide the same amount of uncompensated overtime (UOT) and hence it adjusted SRS's price proposal upward resulting in the award going to Sparta due to its higher technical rating.

In its protest SRS asserted the agency's upward price adjustment was unreasonable because it "effectively removed the value of uncompensated overtime from its proposed costs." The Comp. Gen. agreed noting the purpose of a cost realism analysis in a cost type contract is to determine whether the offerors' proposed costs likely represent the actual costs the government will pay. Here SRS's proposed use of UOT was a valid accounting practice approved by DCAA, the RFP did not prohibit or limit its use and nobody contended that SRS's proposed UOT was unrealistic or unacceptable. Hence, the Comp. Gen. concluded the source selection decision was unreasonable and sustained SRS's protest (SRS Tech., Comp. Gen. Dec. B-291618.2).

Regulations Intended For Government Benefit Can't Support Contractor's Claim

In its small business set aside architect/engineer (AE) contract, the government estimated the project would cost $771,690 and used that estimate to establish a fair market price of $900,000. Contractor's initial bid was $1.3 million but after a scope reduction negotiated by the government, Contractor lowered its bid to $900,000 where upon the parties agreed to a $859,000 price. In a subsequent claim, Contractor asserted the contract it had with the government was invalid because the government's low fair market price estimate it used to negotiate a lower amount was based on unlawful acts. These unlawful acts included (1) breach of certain regulations in FAR 19.806 in failing to properly resolve differences between the offered price, the AE estimate and the fair market price (2) the difference between the offered price and the fair market price estimate required a pre-award audit in accordance with FAR 15-805.5 and (3) the government improperly procured the AE estimate after it deleted certain responsibilities from the contract.

The Appeals Court disagreed noting a contractor cannot base its claim on alleged regulatory violations by the government unless the regulations existed for the benefit of private contractors. Even if the acts were improper, the violations could not support Contractor's claim because the regulations in question are intended to benefit the government, not contractors by seeking to prevent overspending by ensuring contracted prices do not exceed estimated fair market prices. Further, the need to conduct investigations or audits into differences in offered and estimated fair market is up to the discretion of the contracting officer (D.V. Gonzalez Elec., Inc. v. U.S. 2003 WL 1069757).

Mentor-Protégé Parties Can Team For Small Business Set-Asides

(Editor's Note. We always thought one of the key advantages for participants in the mentor-protégé program is that the large company mentor can team with their small business protégés and still be eligible to win small business set-asides. That ability has come into question recently and the following clears up some of the confusion.)

All Star Services, a large business, and MW Services, a small disadvantaged business, formed a joint venture and won an 8(a) set-aside contract for base maintenance services. Both were participants in the Small Business Administration's Mentor-Protégé program where large businesses provide financial and professional assistance to small businesses. A protest was filed by a disappointed bidder where it cited CFR 124.520 of the regulation creating the Mentor-Protégé program asserting section (d)(1) of the regulation provides that a mentor and protégé may joint venture as a small business only if *both* qualify as small. The SBA's Office of Hearings and Appeals (OHA) said that part of the regulation conflicted with two other provisions of the same rule that authorized joint ventures between the two firms provided the protégé qualifies as small. It looked at the history of section (d)(1) and stated the proposed rule and all of its preambles also only required the protégé qualify as small and since there was no record of why the change in the final rule occurred the OHA concluded the change was "inadvertent." As a result, the OHA concluded the MW-All Star joint venture was eligible for the award because MW qualified as small under the procurement (Size Appeal of Agbayani Const. Corp., SBA No. SIZ-2003-1-13-04).

Agency May Consider Information Beyond that Required by the Best Value RFP

(Editor's Note. The following decision sheds light on how much information to provide in the proposal for a best value competition.)

Though the Request for Proposal did not explicitly ask about a transition period for an indefinite delivery/ indefinite quantity contract, the GAO denied a protest that asserted it was improper for the Navy to give a superior rating to a company that provided a transition plan. The GAO stated while the RFP did not require submission of a transition plan, it did not prohibit its inclusion and stated the plan was related to the risks associated with the management plan, which was an evaluation factor. The GAO concluded where an award is to be made on a best value basis, an agency may consider information that exceeds what was specifically required by the RFP (Preferred Systems Solutions, GAO, B-291750).

NEW/SMALL CONTRACTORS

Some Cost Accounting Standards are Contained in FAR Cost Principles

Both new contractors and new employees of veteran contractors often express a confusion over what government accounting rules they must follow. With the passage of time and several court cases (e.g. *Martin Marietta Crop*. ASBCA No. 35895, *Rice v. Martin Marietta Corp*., 13 F3d 1563, *Boeing Co*., ASBCA No. 28342) a hierarchy of controlling rules and regulations have evolved. The Cost Accounting Standards (CAS) Board's standards, rules and regulations come first. If not addressed by the CAS, the second is the cost principles found in Part 31 of the Federal Acquisition Regulations and the various agency supplements. If nothing exists in the FAR cost principles then Generally Accepting Accounting Principles (GAAP) govern. As a last resort, the contracting parties may look to the principles and practices appropriate to the particular circumstances. Generally CAS addresses allocability issues and are not determinative of allowability other than the fact that costs are not considered allowable if not allocable. FAR primarily address allowability issues though they also relate to allocability through the requirements of direct and indirect costs. Problems usually emerge when allowability and allocability issues are confused.

