GCA REPORT
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NEW DEVELOPMENTS

Executive Compensation Continues to be a Hot Topic

There have been numerous proposals and discussions on executive compensation since our last issue. Some key ones include:

1. A May 15 legislative proposal from the Defense Department and a June 25 proposal by the Office of Management and Budget sent to Congress calls for allowable compensation to be lowered to the salary of the US President – currently $400,000. The proposal would be included in the 2014 National Defense Authorization Act (NDAA) where the head of the executive agency could authorize narrowly-targeted exceptions for scientists, engineers and other specialties. DOD stated the current cap of $763,029, which is based on the median annual compensation for the five most highly compensated management employees at publicly-owned companies with annual sales of over $50 million is "excessive" and "not serving taxpayers well." The proposal cited rapid growth of executive compensation over the last 15 years that far outpaced inflation and low increases in federal salaries and wages of most families. Industry representatives such as the Professional Services Council immediately weighed in saying the proposal was "totally inappropriate" and would make it difficult to recruit highly skilled employees and House Republicans denounced the proposals as "inappropriate and arbitrary." However the president of the AFGE union stated the proposal was too high saying earlier proposals that limited compensation to the Vice President at $230,700 were more appropriate.

2. The Senate Armed Services Committee released a June 18 version of the 2014 NDAA which set a $487,999 cap. That amount represents the original cap for executive compensation adjusted for inflation.

3. Kathy Weinberg and Damien Sprecht of Jenner & Block wrote about myths and misunderstanding of limiting executive compensation to the President's salary in the April 30 issue of Federal Contract Report. Some comments include the President's salary is not a good measure of executive compensation and does not reflect the market value of an equivalent CEO job; the President's $400K salary is only a portion of his total compensation – adding unlimited vacation days, expense account, non-taxable travel account and entertainment expenses would exceed $569K plus all the other non-monetary benefits; "exorbitant executive salaries" are small compared to sports and entertainment figures and are part of the marketplace for executive talent; the government does not pay all of CEOs' compensation where there is a current limit of $763K and proposed prices on fixed price contracts are often based on competitive analysis of other companies' prices not a cost build-up including executive compensation.

5. A panel of prominent attorneys and consultants emphasized two recent cases clearly challenged DCAA's "one size fits all" approach and criticized the fact that the results of the two cases did not change DCAA guidance for conducting executive pay audits. All panelists stated contractors should document their compensation practices and show how their pay is reasonable based on financial analysis and other surveys.

6. The Government Accountability Office (GAO) issued a report addressing the impact of potentially lowering the executive comp cap. They stated it would represent a huge reduction in DOD payouts to government contractors. The GAO reviewed compensation data at 27 government contractors from 2010-2012 stating that fewer than 200 employees were paid more than the current $763K cap but if the cap was reduced to $400K, over 500 employees would be paid more and if the $230K cap was used, over 3,000 employees would be paid more.

7. Meanwhile, the OMB has extended the current cap of $763,029 through the end of 2012.

DCAA Issues "Rules of Engagement" Emphasizing Proper Communications with COs and Contractors

(*Editor's Note. The following guidance addresses one of the biggest problems contractors have when dealing with DCAA – audit findings often become identified too late to allow contractors to address them before positions become hardened. Many auditors are reluctant to raise negative points during an audit where they*

wait to surface their findings either at the end of an audit or in an audit report where contractors are often surprised and even shocked. This guidance should help in surfacing audit issues early so contractors can assemble facts and respond earlier to resolve problems.).

DCAA has issued guidance to "reemphasize" the importance of communicating with both its government clients and contractors being subject to audits. These so-called "rules of engagement" are considered essential to ensure audits are "fair, complete, objective, timely and comply with audit standards." The guidance identifies several benefits from proper communication with the government and contractors including early identification of audit issues, immediate dealings with potential problems, audits become focused, efficient and timely, audit results are better understood, demand for DCAA support will increase, more audit results will be sustained and professional relationships will be enhanced. The guidance stresses that auditing standards require auditors to communicate with contracting officers and contractors where DCAM 4-100 and 4-300 are referenced and key expectations are identified:

