GCA REPORT

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NEW DEVELOPMENTS

FY 04 Defense Bill Passed

The House and Senate ratified a conference agreement on the FY 2004 Defense Authorization Act in November (the conference agreement reconciles different versions passed by the House and Senate). It provides $401.3 billion in DOD and national security programs for the Energy Department where $74.2 billion is for procurement, $63.4 billion for research, development, test and evaluation and $114.4 billion for operations and maintenance. Procurement related provisions include:

Management Provisions. Provisions aimed at improving DOD management were passed such as (1) extending emergency procurement authorities passed in the aftermath of September 11, 2001 (2) establishing a pilot program to base competitive sourcing decisions for IT services on best value criteria and (3) extending and expanding authority to use innovative "other transactions" to acquire R&D from companies that do not traditionally do business with the federal government.

Passage of Service Oriented Provisions. In recognizing the increasing importance of service acquisitions the Act passed significant portions of the earlier proposed Services Acquisition Reform Act (SARA). These include (1) establishing a government-wide preference for use of performance-based service contracts by treating certain service contracts under $25,000 as contracts for commercial items and authorizes use of simplified procedures for the award of performance-based service contracts (2) clarifying the existing statutory definition of commercial item that authorizes use of time and material and labor-hour type contracts for certain commercial services commonly sold to the public and are purchased by the government on a competitive basis (3) clarifying the definition of commercial item to recognize that services sold on the basis of specific outcomes in addition to specific tasks should fit the definition of commercial services (4) allowing all federal agencies to use innovative approaches other than traditional FAR-based contracting to buy R&D and prototypes for new technologies to fight terror and (5) ensuring that firms will be able to include in their federal contracts terms to allow their employees to telecommute without being disqualified or downgraded for offering such plans.

A controversial provision that held up passage of the bill was dropped that would have increased domestic content requirements from 50 percent to 65 percent and would have required the DOD to use machine tools entirely produced in the US.

FAC 2001-16 Issued

Eight new rules amending the FAR were published October 1 as Federal Acquisition Circular 2001-16. Significant amendments include:

Mandatory CCR. The FAR has been amended to require contractors to register in the Central Contractor Registration (CCR) database prior to award of any contract, basic agreement, basic ordering agreement or blanket purchase order. The final rule also requires COs to modify existing contracts whose performance extends beyond December 31, 2003 to require contractors to register in the CCR database by that date.

FedBizOpps Named as GPE for Procurement Opportunities. The FAR has been amended in a final rule designating Federal Business Opportunities (www.FedBizOpps.gov) as the single Government-wide point of entry (GPE) for electronic public access to procurement actions exceeding $25,000. References to the old preferred Federal Acquisition Computer Network (FACNET), which was intended as the GPE before the web was widely used, has been eliminated.

Notification of Overpayment. Effective October 31. the FAR requires contractors to notify the CO if the government overpays the contractor when making an invoice payment or a contract financing payment under both commercial item and non-commercial item contracts. The rule also requires the CO to "promptly" provide instructions to the contractor regarding "timely disposition of the overpayment."

Increased Thresholds for Simplified Acquisitions for Homeland Security Purchases. The simplified acquisition threshold

for purchases under the Homeland Security Act (e.g. supplies and services used to facilitate defense against terrorism or nuclear, biological, chemical or radiological attack) has been increased from the normal threshold of $100,000 to $200,000 ($300,000 for contracts performed outside of the U.S.). In addition, the micro-purchase threshold has been increased from $2,500 to $7,500. The change also allows agencies to treat acquisitions covered by the new Act as commercial items.

Economic Planning, Employee Morale and Travel Cost Principles. The final rules amend three cost principles – FAR 31.205-12, economic planning costs; FAR 31.205-13, employee morale, health, welfare, food service and dormitory costs and; FAR 31.205-46, travel costs – to restructure the paragraphs and remove unnecessary duplicative language. There have been no changes to the allowability of costs (Fed. Reg. 56,668).

