GCA REPORT

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NEW DEVELOPMENTS

OMB Increases Executive Compensation Ceiling

The Office of Management and Budget May 21 set the maximum "benchmark" compensation allowable for contractor executives in Fiscal Year 2009 at $684,181 for all applicable contracts no matter when awarded. The benchmark will apply to contract costs incurred after January 1, 2009 and should be used on all applicable contracts and subcontracts for FY 2009 and beyond until revised by OMB.

The new cap represents a 1.2 percent increase over the FY 2008 amount of $612,196. Contractors can, of course, pay their executives more than $684,181 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 benefit pension plans. The cap covered compensation does not apply to fringe benefits like health benefits and 401(k) employer contributions 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, it should be stressed that significantly lower caps will apply to smaller companies (*Fed. Reg. 23893*).

DCAA Issues New Guidance to its Auditors

- **Reporting "Unsatisfactory" Government Employees**

(*Editor's note. In our opinion, the following represents an unfortunate development where ACOs and COs are put on notice that DCAA may refer them to the Inspector General when they fail to support a DCAA opinion, which is supposed to be advisory only.)*

The Defense Contract Audit Agency issued guidance to its auditors to report "unsatisfactory conditions" related to government officials directly to the DOD IG rather than elevating concerns through normal chain of command. The guidance states such conditions include actions "that appear to reflect mismanagement, a failure to comply with specific regulatory requirements or gross negligence in the official's responsibility that result in substantial harm to the government or tax payers or that frustrate public policy." The guidance cites examples such as (1) excluding DCAA from performing or completing an audit to avoid a negative opinion or (2) a CO ignores a DCAA audit report and takes an action that awards a contractor unreasonable or excessive costs or profit.

This special reporting is supposed to apply to the "most significant and sensitive issues" whereas less sensitive issues are to be handled at the local level and then up the chain of command. The guidance reminds auditors that they are to continue reporting "suspected irregular conduct" by completing their DCAAF 2000 referral form rather than pursuing the unsatisfactory condition route (*09-FAS-004R*).

- **Approving and Rescinding Direct Bill Privileges**

Auditors are instructed to ensure that major contractors with billing systems that have been approved for direct billing have not significantly modified their system since the latest report opining an adequate billing system. The guidance states that since an accounting and billing system may be interconnected, any major changes to the accounting system should be examined for an impact on government billing. If there has been a modification to either an accounting or billing system auditors are instructed to take the following steps: (1) provide immediate verbal and written notification to the CFO or equivalent that the authorization to participate in the direct billing program will be rescinded in 30 days (2) ensure there is an adequate sampling plan in place to review a sufficient number of public vouchers (3) ensure there are an adequate number of auditor personnel authorized to approve interim vouchers (4) auditors should immediately commence a billing system audit, regardless of the three-year testing cycle and (5) the contractor can be authorized to direct bill if the

auditor determines the new or revised system is adequate after conducting the billing system audit. Auditors are also told to test the new system for "data integrity" (e.g. the contractor has appropriately reconciled booked costs from the previous accounting system with the new one). Auditors are also told not to review the contractors' draft procedures for fear such a review may be construed as assisting the contractor in developing the system that will be subject to an audit (*09-PPD-006(R*).

- **Alert on Auditing Parts of a Proposal**

DCAA issued guidance intended to clarify the audit support to be provided to a CO for an audit of a part or parts of a proposal. An audit of parts of a proposal may be provided if three of the following conditions are met: (1) the CO requests the audit services (2) the audit covers a "management approved" proposal (in accordance with FAR 15.408) and not a draft one and (3) an audit report is issued based on an independent opinion that is not influenced by either the contractor or government officials. The guidance also recognizes there may be times when the auditor believes additional parts or even the entire proposal should be audited when a risk assessment indicates, for example, there are significant deficiencies, system problems or other high risk circumstances. When additional effort is required, the auditor and his management should take up the issue with the CO and then go higher if there is disagreement.

When a CO decides to have an integrated product team review a proposal they may request audit services. Though recent guidelines prohibit DCAA involvement as a team member, the auditor may still audit part(s) or the whole proposal and issue an independent opinion. Auditors are also reminded they are to discuss only factual matters at an exit conference and not provide dollar impacts (*09-PSP-005(R*).