- At the beginning of the audit, auditors are to communicate the rationale for the audit procedures they plan to perform
- Throughout the audit, auditors should communicate potential audit findings to the contractor to ensure the auditor has and understands all relevant facts
- Throughout the audit, auditors should brief the COs on significant findings
- ·When performing a pricing audit, auditors should communicate with the CO regarding the release of other than factual information. If the CO requires the auditor provide the contractor with audit conclusions and questioned costs auditors should comply with that request. (*Editor's Note. This should open the door to identify questioned costs where now contractors almost never are provided any specifics on what and how many costs are questioned.*)

GAO Says the Government Should Follow Industry Practices in Buying Services

The General Accountability Office issued a May 16 report stating the government could save billions if it utilized private sector strategic acquisition strategies when acquiring services. The GAO was requested to identify leading company practices for purchasing services and potential opportunities for federal agencies to incorporate those practices. The GAO selected seven prominent companies like Dell, Boeing and Wal-Mart and concluded they are continuously seeking efficiencies and setting goals for savings. The study stressed the need to distinguish between types of services being acquired, taking into account complexity and number of suppliers to "tailor their tactics to fit the situation." For example, one company may leverage its scale to purchase commodity-like services where there are many suppliers (e.g. maintenance) while for sophisticated consulting services with few suppliers it may negotiate lower labor rates or other drivers of cost.

The report identified five "foundational principles": (1) Maintaining spending visibility –integrating procurement and financial systems to maximize automated processes (2) Centralized procurement – share knowledge internally, maintain consistent procurement tactics and use approved contracts to acquire services (3) Develop category strategy – recognize that different services require different strategies where there is a need to provide flexibility for defining those sourcing strategies (4) Focus on total cost of ownership – consider factors beyond price such as whether the services are really needed and (5) Regular review of strategies and tactics – continuous evaluation of practices and changing practices to respond to changing market trends.

Proposed House Bill Would Debar Contractors Guilty of Crimes and Delinquent Taxes

The House easily passed the Contracting and Tax Accountability Act that would bar contractors convicted of fraud or other crimes or with "seriously delinquent" federal taxes from securing government contracts. The automatic debarment process would apply to contractors convicted of a crime in the last three years or who were subject to a civil judgment regarding criminal fraud or other crimes related to obtaining an award or performance of any federal, state or local contract. It would also apply to those who violated federal or state antitrust laws specific to a proposal or made false statements, theft, forgery, intentional destruction of records, tax evasion, taking possession of stolen property or any federal crime tax laws. The bill allows the government to debar contractors who are delinquent in payment of income taxes totaling $3,000 or more, even if the contractor has disputed IRS claims and an appeal process is still in play but not yet resolved within three years after the contractor first received IRS notification. The Act treats a corporation as a person with a serious tax liability if the corporation has an officer or shareholder who holds 50% or more or a controlling interest that is less than 50% of the corporate shares if that corporation has a serious tax delinquency. "Seriously delinquent" would mean having a liability that generated a notice of federal tax lien,

taxpayers making payments in a timely manner under tax code Section 6159 or 7122 or taxpayers for whom a due process hearing is scheduled. Contractors will be required to submit statements certifying they have no serious tax delinquencies before being considered for a contract. Waivers can be granted if there is a written finding of "urgent and compelling circumstances" that affect the interests of the US. Supporters of the Act state it will protect taxpayers and prevent corporations from profiting from criminal activity while opponents are saying it duplicates similar FAR suspension and debarment provisions and allows the government to "outrageously" unilaterally shut down government contractors without due process that are still in litigation with the IRS.

The Navy's Vendor Rating Program Triggers Negative Comments

The Navy issued the Superior Supplier Incentive Program (SSIP) which aims to reward the Navy's most reliable suppliers. The SSIP aims to create a five-star rating system based on a supplier's past performance as recorded in the CPARS system and supplanted by as yet unspecified other factors. Suppliers with three stars or more will be designated as "superior suppliers" eligible to receive such contract perks as more favorable progress payments, accelerated acceptance of proposed indirect cost rates and longer intervals between business system reviews. To attain the highest ratings a contractor will need to prove it has an active Energy Efficiency Program in place which will be worth an additional star. A pilot project is anticipated that will evaluate its 15 largest goods suppliers and 15 largest services suppliers.