DCAA Issues New Guidance On Auditor Use of Sarbanes-Oxley Reports

The Defense Contract Audit Agency issued additional guidance on new reporting requirements of certain Security Exchange Commission final section rulings intended to implement the Sarbanes-Oxley Act. The guidance analyzes and summarizes Sections 204, 302, 404, 406 and 407 and addresses how the required reports affect DCAA's planning of its internal control, incurred cost and financial capability audits. The guidance adds to prior guidance issued in April that addressed requirements of the SEC's final ruling related to Section 401.

Section 204. The SEC requires public accounting firms performing audit services to report to audit committees of public companies information related to critical accounting policies and practices, all material alternative accounting treatments that have been discussed with company management and all other significant written communications between the independent auditor and company management. DCAA auditors are told to be aware of these communications since they disclose information having a bearing on their audits or that may provide audit leads for subsequent audits.

Section 302. Requires the public company's principle executive and financial officers to certify financial and other information contained in the quarterly and annual reports filed with the SEC as well as certifications regarding disclosure controls and procedures and internal controls over financial reporting. Though the resulting disclosure made to the outside auditors and audit committee need not be made public DCAA auditors are told to inquire into obtaining access to the audit work performed in support of the required certifications. Executive certifications alone cannot be relied upon to assess risk but work performed by the auditors that was relied upon by company executives in providing their certifications "may be of value in reducing DCAA audit effort." Lack of certifications should be assessed on a case-by-case basis.

Section 404. Requires public companies to include in the annual report to the SEC "a report of management on the company's internal controls over financial reporting." The guidance lists the items to be discussed in this report and encourages DCAA auditors to ascertain the audit work that was used to develop the report in order to reduce the audit effort on reviewing contractors' internal controls. Though auditors are told the absence of internal control deficiencies should not lead to the conclusion that internal control risk is "less than maximum" the report and attending audit work can be fruitful ways of identifying internal control weaknesses.

Sections 406 and 407. These two sections, respectively require public companies disclose whether they have (1) adopted a code of ethics that apply to its principle executive office and senior financial officers and (2) placed at least one "financial expert" that is independent of management to serve on its audit committee. Auditors are told to examine these disclosures during their audit of the control environment and overall accounting controls (MRD 03-PPD-072(R).

DOD Authorizes Provisional Payments of Fees Under Cost-Plus-Award-Fee Contracts

In a new rule that amends the Defense Federal Acquisition Regulation Supplement defense contractors performing successfully under cost-plus-award-fee contracts may be able to receive a "provisional" payment of award fees with an evaluation period prior to final evaluation for that period. The provisional payments are to be made no more than monthly and are based on successful evaluation for the prior evaluation period and the expectation that payment of provisional fee amounts will not reduce overall effectiveness of the award fee. The rule limits the provisional award fee payments to no more than (1) 50 percent for the initial fee period and (2) 80 percent of the evaluation score for the prior evaluation times the award fee available for the current period. Lower provisional award amounts may be established. If overpayment does occur, the contractor must return the overpayment to the government.

The rule is intended to be purely discretionary where the DOD contracting officer has the option to make

the provisional award fee and the discretion on where and how much it will be. The new provisions apply to solicitations issued on or after January 13, 2004 but the CO has the discretion to apply the authority to existing contracts (Fed. Reg. 64,561).

A-76 Developments

Decisions to outsource to the private sector nearly 850,000 full time equivalent government positions by holding public versus private competitions has been one of the hot topics of the year. The Office of Management and Budget Circular A-76, the principle guidance governing the way federal agencies go about determining whether a competition should be made and how competitive proposals will be evaluated, has recently been revised resulting in considerable reactions. The most recent include:

In bad news to federal employees and their unions the American Bar Association issued a white paper opinion saying recent revisions to the OMB Circular A-76 do not make the government in-house entities competing with the private sector offerors "interested parties" for purposes of protesting an award made under the circular. The ABA added even if they were an interested party they still can not bring a protest before the GAO under the Competition in Contracting Act because "it appears" that no agent has been authorized to bring a protest on their behalf. In response the Senate adopted by a vote of 95-1 on October 23 an amendment which provides that the person designated to represent employees of the federal government in a public-private competition under OMB Circular A-76 may file protests on their behalf. This designated representative "shall be treated as an interested party on behalf of such employees."

