GCA REPORT
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NEW DEVELOPMENTS

Government Criticisms of DCAA Mount

(*Editor's Note. Criticisms of DCAA seem to be the number one "hot topic" these days and commentary on these criticisms and more importantly, how they are likely to affect contractors subject to DCAA audits, are starting to appear. We intend to address these issues in more depth in the next issue of the GCA DIGEST.*).

Following whistleblower allegations about DCAA audits in California the General Accountability Office issued a July 2008 report substantiating significant problems (see the July-August 2008 REPORT for details). Congress asked the GAO to expand its audit of DCAA where Gregory Kutz of the GAO gave testimony to the Senate Security and Government Affairs Committee on the most recent GAO report. He stated that 65 of the 69 DCAA audits it reviewed did not meet professional audit standards and demonstrated adverse opinions on accounting and billing systems were reversed with little evidence to support the change. Mr. Kutz stated DCAA had rescinded 80 audit reports in response to GAO's reports representing an "unprecedented" action. Mr. Kutz testified that DCAA's problems result from a culture over-emphasizing producing audits on time and within budget and discouraging taking time to do it right. The GAO report called for extensive changes that would give DCAA protections and authority granted to inspectors general and recommended, long term, that DCAA be made a separate DOD component as an independent audit agency no longer reporting the DOD procurement.

The Comptroller testified that DCAA should improve its audit quality and determine whether its 24,000 audits per year are appropriate. He stated many of the problems stem from understaffing announcing the addition of 500 new auditors in 2010. He disagreed with the GAO recommendations to grant them powers enjoyed by IGs and making them an independent audit agency. DCAA director April Stephenson testified that DCAA has worked diligently since the 2008 GAO audit report to improve quality of its audits citing 50 specific improved actions including (1) doubling quality reviews (2) no longer providing feedback to contractors on draft corrections or removing corrected deficiencies from the audit reports (3) launching an anonymous hotline so DCAA employees can report management abuse without fearing retaliation where allegations will be investigated by an internal DCAA ombudsman or the IG.

The Senate committee members chimed in stating they are "outraged" and the charges are equivalent to "capital crimes" and they have "run out of patience" where DCAA will need a "complete overhaul."

A week later, the DOD IG released a report stating the work environment at DCAA is "not conducive for performing quality audits." Its interviews with DCAA employees indicated concerns over excessive time pressures to complete audits, uncompensated overtime, changes to its audit results and opinions and unprofessional behavior but earlier allegations of an "abusive environment" was not confirmed. The report cited several problem areas either it or the GAO uncovered: (1) recession of defective pricing audits were not explained (2) contractors are not removed from the direct billing program when billing system deficiencies are found (3) inadequate corrective actions were taken following negative results from floor check audits and (4) DCAA needs to identify negative impacts to the government for uncompensated overtime hours.

New Rule Limits Pass-Through Charges When 70 Percent Subcontracting Threshold is Met

The FAR Council issued an interim rule amending the FAR to prevent the government from paying "excessive pass-through charges" when subcontracting costs represent a "substantial amount" of work performed under a contract. The rules implement the 2009 Defense authorization act where the DFARS has already implemented the rule. The rule amends the FAR to minimize pass through charges by contractors to their subcontractor and from higher to lower tier subcontractors. It is intended to prevent companies receiving both indirect cost and profit/fee on work performed by their subcontractors. The rule is to be applied "consistent with existing cost accounting standards and FAR rules related to subcontract management, indirect cost allocations and profit analysis."

For civilian agencies the rule will cover cost reimbursable contracts and task and delivery order over the simplified acquisition threshold (currently $100K) while for DOD it will apply to $550K contracts and task/delivery orders. Contracts will include a contract clause requiring offerors and contractors to identify percentage of work that will be subcontracted and when that percentage exceeds 70 percent of the total cost of work to be performed the offerors or contractors are to provide information on indirect costs and profit/fee and value added with regards to the subcontract work. The contractor or upper tier contractor is to verify it will "add value consistent with the contract clause" where added value is defined to mean contractor performance of "subcontract management functions that the CO determines to benefit the government (e.g. processing orders of parts or services, maintaining inventory, reducing delivery lead times, managing multiple sources for contract requirement, coordinating deliveries and performing quality assurance functions)." The rule also provides recovery mechanisms to recover pass through charges that were not justified.