The proposal is receiving mixed comments where some say it is laudable to identify good suppliers while other say it may negatively affect competition if the star ratings come to overshadow the actual evaluation of offerors (e.g. if there are equal past performance evaluations a higher starred supplier would supplant a non-starred supplier.) The influential Council of Defense and Space Industry Associations (CODSIA) has criticized SSIP for lacking clear criteria, stating the Navy should publish specific evaluation criteria and seek public comments before launching the pilot program.

GSA Owes Small Businesses Millions for Terminated MAS Contracts

House Small Business Chairman Sam Graves May 16 said the General Services Administration owes more than one thousand small business contractors more than $3 million in guaranteed minimum payments on terminated contracts. GSA's MAS program manages 19,000 contracts for goods and services where it generates revenue from fees based on contract sales. Businesses must make at least $25,000 in sales where if they do not their contract is terminated and GSA refunds a minimum guaranteed payment of $2,500 to compensate them for lack of sales. The committee found that the GSA was not adhering to the $2,500 payment where GSA stated a long standing policy required companies to request the payment when they were not paid because no requests had been made. Under new leadership, the GSA no longer requires the request be made and they will make payments to eligible small businesses who have not requested payments within the past six years.

Final DFARS Rule Gives Contractors Access to Proprietary Data

The Defense Department adopted as final, with changes, an interim DFARS rule that gives certain government support contractors access to proprietary technical data belonging to prime contractors and third parties. The access will be for the sole purpose of assisting the government where access will be subject to non-disclosure agreements with restrictions and remedies. The interim rule prescribed "maximum flexibility" for the private parties to reach mutual agreements without unnecessary interference from government. The DFARS scheme is based on the right to limit government's use of privately developed data to in-house users and limit its ability to disclose it to external parties. In the past, two exceptions to this rule were a "type" exception where the government had unlimited rights to certain top-level data that was considered proprietary and "special needs" exception for critical activities. Now a third exception category will allow government contractors access to data for the sole purpose of providing independent advice or technical assistance directly to the government (*Fed. Reg. 30233*).

DOE IG Report Says M&O Contractors Not Properly Auditing Their Subcontractors

The Department of Energy Inspector General Office states some maintenance and operations contractors are not providing sufficient audit coverage of its subcontractors. DOE employs 28 M&O contractors that perform essential mission work and when their cost type subcontractors are used the IG says M&O contractors must ensure that associated incurred costs are audited and allowable. M&O contractors may use their own internal staff, hire outside auditors (we perform audits for certain M&O contractors) or use DCAA. But the IG report shows over the past few

years some M&O contractors have not carried out this responsibility properly. Its review found that between 2010-2012 subcontracts totaling $960 million had either not been audited or had been audited improperly. For example, $398 million of subcontracts by 9 M&O contractors had not been audited including $160 million at Yucca Mountain where the contract was terminated, $343 million at Los Alamos had not been audited and an additional $165 million at Los Alamos had not been audited properly. Reasons cited included four of nine failed to develop an approach to audit correctly, five had such approaches but failed to follow them, one contractor failed to meet audit standards because they were performed by non-audit staff and one audited subcontracts costs only above $15 million meaning that only two out of 1,404 subcontractors were audited. The report also cited timeliness as a problem where subcontractors had to keep records for only three years and the statute of limitations prevented recovery of unallowable costs. The report recommended DOE ensure its M&O contractors adopt an approach for conducting audits with a reasonable threshold for selecting subcontracts and that audits meet Institute of Internal Auditors standards (report found at http://energy.gov/sites/prod/files/2013/04/f0/IG-0885.pdf).