In response to several questions concerning the recent revisions, U.S. Comptroller General David Walker October 3 said agencies will face "major challenges" in meeting the revised requirements. Specifically (1) the revisions provide for "best value" considerations for only limited competitions (e.g. information technologies, commercial activities performed by a private sector source, new requirements, certain expansions of current work) while the emphasis on lowest price for all other awards is unwise where "cost is important but it is not everything" (2) agencies are currently resource constrained in meeting the significant challenges in managing competitions and overseeing the resulting contracts and (3) the requirement that standard competitions not exceed 12 months from public announcement to award conflicts with current competitions that "can take much longer" than the time frames outlined in the new Circular recommending the time frame be extended to 15 to 18 months.

In response to the prevailing assumptions in the Bush Administration that competitive sourcing competitions will bring budget savings, the Economic Policy Institute released a briefing paper saying the evidence for such assertions is "sorely lacking." Citing specific flaws in the evidence put forth by the administration, the think tank states (1) the cited studies are based on too few examples to support valid conclusions (2) productivity and quality of service are measured inadequately, leaving studies skewed primarily in favor of lowest cost regardless of other relevant considerations (3) the studies relied on by the OMB were created by private contractors with a vested interest in expansion of contracting out and (4) none of the evidence is based on application of the new A-76 rules so it is too early to assess them. Unions representing government employees have, understandably, praised the report saying it shows there is no real proof that private sector contractors can do a better job than federal employees.

FAC-17 Issued Revising Bundling Provisions

A final rule amending the FAR was passed intended to ensure federal agencies combine – that is, bundle – separate procurements only when necessary so as not to deprive small businesses the opportunity to participate in federal government procurements. Federal agencies have maintained that bundling often saves time, money and effort while the Administration has directed federal agencies to minimize its use in order to give small businesses a "fair share" of government dollars. In October 2002 the Office of Management and Budget issued a report on contract bundling that contained a nine-point action plan to curb unnecessary use of bundling and the FAR revisions are made to implement five of the nine action points. They include:

1. Expressly include multiple award contracts and task and delivery orders in the definition of contract bundling.

2. Establish dollar thresholds for "substantial bundling" - $7 million for DOD, $5 million for NASA and $2 million for all other agencies. The thresholds will trigger requirements to maximize small business participation as subcontractors, require agencies to justify their use and identify alternative strategies that would minimize the scope of the bundling.

3. Requires procurement activities to coordinate with the Small Business Specialist in each agency proposed

acquisition strategies for contracts meeting the above thresholds at least 30 days before issuing a solicitation.

4. Makes clear that "procurement center representatives" may review agencies' oversight of its subcontracting programs including its overall and individual assessment of contractor compliance.

5. Requires agencies' Offices of Small Disadvantaged Business Utilization to assess agency documentation of decisions to consolidate contracts and the adequacy of actions taken to mitigate its effects on small business (Fed. Reg. October 21).

DCAA Revises Audit Programs Pertaining to Various Contract Reporting Requirements

The Defense Contract Audit Agency September 24 issued three memos to its auditors announcing revisions to its audit programs for three types of contract reporting requirements: (1) Earned Value Management (EVM) (2) Selected Management Reports Submitted by Contractors Without EVM Covered Contracts and (3) Contractor Cost Data Reports (03-PPD-067(R), 03-PPD-065(R) and 03-PPD-066(R), respectively). The memos are intended to "clarify and expand" upon existing guidance reflected in the respective audit programs of the three reporting requirements and the relevant sections of the DCAA Contract Audit Manual. (*We will summarize the changes made to the DCAM along with other significant DCAM changes in our next issue of the GCA DIGEST*).