When the proposal was originally made many industry groups expressed concern that the pass through language would not allow prime contractor profit on subcontractor labor under a time and material contract – that issue has not yet been resolved (*Fed. Reg. 52853*).

New Rule Addresses Award-Fee Contracts and Ends Roll Over of Fees

Responding to criticisms over the last few years asserting contractors were receiving substantially all their available award fee pools when they had major cost overruns or delivery delays the FAR Council has issued an interim rule addressing the use and management of award and incentive fee contract types. The rule implements the 2009 DOD authorization act and OFPP guidance. It also prohibits the practice of the "roll over concept" whereby any unearned award fee available to the contractor during one performance contract period can be carried over to another evaluation period.

The rule changes FAR Part 16 to provide agencies additional guidance where, for example, the head of a contracting activity must justify use of an incentive or award fee type contract. It requires that award fees be linked to acquisition objectives in the areas of cost, schedule and technical performance and that award fee not be earned if overall performance is judged to be below satisfactory. All award fee contracts must have an award-fee plan that establishes the procedures and an award-fee board for evaluating award-fee determinations. The rule also includes a table providing award-fee adjectival ratings where, for example, excellent earns 91-100 per cent of fee, very good earns 90-76 percent, etc. (*Fed. Reg. 52856*)

The 2010 DOD Authorization Act is Signed

The fiscal year 2010 Defense Dept. authorization act signed by Pres. Obama Oct 28 contains a number of provisions related to contracting with DOD in the Title VIII section of the Act. They include:

- For IT services the Defense Science Board is to make improvements over the procurement and oversight of contract services and the DOD budget is to include information on procuring contract services
- In moves to limit public-private competitions there will be language removing the exemption of less than 10 employees from the requirement to conduct a public-private competition, the time limits for conducting a public-private competition will be reduced to 24 months with opportunity to expand this, a moratorium on performance of public-private competitions are made until a comprehensive review of its policies are completed and GAO protests by federal employees being affected by a public-private competition will be allowed
- Agencies are prohibited from awarding a sole-source award valued at more than $20 million unless the CO justifies it in writing and an agency official signs off and a written justification is made to the public
- Revisions to the DFARS are called for that will limit the reimbursement of costs and payment of profit or fees on costs incurred before definitization of an undefinitized contract or task/delivery orders
- The uniform suspension and debarment process is expanded to restrict debarred contractors from receiving subcontracts at any tier except for subcontracts for commercially available off-the-shelf items and subcontracts below the first tier for procurement of commercial items
- The authority for using simplified acquisition procedures of commercial items provided in the Clinger-Cohen Act is extended through the end of 2012
- DOD contracting officers are required to publish on the FedBizOpps.gov notifications of acquisitions involving bundling at least 30 days prior to release of the solicitations for the acquisitions along with a description of any measurable benefit the agency has determined will be derived from the bundling
- The government is to review post-employment restrictions for former DOD personnel to ensure

conflicts of interests are prevented, there is no undue influence by former officials and sufficient disclosures are made on whether accepting employment involve matters related to their official duties while making sure there are not unreasonable restrictions limiting future employment opportunities for former officials
- Institute a study of major subcontracts under major weapons systems to see whether primes conducted a buy versus build analysis, ensured that conflicts of interest were avoided and that the award process was properly conducted ensuring adequate competition
- Initiate a review of the proper use of "Other than Cost or Price" to evaluate competitive proposals and whether their use contributed to the interest of the government
- The DOD's SBIR and STTR programs are extended through Sep 30, 2010
- DOD will be authorized to provide access to technical data delivered under a contract to government support contractors that are furnishing independent and impartial advice or technical assistance to government management. The support contractors may not be affiliated with either the prime or first tier subcontractor on the program and must agree not to use the data to compete against a third party for government or nongovernment contracts. Support contractors must also agree to protect the proprietary nature of the technical data and sign a nondisclosure agreement with the contractor possessing rights to the data where breach of such a contract is subject to legal action, penalties and damages