Contract Data Shows Continuing Reliance on Cost Type Contracts; Possible Moves to Lessen Their Use

(*Editor's Note. The following reflects the tension between increased reliance on cost type contracts and the Obama Administration's apparent desire to lessen reliance on such contracts. It is too soon to tell what the results will be.*)

According to a recently released Office of Management and Budget Report, about 60 percent ($316 billion) of federal contract dollars obligated in fiscal year 2008 were through fixed price contracts, 25 percent ($134 billion) for cost-reimbursement contracts and 5 percent ($27 billion) through time-and-material and labor hour contracts. The data reflects a significant increased use of cost type contracts where in 2000 it was $71 billion.

In a letter accompanying the report OMB Director Peter Orszag said the near doubling of cost type contracts, which are often criticized as wasteful of taxpayer money "calls into question whether these vehicles are being used excessively or without adequate justification and whether agencies have the necessary skills" to manage them. The memo said the president believes that excessive reliance on cost reimbursement and sole-source contracts may be wasteful and inefficient. The memo further encouraged use of fixed price contracts and stated cost reimbursement contracts should only be used when agencies cannot define their requirements sufficiently to allow fixed price contracts *(which are the current requirements for using cost type contracts)*. Pres. Obama stated he will be directing OMB to development governmentwide guidance by Sep 30 on using sole source and other noncompetitive contracts, clarify appropriate use of types of contracts and make sure agency personnel are qualified to manage the different types.

FAR Proposal to Fix HUBZone Abuses

Following a highly critical General Accountability Office report on the HUBZone program, the FAR Council announced some proposed amendments to the FAR to correct abuses. The program includes set-asides, sole source awards and bid price preferences to eligible HUBZone firms that must (a) be 51 percent or more owned by US citizens (b) have 35 percent or more of its employees living in a HUBZone (c) have its principle office in a HUBZone (d) qualify as a small business in its primary industry classification and (e) abide by subcontracting limitations usually expending at least 50 percent of personnel costs on its own employees or other HUBZone small business employees. The GAO report, in its survey of several firms in several areas found many firms did not meet program eligibility requirements such as principle office location, percentage of employees in the HUBZone or subcontracting limitations. The April 13 proposed FAR amendments would require HUBZone small business concerns be eligible both before its initial offer and at the time of contract award and it notify the CO of any material changes affecting its eligibility before contract award. It would also require that non-manufacturing concerns on contracts valued above $25,000 have end item manufactured items be produced by HUBZone small business manufacturing concerns *(Fed. Reg. 16,823)*.

New Bill to Provide Contracting Preference to "Patriotic" Firms

(*Editor's Note. Though passage of the bill discussed below is not immanent, it is instructive to see how certain congressional representatives are seeking to tie contract awards with social goals.*)

A bill was introduced to provide preferences in the award of federal contracts and a five percent tax rate reduction to companies who keep most of their workers and research dollars in the US. Qualification for being considered a "patriotic" firm are: (1) provide at least 90 percent of goods and services in the US (2) spend at least 50 percent of their R&D budgets in the US (3) contribute at least 5 percent of payroll to a portable pension fund (4) pay at least 70 percent of the cost of health insurance (5) limit top management compensation to no more than 10,000 percent more than that of their lowest compensated full time employee (6) maintain neutrality in employee organizing drives (7) comply with federal regulations over environment, workplace safety, consumer protections and labor relations (8) pay the difference between regular salary and military salary for all National Guard and Reserves in active duty and (9) continue health insurance coverage for these workers in the military and their families.