EVM requirements are usually included in large contracts or R&D agreements exceeding $73 million or operations and maintenance agreements exceeding $315 million. The cost management reports are commonly requirements of smaller contracts and include Cost Performance Reports (CPRs), Cost/Schedule Status Reports (C/SSRs) and Contract Funds Status Reports (CFSRs). Contract cost data reports (CCDRs) are usually issued in response to requests by the Defense Cost and Research Center who use the reports to report on major programs for future estimation of costs. DCAA is either requested by program agencies or in the case of the first two categories, may self-initiate audits to evaluate the controls in place for generating accurate report data as well as reviewing specific reports for accuracy.

ABA Weighs In on Proposed ESOP Changes

As we reported in the last issue, the Cost Accounting Standards Board has proposed that Employee Stock Ownership Plans be covered by CAS 415, Deferred compensation and that the costs should be measured by the contribution made to the ESOP, not the value of the compensation received by the employee. In addition, the proposal calls for the costs to be assigned to the cost accounting period in which ESOP awards are made to employees. The way these costs are assigned to contracts and subcontracts are covered by other Standards.

The American Bar Association Section Public Contract Law supported most of the changes but suggested three clarifications that it believes would improve the ESOP accounting rules:

1. The CAS Board's proposed ESOP definition is "overbroad" and could sweep within its reach other types of defined contribution plans such as 401(k) thrift plans. Rather, the Board should conform its definition to the Generally Accepted Accounting Principles which states that an ESOP is an employee benefit plan that is "a stock bonus plan, or combination stock bonus plan and money purchase plan" as described in the Employee Retirement Security Act.

2. It is not necessary to tie the assignment of the cost to the period the ESOP makes the award to individual employees because the ESOP contributions are irrevocable and the cost is incurred at the time of the contribution not the time of award.

3. The CAS Board's transition approach for the new ESOP accounting rules are unnecessarily complicated and do not lead to consistent accounting. The Boards's transition approach provides for three groups of ESOPs: (1) those plans created after the new rule (CAS 415) (2) pre-existing plans where there is an advanced agreement the parties must follow and (3) pre-existing plans with no advanced agreement which subjects the costs to CAS 412 (pension costs) in effect before the new rules. The ABA recommends any ESOP in effect before the new rules should be covered by the new rule with the exception of any ESOP covered by an advance agreement where the agreement terms would rule.

TRAVEL...

No Travel, No Reimbursement for Lodging

An employee for the Federal Aviation Administration was authorized to stay in a hotel near his duty station during a major snowstorm. The agency was not sure whether it was appropriate to pay him for lodging so they sought an opinion. They argued the air traffic mission was critical to public safety and since the facility

could not close it was important to have employees close by when travel was difficult and this alternative was better than working employees double shifts. The Board concluded the agency could not be reimbursed the travel noting that though having employees spend nights near their duty station may be good management the Federal Travel Regulation (FTR) clearly provides for reimbursement "only for employees who perform official travel away from their duty station." Interestingly, as a concluding note, the Board advised the FAA that its ruling applied only to funds used for travel expense and thus if it had other authority to pay for these costs, it could reimburse the expense (GSBCA 16120-TRAV). Similar rulings that rejected lodging expenses included (1) spending the night in a hotel to enable employees to perform 5 days worth of work rather than 2 (GSBCA 15549-TRAV) (2) staying over saved transportation expense of meeting contractors at night and early the next morning (GSBCA 15549-TRAV) (3) even though he finished an 18 hour day at 10:00 P.M., had a 70 mile commute and had to be at a meeting at 7:00 A.M. the next morning (GSBCA 14401-TRAV).

Better to Rent Than Buy

A State Department employee was authorized for long-term temporary duty and determined that the least expensive option was to rent an unfurnished apartment and purchase some basic furniture rather than stay at a hotel. When the agency refused to pay for the furniture saying it lacked authority, the Board rejected the employee's appeal. It stated that FTR 301-11.15 provides only for the costs of renting and not buying household items. It concluded the premise of the law regarding reimbursement of purchased personal property is the items of value purchased with government funds belong to the government and thus employees are not free to retain and use such items without government's permission GSBCA 15890-TRAV).