Industry Group Objects to Prohibiting Profit on Contractor Acquired Property

The influential industry group National Defense Industrial Association is objecting to a proposed rule change to FAR 15.404-4, dated Aug 6, that states "unless contractor acquired property is a deliverable under a contract, no profit or fee shall be permitted on the cost of the property." NDIA says that removing profit or fee as a "contract cost element is not appropriate and conflicts with the FAR profit policy."

Under the FAR contractor-acquired property means property acquired, fabricated or otherwise provided by the contractor for performing a contract and to which the government has title. On fixed price contracts, the government acquires title to non-deliverables but title reverts to the contractor for property not delivered to the government or not incorporated in the end item when the payment is liquidated and the end items are delivered. The proposed change is not clear on whether this property is entitled to profit. On cost reimbursable contracts the government acquires title to all property for which the contractor is entitled to reimbursement and here NDIA asks why should the government intend to deny profit on all property that is not a line item even though it has title.

NDIA says there is no basis to eliminate profit on any element of cost necessary for the performance of a contract. To do so would result in undesirable incentives such as (1) substituting labor for more efficient equipment (2) entering into more expensive operating leases for the equipment (3) charging of overhead rather than direct contract costs and (4) failing to take delivery for funding reasons. The rule would particularly hurt small businesses where if they would be required to buy such property without the opportunity for profit that will make their financial condition worse.

DOE IG Finds Problems with Contractor Legal Cost Reimbursement Practices

(*Editor's Note. Though the following report addresses legal costs where there is considered to be high risk for unallowable costs, many of the findings are relevant for other contractors incurring high legal costs.)*

The Department of Energy reimburses its facilities contractors for legal research, litigation, consulting and settlement fees paid to outside law firms but certain costs are unallowable such as penalties, fines, punitive damages and where contractor management has engaged in "willful misconduct" or has failed to exercise "prudent business judgment." In the past, there were allegations of excessive legal costs where DOE adopted legal-management plans to outline requirements to hire outside counsel and engagement letters to specify which costs are permitted and excluded.

The IG stated that contractors and DOE officials failed in several areas: (1) *directly associated outside legal costs* where DOE reimbursed contractors for questionable costs because they were directly associated with unallowable costs such as fines or penalties (2) *outside legal costs* where costs were incurred that were inconsistent with engagement letters such as travel-related costs or first class travel where the IG cited insufficient reviews of invoices as the cause of such problems and (3) *settlement costs* where multiple contractors were reimbursed for settlement costs without a proper review of the appropriateness of the those costs.

The DOE recommended that COs (1) review high-value outside law firm invoices for the last five years to determine whether they comply with engagement letters (2) require contractors to either terminate or impose available remedies where law firms continue to bill the same unallowable fees (3) review and document reasons for fines for certain legal cases such as management failure to exercise prudent business judgment and (4) ensure that procedures are in place that require the contractor to obtain DOE approval of certain settlements.

Required Information to Evaluate Price Reasonableness for Commercial Services

An interim rule amends the FAR to provide that purchases of commercial services that are not offered and sold commercially in substantial quantities in the commercial marketplace may only be considered commercial items if the contracting officer determines in writing that there is enough information to evaluate the reasonableness of the price of the services. The rule says such services must be "of a type" offered and sold competitively in substantial quantities in the commercial marketplace.

To evaluate reasonableness of the prices, the CO may request the offeror to submit prices paid for the same or similar commercial items under comparable terms and conditions by both government and commercial customers. If needed, the CO may request "other relevant information regarding the basis for price or cost, including information on labor costs, material costs and overhead rates" (*Fed. Reg. 52852*).