The Recovery Act Generates New FAR Changes

The FAR Council published changes to the Federal Acquisition Regulation in the form of Federal Acquisition Circular 2005-32 implementing regulations for the recently enacted Recovery Act (RA) of 2009. Though the new rules apply to new contracts awarded as of March 31, pre-existing contracts can be modified if the Recovery Act provides funding for them. The rules apply to all contracts and subcontracts including those for commercial items and off-the-shelf items. Five of the regulations are of particular interest to government contractors:

Whistleblower Protections. Employers receiving RA funds are prohibited from discharging, demoting or discriminating against employees as a reprisal for disclosing information they reasonably believe indicates evidence of gross management, waste, abuse of authority, a danger to public health and safety or violation of a law or regulation. The new rule establishes an employee-friendly process for resolving complaints of retaliation – complaints may be submitted to the awarding agency's inspector general office, then the employee need only establish the protected disclosure was a contributing factor in the reprisal after which the burden falls on the employer to demonstrate it would have taken the action constituting the reprisal in the absence of the disclosure.

In a separate action, the General Accounting Office urged private citizens, government workers, contractor employees and others to report evidence of waste, fraud and abuse of the stimulus funds through a special hotline at "FraudNet."

Publicizing Contract Actions. The new rule requires COs to use fedbizopps.gov (now FBO.gov) to (1) identify actions funded in whole or in part by RA funds (2) post informational pre-award notices and (3) for orders exceeding $25,000 provide rationale for any contract awards (including mods. or task/delivery orders) that are not both fixed price and competitive.

Reporting Requirements. The interim rule requires quarterly online reports from contractors and first tier subcontractors for all work funded in whole or in part by RA funds. Information includes estimated number of cumulative jobs created and retained each calendar quarter and the name and total compensation of each of the five most highly compensated officers in the year contract was awarded.

GAO/IG Access. The rules provides for agency IG review of concerns raised by the public that allow for review of contractor and subcontractor records including interviews of employees. It applies to all contracts including those awarded below the simplified acquisition threshold (currently $100,000) as well as commercial items and COTS items. Some commentators have stated the interview rights do not apply to agency IG staff or DCAA but those organizations would probably disagree.

Buy American. Buy American provisions of the Recovery Act have been incorporated into the FAR that require all iron, steel and manufactured goods used in the project be produced in the US. The Recovery Act provided for a waiver of the Buy American requirements if (1) the items covered are not produced in the US in sufficient quantities (2) the use of sole domestic items increase project costs more than 25 percent or (3) applying the domestic preference is inconsistent with the public interest. The rule also states the Buy American rule does not apply to construction materials supplied by countries covered by the Free Trade Organization's Government Procurement Agreement e.g. EU countries, Canada, Hong Kong, Japan, Israel, Norway, Singapore, South Korea.

DOD IG Reports on Improper Responses by DCMA to DCAA Audit Reports

(*Editor's Note. We have previously expressed opinions about a disturbing trend for agency ACOs and COs to "rubberstamp" DCAA opinions rather than take a more independent review of DCAA's advisory reports. We are concerned the following IG report that is critical of several DCMA independent actions to resolve issues may contribute to this trend.)*

An April Defense Department inspector general report was critical of several Defense Department Management Agency positions taken in response to DCAA audit reports. The cases cited in the report include:

1. DCMA contracting officer arbitrarily negotiated a position halfway between positions reached by DCAA and the contractor to settle a self-insurance credit that the contractor did not report to the government. In that circumstance, DCAA asserted the contractor withdrew $3.2 million from a medical reserve account it used to maintain its self-insurance plan and charged it to income in violation of FAR 31.201-5 and CAS 416. The contractor had offered to credit the government $2.2 million believing the $1 million of the questioned costs should have been allocable to employee contributions to the health plan. The CO "split the difference" negotiating a $2.7 million settlement, halfway between the $3.2 million questioned by DCAA and the $2.2 million offered by the contractor. The IG report said the negotiation memorandum for the settlement did not include any explanation or rationale for the $2.7 million stating it was "arbitrary and capricious" and failed to "resolve the underlying legal question" of whether the contractor was entitled to reduce the credit for the allocation portion to the employee contributions. (*Editor's Note. A "split the difference" approach commonly leads to mutually agreeable resolution of disputes between the parties.*)

2. The report said the CO improperly determined that a contractor's cost accounting change was desirable to the government and as a result the contractor was improperly paid for the costs associated with the change. As a result, the report said the government lost $1.6 million in costs.