Can Pay Now to Avoid a Lawsuit Later

When on temporary duty in Atlanta a DCAA employee had an accident in its rented car and got a ticket requiring her to appear in court. The employee returned to Atlanta a few weeks later to appear in court and was found not at fault for the accident. DCAA refused to reimburse her for the trip stating it found no statutory or regulatory authority to pay the costs for the return trip. The board ruled that DCAA could reimburse her citing several GAO cases that ruled where there is the possibility of a tort suit against the government, it could be in the interests of the government to authorize payments. The Board ruled that in making a determination of whether the travel is in the best interests of the government it should consider (1) whether the accident occurred while the vehicle was being used for official business and (2) whether the nature and extent of property and personal injury might expose the government to some liability (GSBCA 16097-TRAV).

Family Members Entitled to Personal Car Mileage Reimbursement

When it comes to reimbursing an employee for mileage to the airport, train station, etc. it is immaterial whether the employee drives himself or is driven by a family member.

CASES/DECISIONS

Tradeoffs When Past Performance and Price are Equal

(Editor's Note. When technical factors are weighted heavier than price, the tradeoffs source selection officials make between the two are usually easily justified. It gets a little harder when past performance and price are equal and the following protest is interesting for how the agency made the tradeoffs and what the GAO is looking for.)

A solicitation for contract administration services for the Air Force had two evaluation factors weighed equally – past performance and price. Norcor had a "neutral/unknown confidence" past performance rating with the lowest price of $4.2 million, Cirrus was in the middle with a past performance rating of "very good/significant confidence" with a price of $4.8 million and EMEC had the best rating of "exceptional/high confidence" with the highest price of $5.4 million. The Air Force awarded the contract to the middle contractor Cirrus and both Norcor and EMEC protested.

As for Cirrus versus Norcor, the GAO found the Air Force's decision to be reasonable based on Cirrus's higher past performance rating where the 11.6 percent higher price was not significant over the life of the contract. As for Cirrus versus EMEC, the GAO ruled the government acted reasonably in not giving the contract to EMEC because the Air Force reasoned the higher confidence level for EMEC did not merit the price difference. It concluded an agency may properly select a lower rated, lower priced proposal where, as here, it concluded the cost premium was not justified in light of the acceptable level of technical competence (*Efficiency Management & Engineering Company and Norcor, B-292676*).

Existing Commercial Product's Reliability is Imputed to Upgrade

A solicitation for an automated guided vehicle (AGV) and storage retrieval system required all equipment be the manufacturer's current commercial product and the product have "proved successful field application for at least two years." Siemen offered to install a recently developed upgrade and the government awarded the contract to Siemen's "new improved model." HK challenged the award arguing Siemen's proposal was technically unacceptable because Siemen's AGV had not been in production and use for two years. The Comp. Gen. disagreed noting that the government reasonably concluded the offered AGVs were commercially available and were merely an upgrade to the previous model. Because Siemens proposed essentially the same model as its previous AGV, the prior AGV's successful field experience reasonably could be applied to the upgraded AGV (*HK Sys. Inc. Comp. Gen. Dec. B-291647*).

An Agency is Excused for Loosing a Single Proposal

(Editor's Note. Its not uncommon for an agency to lose parts of a proposal. The following addresses whether the offeror whose proposal material is lost has grounds to reverse the resulting award decision.)

Though the offeror asserted it had hand delivered the necessary documentation, the agency evaluating the proposal concluded it was technically unacceptable because of the missing material. In its protest, the GAO concluded it did not have to resolve the disputed facts of the material because it must be considered lost and lost or misplaced material, short of a "systematic failure" of the proposal process, does not provide a basis for sustaining the protest. The GAO concluded this "arguably harsh result" is justified because allowing an offeror to establish the content of its lost proposal after the closing date for proposals has passed would be inconsistent with the fair competitive system (*Shubhada Inc. GAO B-292437*).

Incomplete Oral Presentation Doesn't Justify Excellent Technical Rating

(Editor's Note. The following decision highlights the need to follow stated time constraints in the government's increasing use of oral presentations during selection process.)