When it comes to the applicability of CAS to non-major contractors we often hear a wide range of answers from "We have to follow all the regulations (i.e. FAR, CAS, GAAP) to a T" to "Since we are not covered by CAS we don't have to be concerned about it." The most prudent position lies between the two. Though relatively few contractors are now fully CAS covered (e.g. currently or in prior year awarded a non-exempt contract over $50 million, awarded a trigger contract over $7.5 million) and many but not all are modified covered (contractors meet the $7.5 million trigger, awarded a non-exempt contracts or subcontract exceeding $500,000) all contractors who submit cost data for any reason need to be concerned about certain cost standards that are incorporated in FAR. At a minimum, according to Lane Anderson's Accounting for Government Contracts, the following cost accounting standards are incorporated into the FAR Part 31:

CAS 402, Consistency in allocation of costs incurred for the same purpose. FAR 31.201 defines a direct cost and FAR 31.203 defines an indirect cost. These definitions contain, in effect, the fundamental requirement of CAS 402. Thus, contractors are required by definition to comply with the requirements for consistency in distinguishing between direct and indirect costs.

CAS 405, "Accounting for Unallowable Costs." FAR 31.201-6 prescribes compliance with all the accounting requirements of CAS 405. These relate to identifying and accounting for unallowable costs, submitting proposals, billings and claims for unallowable costs and providing back-up documentation for unallowable costs.

CAS 412 and CAS 413, Pension costs. FAR 31.205-6(j) requires contractors to use CAS 412, "Composition and Measurement of Pension Costs" and CAS 413, "Adjustment and Allocation of Pension Costs" when including pension expenses in their contracts.

CAS 415, Deferred Compensation. FAR 31.205-6(k) extends the requirements of CAS 415 to all contracts.

CAS 414, and CAS 417, Cost of Money. According to FAR 31.205-10 cost of money is an incurred cost for all contracts except cost contracts and cost-sharing contracts. Contractors are required to measure and allocate the facilities capital cost of money in accordance with CAS 414 and cost of money as an element of the cost of capital assets under construction in accordance with CAS 417. The FAR provision does include some specific allowability requirements about cost of money that are not addressed in either CAS 414 and CAS 417.

CAS 409, Depreciation of Tangible Capital Assets. Contractors not subject to full CAS coverage are given the option in FAR 31.205-11 to adopt CAS 409 for all contracts. If adopted, the requirements of CAS 409 supersede any requirements in the FAR if there are conflicts.

CAS 420, Independent Research and Development and Bid and Proposal Costs. FAR 31.205-18 incorporates CAS 420 in its entirety and applies it to all contracts. However, the FAR substitutes a slightly modified

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allocation requirement for contracts that are exempt from CAS and for contracts with modified CAS coverage.

CAS 416, Insurance costs. FAR 31.205-9 requires that any contractor desiring to establish a program of self-insurance must comply with the self-insurance requirements of CAS 416 whether or not they are CAS covered.

Though not formally incorporated into the FAR cost principles, other cost accounting practices prescribed by other standards have informally become the criteria of acceptability. CAS 401 requiring consistency between estimating and reporting of costs will generally create resistance if not followed. In addition to CAS 402 and 420 discussed above, the other so-called allocation concept standards – CAS 403, Allocation of home office expenses (except for mandatory use of the 3-factor formula); CAS 406, Cost accounting periods; CAS 410, allocation of G&A expenses and CAS 418, allocation direct and indirect costs - need to be generally adhered to where noncompliance will usually be challenged as inappropriate accounting practices. Similarly, the standards covering standard costing (CAS 407) and acquisition of material (CAS 411) have evolved to be the criteria for what are acceptable allocation practices with respect to those type of expenses.

Questions and Answers

Q. We book numerous transactions such as sale of fixed assets, scrap, accounts payable and receivable adjustments, etc. as "Other Income." Do we need to credit our overhead and G&A pools for these items.

A. Only if the associated "cost" is included as an expense item in your indirect cost pools. So, for example, if you include the cost of reproduction or vehicles in your indirect cost pools, you need to credit the appropriate pool for the cost portion of income for reproduction services or vehicle usage you charge clients for. Remember, the portion you need to credit is only the cost component of the item since some of the "income" represents profit (though due to the difficulty of isolating the cost from the profit, many contractors choose to credit the pool for all of the income). However, if you choose to accumulate certain type of expenses in a separate service center rather than an indirect cost pool then you do not credit the service center for the income.

Q. On one of our government contracts, our technicians go aboard ships and to military bases to do some of their work. The request for proposal required that contractors use their own facilities for the entire effort and we, in fact, established our own facilities to house and support the entire effort. Now the government is asking us to charge them for an "on-site government rate" where, for example, our facility costs would be excluded. Can we challenge this?

A. Based on the information you provided, a few arguments come to mind. First, the government would be "estopped" from such a change because you would be harmed (there was "detrimental reliance") based on the original terms of the contract and the manner in which you bid and priced the contract. Second, it would constitute a change in your accounting policies and procedures. Third, it would unduly complicate the bidding, accounting and billing process.