3. The report was also critical that the DCMA CO did not consult with DCAA before taking final action on a DCAA-reported estimating system deficiency. In this case, DCAA found a contractor's estimating system to be "inadequate in part" because proposal files were not maintained according to the contractor's estimating manual and because complete proposal packages were not available for audit. Though DCAA had twice previously reported on the same deficiencies, an independent review by the DCMA's price analyst led to the CO's determination that the deficiencies were not "significant" under DFARS 215.407-5-70(a)(4).

4. Though it has not yet taken a position, the IG report identified another case where "serious questions" about the allowability of subcontract costs were questioned by DCAA and the CO allowed one-half of the costs.

5. Other issues were identified in the report including (a) DCMA COs did not process CAS noncompliance reports according to procedures specified in FAR 30.605 (b) DCMA did not accurately maintain records of reportable contract audit reports in its information system and (c) DCMA COs did not complete actions on 22 audits within the time frame set in DOD Instruction 7640.02.

New Accounting Standards Will Likely Affect Contract Costing

We came across a commentary by Peter McDonald of Navigant Consulting in the May 12 issue of Federal Contracts reminding contractors that in a few years the International Financial Reporting Standards (IFRS) will be replacing the more voluminous generally accepted accounting principles (GAAP) American firms have been following. Peter reminds the readers the new standards will affect all companies, not just government contractors, and identifies some examples of potential problem areas the new standards will pose such as different rules affecting inventory costing methods (LIFO not recognized by IFRS), revenue recognition, extraordinary items, statement of changes, asset impairment write-downs and probability thresholds for recognizing contingencies. These and other differences will affect such government costing issues as compensation for personnel services, contingencies, gains and loses and rental costs on leases. You can find out more about IFRS at www.ifrs.org.

CASES/DECISIONS

Protest Sustained for Failing to Consider Cost/Technical Tradeoff

(*Editor's Note. The following case demonstrates why a failure to justify choosing a higher priced proposal is a common basis to successfully protest an award.*)

In a competition for an IT support task order to be awarded on a best value basis where technical merit was considered more important than price, the evaluators determined that Avineon's higher price quotation

reflected the best value. The agency found that the protester, the incumbent Access Systems, had strengths though Avineon had a superior understanding and approach to the work. Though the GAO determined the agency had appropriately considered the firm's different technical strengths, it found no meaningful consideration of Access' lower evaluation price or an explanation of why the evaluated technical superiority of Avineon's proposed price warranted its additional cost. The GAO stated that the Agency, in fact, appeared to view Access's price advantage as a technical weakness assuming their lower billing rates would negatively affect their ability to retain staff. Because there seemed to be so little weight given to Access' price advantage, the GAO sustained the protest recommending the task order be terminated if a new cost/technical tradeoff analysis results in a new best value determination (*ACCESS Systems Inc. GAO, B-400623*).

GAO Addresses Several Protest Issues

Honeywell protested a NASA space communications network services award to ITT Corp on the grounds the agency's past performance proposal evaluation was improper, discussions held were inadequate and misleading, ITT had an impermissible conflict of interest (OCI), it had an unfair competitive advantage because it used a former NASA official as a consultant and the evaluation of its technical proposal was prejudicial.

OCI. Honeywell claimed that two of ITT employees gained access to material nonpublic information while performing another contract. In noting the protester had its concerns before the closing time for receipt of proposal submittals and knew NASA considered ITT eligible for award the GAO ruled Honeywell should have filed its protest before the closing time. The GAO cited three conditions making the protest filing untimely: (1) the solicitation was issued on an unrestricted basis (2) the protester know of facts giving rise to a potential OCI and (3) the protester knew the agency considered the offeror eligible for award.

Competitive Advantage. Honeywell asserted that ITT gained a competitive advantage by retaining a former NASA official as a consultant on the procurement which violated Procurement Integrity Act provisions. The GAO said a protester must report an alleged violation of the act within 14 days after becoming aware of the facts giving rise to the alleged violation and since it had known the consultant was helping ITT for more than a year, it did not meet the 14 day requirement and hence the protest was untimely.