DCAA Announces Furloughs

Resulting from the sequestration, DCAA auditors have received their long awaited letters proposing an 11 day furlough – one day a week from July through September 2013. Undersecretary of Defense Jessica Wright stated the furloughs may not end in September where a review of 2014 budget numbers indicates the possibility of more of them. We are seeing many comments indicating the 20 percent reduction in audit hours will certainly delay audit work. This will have an adverse impact on, for example, closing out contracts from a delay in incurred cost audits, award of contracts for delays on proposal audits, clearing up accounting system deficiencies quickly and allowing less time for contractors to respond to negative audit findings. Some comments refer to a likely acceleration of the retirement of eligible senior and experienced auditors as they ask what incentive is there to stay when their pay is cut 20% resulting in lower quality audits and supervision without necessary mentoring from knowledgeable veteran auditors.

PSC Asks for Revisions to Past Performance Evaluations and Other Changes to OASIS

The Professional Services Council recommended several changes to the General Services Administration's OASIS (One Acquisition Solution for Integrated Services) procurement solicitations. PSC lauds the OASIS program whose intent is to complement the multiple award schedule program usually oriented to IT services by offering government agencies greater flexibility for full service offerings in such "core disciplines" as program management, management consulting, engineering, scientific, logistics and financial services. PSC states past performance and other evaluation criteria needs to be revised for contractors seeking to join the OASIS program. As for past performance, considerations need to be revised to allow for scoring of commercial and federal government work so commercial work is given the same weight as government work. By limiting the scoring evaluations of commercial work PSC says the GSA is limiting access to vendors that deliver superior performance in the commercial space. Similarly, PSC recommends the GSA equate the scoring values of work performed at the state and local level to federal work. The group also asked GSA to clarify several other issues such as (1) revise cost accounting standards compliance requirements to allow contractors not compliant with CAS to nonetheless not be excluded from the initial award phase but will be ineligible to compete for task orders unless they are CAS compliant (2) remove certain system, certification and resource requirements from the initial award phase and applying them at the task order level (3) provide greater flexibility clarifying that alternative or equivalent certifications are acceptable and (4) allowing for third party audits.

SBA and DOD Removes WOSB Set-Aside Limitation

The Small Business Administration issued a new rule that formally removes restrictions in the women owned small business program that limited WOSB set asides to $6.5 million for manufacturing contracts and $4 million for all others. Director of Defense for Procurement and Acquisition also removed the dollar limitations for set-asides for WOSBs. Effective May 16, FAR 19-1505(b)(2) and (c)(2) that limit the set-asides are no longer applicable to defense contracts.

SBA Issues Final Rule on Misrepresenting Size Status

June 28 the Small Business Administration issued a final rule that provides significant damages and penalties against contractors that misrepresent their size or small business category status in connection with government awards. The rule covers government contracts, subcontracts, cooperative agreements, cooperative R&D agreements and grants and will apply to such small

business categories as service disabled, veteran-owned, women-owned, HUBZone and 8(a) small business concerns. The rule establishes a "presumption of loss" for the government equal to the "total amount expended" on the government award where there is a willful representation leading to the award. Penalties can also apply whether or not the contractor receives an award where it is subject to suspension and debarment from participation in future government awards. The final rule will permit a contractor to limit or even defeat its liability if it can show the violation was not willful or it can establish it has taken demonstrable steps to remedy the violation. The rule contains a broad definition of actions that would be deemed affirmative, willful and intentional certification of size or status misrepresentations such as submission of a bid intended to be awarded to a small business or encourages an agency to create a set-aside or registering on any federal electronic database for the purpose of being considered a small business concern. The penalties do not apply to unintentional errors, technical malfunctions and other similar situations. Determinations of whether an act is "willful" will be made on a case-by-case basis taking into account the contractors internal management procedures, the clarity of the representation requirement and efforts made to correct representations in a timely manner (*Fed. Reg. 38811*).

Bill Would Count Lower-Tier Subcontracts Toward Goals

A proposed House bill will allow prime contractors to count lower-tier subcontracts toward percentage goals for small business subcontracting. Large contractors with contracts over $650,000 ($1.5 million for construction) must afford small businesses "the maximum practical opportunity" to participate in federal contracting where failure to do so can adversely affect performance ratings and opportunities to win awards. Only first tier subcontractors are included in meeting subcontract goals where the proposed change will include all tiers of subcontractors. The bill has received praise from industry saying it will expand small business participation at all levels.