In addition to the written portion the solicitation stated each offeror was required to orally present its technical approach and the oral presentation was required to address each technical subfactor within 90 minutes. Sankaty's written proposal covered all five technical subfactors, its slides for the oral presentation included the material for each subfactor but its oral presentation reached the 90 minute time limit before Sankaty could address two of the subfactors even though portions of them had been addressed under the other three subfactors. The government gave it an "excellent" technical rating and decided its higher price was justified and awarded the contract to them. T Square protested the award saying it was unreasonable because Sankaty's technical approach, without the two subfactors missed, did not justify the excellent rating.

The Army responded that those two subfactors were covered sufficiently in both the written proposal and oral presentation and hence the award was reasonable. The GAO sided with T Square noting the RFP required that the oral presentation address all five technical subfactors and that subfactors not discussed during the 90 minute presentation would not be considered for evaluation. Though the record indicated some of the two subfactors were covered under other subfactors, it was clear those plans were not fully addressed before the oral presentation was stopped. Hence the GAO concluded Sankaty's excellent rating was unwarranted (*T Squiare Logistics Servs. Corp., Comp. Gen. Dec. B-291851*).

"Monitoring" a Separate Contract is not Conflict of Interest

The Department of Defense awarded a contract for information management services related to a vehicle tracking system using global positioning devices to Critel. Critel had a separate contract with DOD to furnish global positioning devices for the vehicle tracking system. CUI protested the award arguing Critel's position as information manager created an "impaired objectivity conflict of interest" because the information management contract required Critel to perform quality assurance services in connection with the global positioning contract making it unable to render impartial judgements to the government.

The GAO disagreed, noting that an impaired objectivity OCI exists when a firm's work under one government contract "could entail evaluating itself" under another government contract. The concern is that the firm's ability to deliver impartial advice to the government is "undermined" by its conflicting responsibilities. Here, Critel's information management services required only that Critel prepare a quality assurance program, not make judgements as to what GP maintenance is required or how well it is bring performed. In other words, the

contract essentially required Critel to "monitor" the GPS contract. This monitoring alone did not create an OCI because Critel was not "evaluating" its own activities (*Computers Univeral Inc. Comp. Gen. Dec. B-292794*).

(Editor's Note. Commentators on this case have noted that an "impaired objectivity OCI" may properly be mitigated by creating a "firewall" between employees responsible for evaluating their companies' performance under separate contracts. They allude to the LEADS Corp. case where the GAO rejected a protester's argument that impaired objectivity OCI barred the award because (1) the awardee's plan including a firewall prevented potentially conflicted employees form sharing information and (2) required the awardee to notify the agency when the awardee was interested in competing for future contracts.)

NEW/SMALL CONTRACTORS

Survey on Uncompensated Overtime Practices

Recently, one of our subscribers asked us to evaluate their written policy and practices related to uncompensated overtime (UOT) – hours worked in excess of 40 hours per week without additional compensation by employees who are exempt from the Fair Labor Standards Act. They also asked us to compare their practices with other large (over $150 million revenue per year) professional services firms. We were unable to locate any written material on how other firms treat UOT so we decided to conduct an informal survey of our own. Our sources included the practices of our own clients as well as those of other firms where colleagues worked (since we did not divulge firm names we were permitted to include them in our survey).

There are usually three types of decisions contractors need to make concerning uncompensated overtime. First, will they record total time – the government strongly prefers this but does not require it if uncompensated overtime is not "material" or there is no adverse impact on government work. Second, they need to decide how they will compensate exempt employees when they work overtime. Third, they need to decide how they will account for the uncompensated portion of overtime worked. As we have discussed in previous articles there are three acceptable methods for this last question: (1) average rates by dividing salary for a given period (e.g. payroll period) by actual hours recorded for that period (2) prorate salaries for the percent of time spent on each cost objective or (3) charge cost objectives by standard labor rate (salary divided by normal hours worked such as 40 hours in a week or 2,080 for a year) and either crediting or debiting overhead for the difference. The results of our survey are presented below.