Meaningful Discussions. Honeywell argued that though it had addressed deficiencies in its original proposal, NASA did not raise the technical weaknesses it found in its final proposal revisions. The GAO stated deficiencies and significant weaknesses identified in a proposal must be addressed but the precise content of those discussions are largely a matter of contracting officer judgment. Here, the GAO ruled that if proposal defects are introduced in response to discussions or in a proposal revision, an agency has no duty to reopen discussions or conduct additional rounds of discussions.

Technical Proposals. In response to Honeywell's assertion that NASA's evaluation of its technical sections was unreasonable, the Comp. Gen reviewed the agency's evaluation to ensure it was reasonable and consistent with the solicitation's stated criteria and procurement statutes. The Comp. Gen. concluded that any differences in ratings did not stem from unequal treatment but rather a recognition of differences in proposals where NASA reasonably determined ITT proposal was superior. In response to Honeywell's assertion NASA did not give enough weight to its advantages as being the incumbent contractor, the Comp. Gen. ruled there was a "mere disagreement with the agency's evaluation" but did not find its evaluation unreasonable.

Past Performance. The RFP stated offerors should provide information on all relevant contracts and subcontracts and any major subcontractors worth at least $50 million and $10 million, respectively. Honeywell argued that one of the two ITT contracts had a value of $40 million, which was considered "highly relevant" to its evaluation, stating the low value of it should not have been considered. The Comp. Gen. stated though the RFP expressly permitted additional information to be considered on contracts below $50 million NASA erred in not explicitly analyzing the relevance of a lower dollar value contract for similarity of size, content and complexity. Consequently, it ruled NASA's past performance evaluation could have affected the outcome of the competition and was considered prejudicial against Honeywell recommending a reevaluation of past performance and a new source selection determination (*Honeywell Tech. Solutions Inc., Comp. Gen. Dec. B-400771*).

Cost of Technically Acceptable Proposal Must Be Considered in Establishing Competitive Range

In a competition for a five year, fixed price ID/IQ custodial services contract, each evaluator scored the

proposals on the technical evaluation factors in the RFP where the average of evaluators' scores yielded an overall technical score. The three proposals with the highest overall technical scores were included in the competitive range and the rest were excluded. Arc-Tech's protest alleged the competitive range determination was unreasonable because the agency did not consider price and relied solely on an arbitrary technical-score cutoff. The Comp. Gen. agreed with the protester stating an agency may properly exclude a technically unacceptable proposal from the competitive range regardless of price and it may exclude a technically acceptable proposal for not being in the highest-rated proposals if the RFP states the competitive range may be limited for efficiency reasons. But an agency may not exclude a technically acceptable proposal from the competitive range without considering the relative cost of that proposal to the government and hence ruled the agency's evaluation was unreasonable (*Arc-Tech, Inc., Comp. Gen. B-400325*).

No Valid Claim for No "Sum Certain"

(*Editor's Note. The following shows the need to clearly identify an amount of entitlement for all parts of claims and what constitutes such an identification.)*

United performed a contract for a water system project where it submitted claims for five reservations: Res. 1 and 2 sought additional compensation for a three month delay. Res. 3 involved added costs for remobilizing to complete work, Res. 4 for miscellaneous added costs and Res. 5 for justifiable time extensions. Whereas communications identified costs for Reservations 1 and 2, no such costs were provided for the other reservations because time was needed to document the added costs where the claims stated "at a minimum" 15 percent of the value of certain transactions. The Court first stated that a claim under the Contract Disputes Act must include a sum certain which may be satisfied if the amount sought can be easily determined by a mathematical calculation or from the contractor's submission to the CO. United asserted that where a plaintiff had failed to seek a sum certain it may subsequently request payment of money as "other relief." The Court disagreed stating the payment of money is not "other relief" under the FAR which is usually non-monetary remedies. Though correspondences did identify costs for Ress. 1 and 2, the claim contained no sum certain for the other reservations (*United Constructors LLC v US, Fed. Cl., No. 08-757(C*).