FAR Revised to Make Explicit T of C Cost Recovery and Price Analysis

The FAR has been changed to make explicit that (1) the cost principles affecting termination for convenience cost recovery are those principles in effect at contract award (*Fed. Reg. 26518*) and (2) "price analysis" technique is acceptable to establish a fair and reasonable price (*Fed. Reg. 37684*).

DECISIONS/CASES

Head Count Risk for Dining Contract is Reasonable

(*Editor's Note. It is often highly desirable to propose unit prices that vary depending on the quantity of items the client buys. The following addresses a limitation on that.*)

The Army issued a solicitation for an indefinite-delivery, indefinite-quantity food service contract where the pricing method was to offer a price-per-meal. Timothy thought the cost of meals depended on headcount (i.e. number of meals to be served) and reasoning the bidding was a "risky proposition" filed a protest before proposals were due, asserting the Army's irrational price-per-meal acquisition warranted an injunction. The court ruled for the Army asserting it had provided the best estimate it could for headcount and because offerors were able to compete intelligently nothing required the Army to bear the risk of the fluctuating head count. The Court added there was nothing unusual about a private business having to assume risk for competing for and performing a contract and here offerors were allowed to use their own estimate of actual head count in calculating their price per meal. The Court noted though the offerors might have preferred the Army permit them to quote different prices to cover various head count possibilities no statute or regulation required doing so (*State of North Carolina Business Enterprises Program v US, Fed. Cl. No. 12-459C).*

Government Control Exception Applies to Electronic Submissions

(*Editor's Note. The following shows that late submittal rules need to accommodate the electronic age.*)

USAID issued a RFQ for health support services where it told offerors the quote deadline was 5:00 PM on Nov. 27, 2012. Two offerors sent an email with the proposals attached to USAID personnel where both were received by the agency server before the deadline (3:41 PM and 4:39 PM, respectively) but the server was unable to transmit the email to recipients until after 5:00 PM. USAID told both offerors their quotations would not be considered because they were untimely and both filed complaints on a consolidated basis. The offerors asserted the government control exception at FAR 52.212-1(f)(2)(i)(B) applied to make their quotes eligible because their emails were received at the government installation designed for receipt of the quotations and were under government control prior to the deadline. The

government asserted the electronic commerce exception at FAR 52.212.-1(f)(2)(i)(A) applied which creates a safe harbor for electronic submissions but it applies only to proposals submitted at least a day before they are due. The Court agreed with the offerors and rejected the government position stating it was correctly applying the government control exception to the technology USAID was using. The Court ruled no contract can be awarded unless the offerors' quotes were accepted (*Insight Systems Corp. V US, Fed. Cl. No. 12863(C)*.

Government is Not Responsible for Contractor's Cost Overrun

(*Editor's Note. The following demonstrates the important of tracking costs and notifying the government of any cost overruns before they occur.*)

PHI's cost plus fixed fee contract with an estimated cost of $37,730 to provide a prototype item included the Limitation of Cost clause that required PHI to notify the CO whenever it believed certain cost thresholds would be surpassed and once notification was made PHI was not obligated to continue performance until the CO notified PHI it was increasing the estimated cost. A DCAA auditor visited PHI and found PHI personnel were not keeping track of their contract ceiling price where PHI still invoiced the government for an additional $300,000 of claimed costs to complete the prototype. When the CO refused payment asserting any amounts over $37,750 were unallowable PHI filed an appeal seeking $1.3 million. The Board denied the claim stating PHI failed to adhere to the LOC clause that would have notified the CO the cost of performance would exceed the original estimated amount. The Board stated PHI had ample time to notify the CO because it knew its costs would exceed the estimated amount shortly after it received the contract and moreover, the DCAA auditor advised PHI before, during and after the audit of its LOC clause restrictions. In addition, the Board ruled the CO never notified PHI of any increase in the estimated cost but rather the government consistently and clearly told PHI that no additional funding would be made (*PHI Applied Physical Sciences Inc., ASBCA No. 56581).*