Government Expands Access to Contractor Employees

The FAR Council has made final an interim rule that gives the Government Accountability Office authority to interview contractor employees when performing certain audit functions. The rule amends FAR clauses 52.215-2, Audit and Records – Negotiation and 52.214-26, Audit and Records – Sealed Bidding. However the rule does not apply to clauses affecting commercial item contracts (Fed. Reg. 52851).

In a separate action, Rep. John Conyers introduced a bill that would allow inspectors general to subpoena contractors, contractor employees and former agency employees to give testimony by deposition as part of IG investigations into alleged wrongdoing. The proposed legislation is already drawing both positive and negative reactions. The bill is intended to avoid IG investigations that were hindered by witnesses simply resigning their positions to avoid being interviewed and subpoena power if it interferes with national security, federal or state criminal prosecution or civil litigation.

SBA is Reviewing Size Standards

The Small Business Administration is proposing to increase the small business size standards for certain industries in three North American Industry Classification System (NAICS) sectors including Accommodation and Food Services, Retail Trade and Other Services. The SBA said the recent moves are part of a two year effort to update the size standards that are used to determine eligibility for federal small business programs in response to numerous comments claiming the size standards, last reviewed in the 70s, have not kept up with changes in the economy and the federal marketplace. SBA said the more gradual approach rather than a one time review will allow for greater manageability. Currently SBA's standards consist of 45 size levels covering 1,141 NAICS industries and 17 sub-industry activities where 32 size levels are based on average annual receipts, eight are based on number of employees and five are based on other measures (*Fed. Reg. 53913*).

SBA Issues Final Rule on Definition of Employee for HUBZone Firms

The Small Business Administration issued a final rule modifying the definition of employee for purposes of determining whether a small business may participate in the Historically Underutilized Business Zone (HUBZone) contracting program. The rule (1) deletes full-time equivalency requirements (2) specifically allows HUBZone firms to count leased or temporary employees or employees obtained through a temporary agency, professional employee organization arrangement or union agreement to count as employees (3) explains that volunteers are not employees (4) defines volunteers as those persons receiving no compensation but (5) separately addresses a deferred compensation section for individuals who own all of part of the firm but receive no compensation for work performed. Under the HUBZone program a firm located in an area of economic distress is entitled to receive HUBZone set-aside contracts and receive a 10 percent price evaluation preference if 35 percent of the firm's employees reside in that HUBZone area. Before the rule change only employees who were employed on a full time permanent basis (or full time equivalent) could be counted toward the 35 percent figure.

CASES/DECISIONS

Awardee Relationship with Incumbent Does Not Create an OCI

(*Editor's Note. The following shows the advantage of teaming with former incumbents while making sure that potential conflicts of interests are adequately addressed.*)

In its small business set-aside solicitation for a range of operational and administrative activities, ITP proposed to use Wackenhut, the incumbent who was a large business, as a subcontractor where it would retain a number of Wackenhut's employees as key personnel on the contract. In its protest of the award to ITP, PAI asserted (1) the government improperly handled potential conflicts of interest issues due to Wackenhut's access to information as the incumbent and (2) erred by considering the corporate experience of subcontractors when it gave ITP an "excellent" rating. The Court sided with the government on both assertions. It said the government properly addressed potential OCI issues and revised the solicitation to require that offerers certify their participation in the procurement did not give rise to any OCIs. It added that any advantage Wackenhut offered ITP was the result of experience rather than having access to nonpublic information received through its special relationship. As for improperly giving credit to Wackenhut's prior performance history, the court ruled that the solicitation established a "contractor team arrangement" with subcontractors so the government could properly take Wackenhut's experience into account (*PAI Corp. v US, Fed. Cl., No. 09-04*).