QUESTIONS AND ANSWERS

(*Editor's Note. Since we have had so many excellent questions submitted by our subscribers and clients lately (keep them coming), we decided to expand the Q&A section in this issue and delete our normal feature article. The article will continue next time.)*

Q. Our overhead and G&A rates are capped where our overhead costs are exceeding our capped rates while our G&A costs are lower. Both rates are applied on a direct labor cost base and overhead consists of all company indirect labor while G&A consists primarily of payroll taxes and fringe benefits including bonuses. Do you see any opportunities to reduce our exposure to exceeding our capped amounts?

A. Short term, there may be opportunities to reassign certain overhead costs to G&A. Since the overhead pool consists of all indirect labor and executive salaries, those positions related to supporting the company as a whole (CEO, CFO) would seem to be logically re-assignable to the G&A pool. If so, associated costs related to these individuals (e.g. administration staff, portion of facilities related expenses) may also be reallocated to G&A. Though I see little opportunity in changing your contract capped amounts retroactively, there may be opportunities going forward. For example, since you use the same base for each rate, why not combine the two rates into one where you could then negotiate one capped rate. Or, you could always assert that business conditions have changes (e.g. lower business base) requiring a contract mod. for higher capped rates to be able to perform work.

Q. If we adopt some of the recommendations made above, what are our disclosure requirements?

A. Most, if not all, of the recommendations would likely be considered accounting changes by the government (though we might argue some are not). Since you are not CAS covered immediate notification is not needed but you will be required to divulge the changes in your incurred cost proposals. Though not required, contractors often arrange a meeting with DCAA or their cognizant audit agency to inform them of the intended changes whereupon the auditors commonly ask for a written description of the changes, reason or justification for the change and a rough order of magnitude of the cost impact of the change. You will need to decide whether the early disclosures would benefit you or not.

Q. I seem to remember an article stating the paid state income taxes principles paid for their Subchapter S allocation of profits are unallowable costs. Our company paid the state income taxes on the profit of the company where I know the FAR allows for state income taxes. Could you explain the differences?

A. A fairly recent case (*Information Sys. & Networks Corp. vs US, 437 F.3d 1173*) reversed an earlier decision allowing the portion of profit distribution made to a single owner of a Subchapter S representing state income taxes. However, state income taxes paid by the corporation are not considered income of the owner(s) but allowable expenses of the corporation.

Q. Our auditor disallowed in-house meals because we had not documented the attendees at the meal and purpose of the meeting. What do you think?

A. Though those documentation requirements are imposed on expense reports documenting travel away from the office, I am unaware of any requirements for documenting those facts for meals associated with in-house business meetings. Though it is not unreasonable for the auditor to inquire into the nature of the meetings, the documentation requirements for them to be allowable is a bit excessive. I would ask the auditor to provide the basis for the assertion that such documentation is required.

Q. I proposed two days of ship storage time on a proposal. If it turned out I needed less, do I need to credit the contract.

A. No. Unless you knew of some facts at the time you proposed the costs that would indicate the two hours were not needed, just because you spent less than you reasonably estimated it would cost is not grounds for a credit. After all, if it was higher than you estimated, you would normally not be entitled to additional reimbursement.

Q. In my new company direct labor is charged to work orders based not on actual rates of individual employees but at an average hourly labor rate per work center such as CNC machining, Fabrication, Paint Shop, Welding, etc.. The average hourly rate per work center is itself based on the average actual hourly rates of all employees within each the work center. Given the rates are based on an average, not actuals per employee, would that average rate constitute a "standard labor cost system." If yes, is it acceptable to dispose of the calculated variance – applied direct labor dollars versus paid direct labor dollars - into the overhead cost pool within each work center's overhead pool or must we dispose of the variance at the work order level. Also, can you cite a relevant regulation?

A. Whether or not you are CAS covered, the best source of info about standard costs and treatment of variances are in CAS 407. Though you can argue GAAP should prevail auditors tend to view CAS requirements as the proper basis of cost accounting. Average rates are not normally considered "standard costs" but treatment of the "variances" you describe would probably be the same. The standard requires the variance be handled at the "production unit" which corresponds to your machining, fabrication, etc units. If the variance is not "material" (not really defined so your judgment is best) you can charge it to your overhead pools. If material, you need to come up with a way to charge it to individual final cost objectives (e.g. contracts, subcontracts, task or delivery orders, work orders if separately funded) where the standard and DCAA guidelines provides for a variety of ways to allocate the variances.