SURVEY OF PRACTICES RELATED TO UNCOMPENSATED OVERTIME

Overtime Payment Practices	**FIRM 1**	**FIRM 2**	**FIRM 3**	**FIRM 4**	**FIRM 5**	**FIRM 6**
Recording of all hours worked (Total Time)	X	X	X	X	X	X
Straight time overtime			X	X	X	
None between 40 to 45; straight time after when all hours are 100% chargeable/billable		X				
None	X					X
Methods of Charging Uncompensated Overtime						
No adjustment of hourly rate - excess credited to overhead		X	X			
Effective hourly rate calculation (Avg hourly rate)	X					
All direct chargeable employee get OT (clear distinction between direct and indirect)				X	X	
Estimated hourly rate ñ pro-rata allocation of salary to cost objectives worked						X

1. All firms record total hours for direct charge employees - all hours were recorded for exempt employees who worked on direct projects. Interestingly, most firms surveyed did not originally record total hours but all eventually switched when either consultants strongly recommended the practice or DCAA urged the practice.

2. For exclusively indirect employees, two companies recorded total hours for indirect employees while four did not.

3. In spite of the fact that all firms surveyed do provide for certain exceptions for recording time (e.g. training during off hours, meals, etc.) only two firms explicitly provide in their procedures that certain costs will not be recorded while the other four do not.

4. Three of the six firms do not provide additional compensation for overtime.

5. Two of the firms pay direct exempt employees straight time pay for authorized hours worked that

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exceed 40 hours. Another firm pays direct exempt employees straight time pay only when hours worked exceed 45 hours. That firm does not compute an average hourly rate. No firms pay exclusively indirect employees additional straight time.

6. Two of the firms allocate hourly costs to direct projects at the standard (salary divided by 40 hour) hourly rate no matter how many hours are recorded and they credit or debit the relevant overhead pool for the difference. In one case, the firm allocates salary costs to projects on a pro-rata computation of percentage of time worked on each project.

7. Only one firm computes average hourly rates each pay period by dividing salary by hours worked.

QUESTIONS & ANSWERS

Q. We have several overhead rates. We want to reallocate our contract administration expenses from our General and Administrative pool to overhead and want to know how we should assign these costs to the various overhead pools.

A. In addition to good cost accounting practices, the decision on how to allocate costs often is driven by what overhead rates you want to increase and then decide if a given allocation method to achieve that objective is defensible. As for methods to reallocate the costs, several come to mind: (1) create a cost center for contract administration expenses (e.g. labor, fringe benefits, facilities, supplies, depreciation, etc.) and allocate to the various overhead pools on some basis that is related to generating the costs such as headcount, number of contracts, contract values, etc. (2) assign specific contract personnel to specific overhead pools depending on what contracts they primarily support and allocate non-personnel costs either to one overhead pool or prorate the costs as a percentage of contract personnel costs or (3) assign related contract administration costs to one main overhead pool and justify the practice on the basis of administrative ease. In addition, if significant contract administration costs are charged direct to contracts, you may want to create a service center where all costs are accumulated and allocated to contracts on a unit basis such as cost per hour. These costs would be excluded from overhead except for those that are charged to an overhead pool as a consumer of contract administration services.

Q. In general, who has the responsibility of demonstrating a given cost practice is proper or improper – do we have to show it is appropriate or does the government have to prove it is inappropriate?

A. This question is addressed in a recent article in the October 2003 issue of the Nash & Cibinic Report where the authors discuss who has the burden of proof on cost allowability and allocation practices. For questions of *reasonableness* the burden used to fall on the government to show a given cost was unreasonable but that was changed in 1985 by statute so now all contracts that contain the FAR 31.201-3 provision requires the contractor to demonstrate both its indirect and direct costs are reasonable. For questions related to *allocability*, though there is no statute or regulation, court cases have uniformly held the contractor has the burden of proving the costs are allocable to the contract or other claimed cost objective. As for *allowability* of costs, most cases cited by the authors puts the burden of proving unallowability of costs on the government once a contractor has established the cost is reasonable and allocable.

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