Actual Knowledge of a Cost Impact Triggers the SOL clock

(*Editor's Note. The following case continues the current throng of hot cases addressing the Statute of Limitations. The Contract Disputes Act requires submission of a contract claim within 6 years after the accrual of a claim. A claim accrues when "all events that fix the alleged liability…are known or should have been known." The SOL clock does not begin to run until the claimant learns or reasonably should have learned of the cause of action.)*

Raytheon followed the administration requirements of the cost accounting standards when in 2004 it notified the government of several changed accounting practices, submitted a revised disclosure statement documenting the changes and for three of the four changes, provided an initial estimate of the adverse cost impact of the changes. For the fourth change, Raytheon stated it did not know if there would be a cost impact. Years later, in 2011, the CO issued a final decision demanding $8.74 million for the cost impacts. Raytheon argued the SOL had been exceeded asserting the government's claim accrued when it first notified the government of its changes and those changes would result in increased contract costs. The government argued it could not have known of the contractor's increased costs when it was notified about the accounting changes and therefore its claim did not accrue until a later late because the contractor provided only estimates in 2004 rather than detailed information required by FAR 52.230-6 which was provided only in later years, well within the SOL period.

With respect to the three changes, the Board sided with Raytheon finding its notification of an estimated adverse dollar cost impact was sufficient to trigger the CDA SOL stating the claim accrual does not depend on the degree of detail provided, whether the contractor revises calculations later or it states the impact is immaterial. It is enough the government knows or has reason to know that some costs have been incurred even if the amount is not finalized or a fuller analysis will follow. Applying this standard the Board found one of the claims to be timely because the government was not put on notice of a negative cost impact in 2004 but only in later years, within the SOL 6 year period, when it notified the government there would be a cost impact (*Raytheon Co., Space & Airborne Systems, ASBCA No. 57801*).

A Claim Must Include "A Sum Certain" to be Valid

R&G Foods submitted a claim under the Contract Disputes Act that claimed an amount "not less than". The Board ruled the claim was inadequate and hence it had no jurisdiction to rule because it was not a claim for "a sum certain" as required under the CDA (*R&G Food Services Inc. vs. Dept of Agriculture, CBCA No. 3126*).

NEW/SMALL CONTRACTORS

Basic Rules For Travel Costs

(*Editor's Note. Ever since we started occasionally featuring recent developments for travel and relocation costs in our GCA DIGEST we have received requests to identify the not tos obvious rules covering travel costs. So here it is. It is based on several articles we have read over the years and our own experience. We decided to even reference private aircraft since it is becoming more accessible to many contractors.)*

1. Receipts for expenditure should be obtained in accordance with the contractor's policies with the requirement that any item over $75 must be supported with a receipt.

2. Per diem rates should apply at the lodging location not the business location in determining which rates apply.

3. Car rental costs are not included in per diem rates.

4. Travel cost limitations apply to direct and indirect travel costs charged to government contracts. Individual contracts may have additional limitations or exceptions to normal limitations.

5. In the mid-90s the FAR was changed to prohibit full per diem amounts for partial travel days. Contractors are permitted to establish their own rules for partial travel days as long as the full per diem amounts are not paid.

6. Additional charges by hotels (e.g. surcharge fees, taxes) are fully reimbursable as miscellaneous travel expenses that are outside the per diem/lodging rates.

7. Higher costs than the published lodging and per diem rates are allowable under special circumstances as long as they do not exceed 300 percent of the established per diem rates. Special circumstances established in the Federal Travel Regulations which applies to contractors are (1) if short-term conditions exists such as a world fair, convention, natural disaster or (2) if superior or extraordinary circumstances are necessary due to the work assignment. If possible, receipt of approval by contracting officials may be prudent where if frequent deviations for a location are common, an advance approval should be obtained.

8. Though government employees are not allowed to retain their frequent flyer benefits for personal use, no such prohibition exists for government contractor employees, though there are occasional legislative proposals to prohibit it. DCAA auditors sometimes require contractors to have a written policy addressing frequent flyer benefits.