Q. Our state income tax returns are never filed until months after the June 30 due date for our rate claim. I plan to adjust our book amount to the estimated "current" state income tax expense - i.e. the estimated amount for the year for the rate claim. We charge this to overhead, and as a company we have been charging the GAAP expense amount in the past. I now believe this is incorrect under FAR in that we should be charging the actual amount on the tax return. Could you confirm this?

A. You are correct - DCAA wants to see actual, not estimated amounts. If you do not know the amounts by June 30, I would submit accurate as possible estimates and be prepared for auditors to make an adjustment. If the difference is material, you may consider submitting a revised proposal.

Q. I was examining your article on the Grant Thorton survey where you indicated that a 240% multiplier is the norm for professional services firms. Is that correct?

A. That figure, where the combined overhead, G&A and fee add-on is 140% of base direct labor costs, is consistent with many companies we encounter. However, you would be ill-advised to assume that all offerors in competitions would use such a multiplier. On some competitions, we see multipliers as low as 160% (even lower) so no survey benchmarking a large variety of firms should be substituted for good, sound business intelligence for specific competitions.

Q. Can a CEO charge both overhead and G&A.

A. Yes. What charges go to overhead and G&A are usually left to the contractor to define and if the basis is

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reasonable and consistently applied, it should be accepted. So, for example, if you decide that overhead expenses relate to support of projects that are not identifiable as direct charges while G&A are costs in support of the company as a whole then the activities of the CEO can be allocated to both pools depending on the nature of the activities. If you want to charge CEO or other indirect labor to both pools, then I would advise keeping track of those activities by use of a timesheet. Arbitrary or estimated times are often not accepted.

Q. As an incentive to encourage a relocation from Nevada to open a Washington DC office we provided an employee, who is paid $200,000 per year, a one-time $100,000 incentive bonus. DCAA is now asking for documentation of relocation expenses to support the bonus which we cannot find. What can we do?

A. It appears as if DCAA is confusing relocation costs with a relocation incentive bonus. Reimbursement of relocation costs are covered by the relocation cost principle of FAR 31.205-35 that identifies specific types of costs that are allowable or not. The relocation incentive bonus, being a one time charge, should be evaluated for reasonableness, and compared to industry practices. We conducted a Google search on the topic and discovered that the federal government allows payment of relocation incentive bonuses up to 100% of a government employee's salary, which is far below what you paid your employee. It should not matter what the employee did with the funds – it is irrelevant whether they used the bonus for relocation costs, school tuitions or purchase of a Ferrari (used).

Q. Are lodging taxes for travel expenses included in the maximum lodging limits of the per diem rates?

A. The Federal Travel Regulation, which in this case should apply to contractor employees, was changed in August of 2008 to have taxes for domestic lodging be considered a miscellaneous expense not subject to per diem caps. For international travel, the taxes are included in the per diem limits.

Q. Does a gain realized on an asset sale decrease the net book value of assets?

A. Yes. The gain should reduce the value of the net asset value used for computing depreciation, cost of money and the net asset component of the three factor formula used for allocating residual home office costs to business segments.

Q. On a cost type contract, we proposed estimated average costs and the contracting officer says we must use those estimated costs for our incurred cost proposal rather than actual costs. Is that correct?

A. It does not sound right to me. The incurred cost proposal is supposed to be that – actual costs of employees. The estimated average costs are appropriate for quantifying the estimated costs of the work as well as provisional billing purposes but the incurred cost proposal is supposed to reflect actual costs.

Q. Are there guidelines published as what percentage of a Project Manager's time should be direct charged to the project? For example, I was told there is a standard that states 30% is the norm.

A. There is no standard I am aware of - I've seen it range from 0-100%. It largely depends on both your accounting practices and what the contract(s) allows. For example, if your contracts largely allow for direct charging of project management (common) then yes, a project manager may charge all their time to a contract(s). If not (also common), then project management may be considered an overhead item, charged indirect.

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