Protest on Price Evaluation Method Made After Proposal Deadline is Ruled Late

(*Editor's Note. This case underscores the need to closely examine the method to be used to evaluate proposals early on to allow for timely protests.*)

In the RFP to establish a $400 Million blanket purchase agreement for IT support, Lockheed was selected based on its lower price and Unisys protested asserting the government improperly focused only on percentage discounts rather than its more favorable pricing. Lockheed asserted the protest was untimely stating prior cases required challenges to the terms of a solicitation must be made before the closing date of receipt of proposals. Unisys countered stating though it understood the agency would compare price discounts, it nonetheless believed that a comparison of bottom-line prices would be conducted and it did not protest before submitting its quotes because it was confident its more favorable price would "carry the day." The court ruled against Unisys saying the alleged error of evaluating discount prices was clear before the deadline for receipt of proposals and hence it had waived its right to protest the agency's price evaluation methods (*Unisys Corp. US, Fed. Cl. No. 09-271(C)*.

Board Denies Anti-Assignment Act Violation

(Editor's Note. The following case illustrates the potential problems of having subcontractor or teaming partners perform certain administration tasks.)

GH held the contract and designated an employee from its subcontractor AB to be the job representative or project superintendent. The contracting officer said it was understood that a GH employee would be in charge of all communications, progress meetings and change order negotiations while GH said it had authorized the AB rep on its behalf and the president of GH controlled and directed the AB rep. The government asserted that AB's involvement violated the Anti-Assignment Act which provides that no contract can be transferred by the party to whom that contract was given where AB was the real contractor and GH had "zero control and little involvement." The Board disagreed saying the act does not prohibit a government contractor from forming joint ventures or partnerships to perform a contract. It credited GH's statement it had a close teaming and subcontractor relationship with AB on the project that was not forbidden and that AB had limited authority to act on GH's behalf where GH performed significant contract work and its president oversaw contractor performance including actions involving time and money (*General Heat and Air Conditioning Inc vs. GSC, CBCA, No. 1242*).

Follow-Up…

Court Affirms Costs Without Government Benefit are Unallocable

The US Court of Appeals affirmed the Court of Federal Claims decision that Teknowledge Corp. failed to show a connection between software development costs and a government contract. Teknowldege developed TekPortal software, a customer information tool for the finance industry intended for use by both commercial and government customers. However the government never purchased the software. The company amortized costs related to developing the software in its overhead pool where 31 percent was allocated to the government contract. The government held the costs were not allocable under FAR 31.201-4 and found the costs were not necessary to the overall operation of Teknowledge's

business. Teknowledge argued (1) the lower court erred in requiring proof of a concrete, present benefit to the government where potential benefits could be sufficient to allocate the costs to the contract (2) since the costs were "indirect" they were not subject to disallowance under FAR 31.201-4 and (3) the costs indirectly benefited the government and was necessary for Teknowledge's overall business. The Court disagreed stating that under the *Boeing No. Am.* Case, the contractor had to show a "nexus" between its costs and its government work where there was no such nexus here. Further, there were no underlying government contracts that were related to the software that would allow these costs to be properly allocated as indirect costs. Finally, the court held that because the costs resulted from work done in anticipation of acquiring government purchase orders and contracts, any benefit to the government from the software development would be "remote and insubstantial" (*Teknowledge Corp. v US Fed. Cir No. 2009-5053*)

Court Denies Petition to Hear Tecom Case

The US Court of Apeals for the Federal Circuit denied the petition to rehear the *Geren V Tecon Inc. case 566 F.ed 1037*. The Tecon case created what commentators have called the "untenable test" where costs incurred in the defense of an employment discrimination suit settled before trial are unallowable unless the contractor can prove the allegations against it had "very little likelihood of success on the merits." As we reported earlier the case extends the provisions that only settlements of false claims, false statements, fraud or other misconduct against the US would be subject to this test. Commentators say now the Tecom case penalizes a contractor that has made a prudent business decision to avoid costly litigation to settle private lawsuits where now the allowability of such costs will be made against the "little likelihood of success" test to be made by contracting officers who have little experience in determining such merits. Now government contractors will be effectively forced to take the expensive and uncertain litigation route in hopes of obtaining a successful result to recover its legal costs.

