GCA REPORT
(A publication of Government Contract Associates)

September - October 2000 Vol 6, No. 5

NEW DEVELOPMENTS

Government Proposes a Single Online Access Point for Federal Procurements; GSA Initiates E-Buy

A proposed governmentwide rule aims to create a single point of access known as FedBizOpps for government procurement opportunities. Federal agencies will have until October 1, 2001 to transition or integrate to the single access point by either posting their information to FedBizOpps or to their own websites to be accessed by the public via FedBizOpps at http://www.FedBizOpps.gov. Notices of proposed contract actions will be available in a standardized format and sellers will be able to link directly to related solicitation information. In addition, FedBizOpps will include an automatic email notification that provides information about contracting opportunities for specific supplies or services thus eliminating the need for sellers to make repeated searches. Also under the proposed rule agencies would no longer need to furnish procurement opportunities to the Commerce Business Daily but instead, agencies would direct FedBizOpps to forward information to the CBD.

In an unrelated event, beginning this fall, federal buyers will be able to request quotes and electronic submissions from contractors that are members of the on-line catalog ordering system GSA Advantage! Under the new system, called E-Buy, buying agencies and buyers will post a request for quotation for specific services and products for a designated period. Once the RFQ is posted, GSA Advantage! schedule contractors will receive an e-mail notice informing them that an RFQ has been posted and a quote is requested. Each RFQ will be assigned a category that will determine which contractors receive the request. Only GSA Advantage! contractors can submit a quote at the E-Buy site. E-mail communications will be permitted if clarification is needed. Once the RFQ is closed, buyers may then accept the quote representing the best value and issue a purchase order to the accepted contractor.

DCAA Audit Manual Update

The Defense Contract Audit Agency provides guidance to its auditors in the DCAA Contract Audit Manual. The DCAM is revised twice a year and the current update incorporates recent changes to the Federal Acquisition Regulation, Defense Federal Acquisition Regulation Supplement and audit guidance submitted since the last update. Important changes include:

Chapters 5 & 6. Compensation Reviews. The manual has been extensively revised to reflect changes to FAR 31.206-6 (Compensation for Personal Services). These include:

1. Employee compensation is considered reasonable when each element of compensation is reasonable when compared against practices of other firms. Comparable firms can include firms of the same size, same industry, same geographic area, predominately non-governmental or same as comparable services obtained from outside sources. Considerable guidance has been added to Chapter 5-808 identifying how to compare compensation using surveys and how to analyze job classifications.

2. Auditors are reminded to be on the lookout for items of costs that FAR 31.205-6 specify are unallowable, labor agreements are arrived at by "arms length" negotiations and special attention should be focused on "higher risk" individuals such as owners, executives and employees and relatives having a financial interest in the business. Additional guidance for conducting audits of such "high risk" individuals has been added to Chapter 5-803 where auditors are instructed to closely examine supplemental benefits, incentive programs (e.g. needs to be related to performance only), deferred compensation, executive severance and hints of unallowable "golden parachutes".

3. Chapter 6-413 has been expanded to discuss how "reasonableness" of compensation is to be determined (e.g. compensation in excess of 110% of survey results are unreasonable) and discussion of how offsets of certain elements of compensation in the same job classes or same grade levels should be allowed in making reasonableness determinations.

Chapter 7, Selected Areas of Cost

1. Chapter 1705 acknowledges the 1999 class deviation allowing indirect costs associated with stepped up assets to not be disallowed. Normally, asset values determined in accordance with either cost accounting standards and/or generally accepted accounting principles are included in the bases that usually include such costs (e.g. total cost input base, three factor formula used to allocate home office costs). FAR 31.203 requires the full amount of such costs to be included in the bases so as to cause the unallowable portion of such costs to absorb a portion of the overhead or G&A expenses. Under the 1999 class exemption issued by DOD for contracts and subcontracts, the indirect costs allocable to the step-up asset value will not be disallowed.

2. Chapter 7-1906.2(f) provides that bonus costs or other payments in excess of an employee's salary that are part of restructuring costs associated with a business combination are unallowable under DOD contracts funded in FY 1996 or later. The DFARS 231.205-6(f)(1) change does not apply to severance and early retirement incentive payments.

3. Section 7-2110 clarifies that administrative fees resulting from use of bank and purchase card transactions are not interest on borrowings in spite of the fact they are commonly expressed as a percentage of the transaction cost.

Chapter 12, Terminations and Claims

1. In Section 12.302, auditors are to verify the total amount payable to the contractor for a settlement before deductions and other credits exclusive of settlement costs do not exceed the contract price less payments otherwise made or to be made.

2. Section 12-507 clarifies that the role of an auditor during an alternative disputes resolution proceeding is as an advisor to the CO. The guidance tells the auditor that the ADR techniques are used as alternatives to litigation or formal administrative proceedings.