9. Costs of company-owned, leased or charter aircraft, which includes costs for the lease, charter costs, operations, maintenance, depreciation, insurance and related costs, are allowable to the extent they do not exceed standard air fares unless those costs are required under a contract or a higher amount is approved by the CO. Circumstances justifying these higher amounts include (1) scheduled transportation services are not reasonably available (2) critical situations might not be accommodated (3) increased flexibility actually saves time and enhances effectiveness of key personnel (4) national or industrial security demands privacy for key personnel or (5) the contract requires flight testing of equipment. Government auditors can be expected to request "supporting documentation" for justifying use of these vehicles, not just accept a contractor's contention of increased efficiency, where costs are to be allocated to the total number of passengers including those passengers who not allowable (e.g. spouses).

QUESTIONS & ANSWERS

Q. In auditing our 2011 incurred cost proposal (ICP) DCAA noted we do not apply G&A to travel and other direct costs and said we should change our G&A total cost input (TCI) base to a value added base that excludes travel and ODCs. We are confused and don't know what to do for our 2012 ICP.

A. First, it is your call, not the government's on what costs to include in your indirect cost bases. As for what you bill the government, you are entitled to apply G&A to all costs that are included in the base. It appears as if your G&A base is TCI but for some reason you have not been applying G&A to travel and ODCs. There is nothing necessarily wrong with that except you are not recovering all the costs you are entitled to. The auditor has apparently seen that and is saying you should change it. There is one problem with that.

If you proposed (either on fixed price or cost type work) a G&A rate where the computation included a TCI base then changing it to a value added base for ICP purposes, which would presumably increase the rate, is inconsistent with the way you proposed it. Such a change constitutes an accounting change where even if you are not CAS

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covered it does require notifying the government, justifying the change and probably identifying any cost impacts due to the change. The auditor is giving you advice that may come back to haunt you.

Q. Our county assesses a yearly personal property tax on our business equipment and small tools (i.e. screwdrivers, drills, printers, etc.). This assessment is only on our indirect property, not government property in our possession. In the past, I have considered this tax unallowable but now have second thoughts. The bill is usually under $2k-3k and it would be difficult to determine how much of this indirect property was used for government/non-government use. Do you think it's acceptable to allocate this to G&A as a cost of doing business?

A. Yes, I see no problem with allocating the costs to G&A. Generally the tax should follow where the related depreciation costs are charged - if they are in overhead then the tax should technically be an overhead cost. However, the small amount would justify it being charged to whatever indirect cost pool you choose so I would say the G&A should be OK.

Q. The pricing analyst at DCMA has asked for our Officers Salaries and Office Salaries accounts, both of which are G&A and are requesting payroll reports for the indirect labor and "an exact breakdown of the responsibilities of this group and the amount of time spent on each type of task." I am thinking about saying the nature of G&A jobs is dynamic and the activities vary from day to day, and of course we do not record time to break out the different activities since they are all within the G&A.

A. Yes, it is unusual to request this information for 100% G&A labor. Perhaps they are looking for instances of unallowable activities (e.g. M&A work, public relations or advertising costs, trade shows) or they want to see whether some of their time should be charged either direct or to overhead rather than G&A. These days DCMA "price analysts" are auditing costs that used to be handled by DCAA and we find them becoming quite "creative" – e.g. looking to ding you because your officers don't complete timecards, which would be inappropriate. Assuming you can't identify G&A tasks worked and/or they don't complete timecards I would say your response is fine.

Q. Are IR&D costs for commercial items allowable.

A, IR&D costs, whether they are for contractors' government or commercial work are allowable where both the FAR and CAS 420 address such costs. However, that does not prevent some auditors from attempting to make them unallowable asserting they are not allocable to government contracts. It is similar to marketing and sales costs associated with commercial items – all such costs contribute to the government because they are intended to expand revenue and hence the G&A base which tends to lower indirect costs and hence benefit the government.

Q. Part of our building will be dedicated to classified work so how should we classify the related costs?

A. Several options come to mind. If they are immaterial, include the costs in overhead just like you would charge any building-related costs. If it meets your pricing strategies (e.g. charge lower or higher rates to classified versus non-classified work) you could create separate classified and non-classified overhead rates. Alternatively, you could create a service center for classified facilities related costs.