SMALL/NEW CONTRACTORS

Guidance on What is an Accounting Change

Whether an alteration in accounting is considered to be an accounting change requiring notification and possible cost impact analyses is a pressing concern. Sometimes contractors are reluctant to make the change even though it is not an accounting change while others make the change not realizing they are making one. In our consulting work we commonly help clients evaluate whether the number and nature of indirect cost rates best match their changing pricing objectives where we may recommend either the adoption or elimination of an indirect rate or more commonly, we may recommend altering what elements of costs are included in the cost pools, deleting or adding some elements or transferring others out of one pool into another.. One of the first questions that arise is has an accounting change occurred and if so, how do we disclose the changes to the government.

Though a comprehensive understanding of what is an accounting practice and what is considered to be a change must await a more detailed treatment in the future, we thought we would briefly address some of the accounting change rules that commonly arise in addressing the consulting issues described above. The Cost Accounting Standards, DCAA Contract Audit Manual, several texts and guidance issued by the Director, Defense Procurement in 2002 provide excellent guidelines on this issue.

In summary form, ACOs and auditors are told that the following should be used to determine whether a change has occurred: an accounting change occurs when there is a change in the method or technique for determining (a) whether a cost is direct or indirectly allocated (b) the composition of the cost pools (c) the selection of the allocation base or (d) the composition of the allocation base.

- **Direct vs. Indirect**

Specific identification of a cost to a final cost objective or to a business segment is a direct allocation method. Accumulating a cost in a specified indirect pool or home office pool for purposes of allocating to multiple cost objectives or segments is an indirect allocation method. Be aware that determinations of whether there is a change are commonly determined by the company's established practices – if a given cost is treated only as direct or indirect then an alteration would be considered a change; however, if the disclosed practices specify that similar costs incurred under dissimilar circumstances may be treated as both direct and indirect then an accounting change would not have occurred.

- Determining the composition of cost pools

(Editor's Note. Though we have expressed doubt in the past whether changes in the composition of costs within cost pools are accounting changes, a review of the material for this article has convinced us that many, but not all such changes do represent accounting changes.)

Functions and activities. Indirect cost pools are composed of "activities" and "functions" where the latter is defined as "an activity or group of activities that are identifiable in scope and have a purpose or end to be accomplished." A change to the composition of a cost pool occurs when a contractor changes the functions or activities that compose the indirect cost pool.

Combining indirect cost pools. When two or more pools are combined, there is a change in the composition if the functions or activities of the previously separate pool(s) are not generally the same as the functions or activities of the new combined pool.

Dividing indirect cost pools. When a company divides a single indirect cost pool into two or more pools, a change occurs in pool composition because the functions and activities in the divided pool(s) are not generally the same as the functions and activities of the former single pool. For example, an accounting change has occurred when a single overhead pool includes two functions, building maintenance and security and then divides the single overhead pool into two separate cost pools consisting of maintenance and security functions.

Transfer of functions. A transfer of a function or activity from one pool to another is not considered a change in pool composition if the transferring pool (i.e. the pool from which the function or activity is transferred) receives an allocable cost of the function or activity from the receiving pool. Otherwise, the transfer represents a change for the transferring pool. If the receiving pool contained that function or activity prior to the transfer then a change has not occurred.

The DOD guidance provides an example where the engineering overhead pool contains a production engineering supervision function while its production overhead pool does not. If the production engineering function is moved from the engineering overhead pool to the production pool a change to both pools has occurred because the engineering overhead pool no longer contains the supervision costs while the production overhead pool now contains the supervision costs.

Variations in costs. Costs that are associated with a function of a pool may vary, even significantly, from one point in time to another. These variations do not result in an accounting change as long as the defined pool functions do not change. For example, if a contractor buys a building and the maintenance costs fall within the defined building maintenance function of the pool the increase in size of the pool does not affect its composition and hence no change has occurred.

- Determining the selection of the allocation base

The selection of the allocation base refers to the base measure (e.g. direct labor dollars, direct labor hours, direct material costs, total cost input or a resource consumption measure like computer usage or square footage). A change in the selection of the allocation base is a change in accounting practice.

- **Determining the composition of the allocation base**

A change in the composition of the allocation base occurs when (a) a change in the elements of the base or (b) a change in the activities that are included in the base. However, a volume change in the base (e.g. addition or deletion of a contract or a business segment) does not, in itself, represent a change. The elements include not only the type of base (e.g. direct labor) but the composition of that type (e.g. direct labor dollars plus overtime premium or fringe benefits). A change in the elements making up the base is an accounting change. For example, a change from a direct labor dollar to a direct labor dollar plus overtime premium is a change in the composition of the allocation base.

Exceptions to a Change

Though a change may seem to have occurred CFR 9903.302-2 provide three categories of changes that do not qualify as a change to an accounting practice:

1. The initial adoption of an accounting practice for the first time a cost is incurred or a function is created. This exception does not apply to transfers of ongoing activities from one pool to another e.g. transferring contracts administration from G&A to overhead.

2. The partial or total elimination of a cost or the cost of a function.

3. The revision of a cost accounting practice which previously had been immaterial.

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QUESTIONS AND ANSWERS

Q. We invoice the government on our cost reimbursable contract when we receive an invoice from our subcontractors. However, many of these are long term arrangements when there is a long time between the time we issue a Purchase order and invoice them. Can we invoice the government at the time we issue a PO?

A. Maybe. The criterion for invoicing the government is when you "incur the expense." Different companies have different policies when an expense is recognized as being incurred e.g. when paid, when invoiced, when received, when ordered, etc. There is no reason you cannot change this but it is highly advised that the practices be committed to in writing as part of your policies and practices. As for recognizing the cost when a PO is issued, I would ensure that issuance of a PO does represent a bona fide obligation to pay.

Q. Our president has recently died and we are planning several company events to recognize his contributions that will likely exceed $5,000. Would this be considered an allowable employee morale expense?

A. I see nothing in the FAR and DCAA guidelines that prohibits it. You could make an argument for it being allowable and I see no grounds for imposing a penalty if it was considered to be unallowable.

Q. We offered a relocation package to a new hire almost a year ago. Because of the economy, he still hasn't sold his house, so he is renting an apartment here. The offer letter for relocation was available for 12 months. Can we extend the timing and still include these costs (when paid) as allowable as long as he doesn't exceed the total dollar limit or would DCAA question it?

A. Looking at FAR 31.205-35, Relocation costs I don't see any time limit. If there are any in the FTRs, they should not apply to you. So, if there is any time limits it would be based on your specific firm's individual written or established policies unless the contract imposed a time limit. Here, your offer letter established a 12 month limit. If you want to extend that period, you would need to amend the offer and in your notes indicate why it was extended (e.g. unusual and unexpected real estate market). A formal extension would be needed to prevent DCAA from questioning the expenditure after the 12 months. They may still attempt to question it but you would be on pretty solid grounds to challenge them by showing the amended offer letter and reasons for extending the period. Remember, have as much documentation as possible showing the extension, possibly including executive decision notes.

Q. I'm the President of a small company. I have had a Deferred Comp as a part of my compensation package but only a simple IRA for retirement. A retirement planning specialist advised me of the benefit of Defined Benefit or Defined Contribution plans where I could avoid paying taxes on the latter.

A. Both the deferred comp and defined benefit and defined contribution plans are allowable costs. However, be aware that the deferred comp and defined benefit pension plans will be included in your executive compensation amount that will be evaluated for reasonableness of compensation (the four elements of compensation are salary, bonuses, deferred comp and defined pension benefits). Interestingly, a contribution pension plan is not considered part of compensation and will be considered a fringe benefit.

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