3. Section 12-802.4 directs auditors to make sure that job site/field overhead rates used in claims do not (1) include costs associated with running the business as a whole (home office overhead) and (2) include more than one allocation method for allocating job site/field overhead rates. In support of the second point, the guidance alludes to the *M.A. Mortenson* case that ruled against applying a daily field overhead rate for delays affecting the performance period and a percentage markup for changes not affecting a performance period.

4. In Section 12-805.4, auditors are told to examine the contractor's records to ascertain whether the contractor performed any replacement work during periods of claimed delay to determine whether the contractor was entitled to less overhead on their claim. The section provides lengthy examples in how to compute the amount of indirect costs due the contractor when replacement work is performed.

Chapter 14, Other Assignments

1. Section 14-106 covers DCAA's responsibilities when the subcontractor denies the prime contractor access to its records.

2. Section 14-116 provides detailed guidance on how to calculate the adjusted price of a contract when defective cost or pricing data has caused an increase in the contract price.

3. Section 14.305 provides additional guidance on conducting financial capability audits at non-major contractors. If a financial capability review was not conducted during either a preaward survey or a progress payment review auditors are instructed to perform a financial capability risk assessment during the first field visit of the next fiscal year where financial data will be gathered and analyzed using various analytical techniques. If the contractor does not prepare a cashflow forecast as part of its normal financial planning auditors are to request one and if one is not provided, the auditor may cite a major contractor for poor financial management and budgetary controls and may issue an unfavorable or adverse audit opinion on a non-major contractor's financial capability if other financial information (e.g. poor financial ratios, aging of accounts payable, lines of credit) indicate the contractor is experiencing financial distress.

FAR Council Seeks to Clarify Definition of Commercial Item

The FAR Council has proposed to "clarify" some confusing elements of the current definition of a "commercial item". The change to FAR 2.101 would (1) define the term "purposes other than government purposes" when seeking to define "commercial" to mean purposes that are not government unique (2) clarify that services ancillary to a commercial item – such as installation, maintenance, repair, training, other support – are considered commercial services regardless of whether they are provided by the same vendor or at the same time (3) define *catalog* price as a price included in a catalog, price list, schedule or other form regularly maintained by the vendor, is either published or

otherwise available for inspection by customers and states prices at which sales are currently made to a significant number of buyers constituting the general public and (4) define *market* prices as current prices that are established in the course of ordinary trade between buyers and sellers free to bargain and than can be substantiated through competition or sources independent of the offerors. The proposal follows the FY 1999 National Defense Authorization Act mandate to make such a clarification.

DOD Says Historical Data Is Needed for Pricing Sole Source Commercial Items

Director of Defense Procurement Deidre Lee recently issued a memorandum instructing officials to obtain historical pricing information from contractors who are proposing a commercial item exception to requirements to submit cost or pricing data under a sole source acquisition. The memo states this additional information should be requested only in circumstances where the CO cannot obtain information either within the government or from other sources to determine whether the proposed price is reasonable.

Though contractors usually provide either cost or pricing data or other than cost of pricing data for sole source buys they may want to avoid such requirements when they claim their offered product or service is a commercial item. The memo is a result of a GAO report stating DOD should clarify circumstances when it is appropriate to seek historical data under a sole-source commercial item procurement according to FAR 52.215-20, Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data.

FAC 97-19 Issued

The most recent Federal Acquisition Circular finalizes several proposed and interim rules. Significant rules include:

1. *Limits on Contract Bundling.* The final rule implements the Small Business Reauthorization Act of 1997 that defines contract bundling and requires agencies to avoid unnecessary bundling that may preclude small businesses from bidding on government contracts. Bundling is the consolidation of two or more procurement requirements into a single contract solicitation that would result in small businesses being unlikely to compete because of the diversity, size, dollar value and/or geographic diffusion of the work. Agencies must (1) conduct market research when bundling is anticipated (2) justify planned bundling (3) assess its impact on small businesses and (4) include a source selection factor for offerors' proposed use of small businesses as subcontractors. The rule also authorizes two or more small businesses to form a contract team and still get credit for being a small business.

2. *Applicability of SCA from Certain Commercial Item Acquisitions.* A final rule eliminates the McNamara-O'Hara Service Contract Act (SCA) from the list of laws that are inapplicable to subcontractors for commercial items. When implementing the Federal Acquisition Streamlining Act of 1994 that required the FAR council to include in the FAR a list of laws inapplicable to commercial items, the FAR Council included the SCA. Since doing so, the FAR Council has been concerned that some businesses (mostly government contractors) subject to the SCA would be competing against others not so covered resulting in competition under different rules. The FAR Council, in consultation with the Department of Labor, decided to eliminate the SCA where the DOL will propose to amend its regulations to delineate several services that will be exempt from the SCA.

3. *Deferred Research and Development.* The final rule clarifies that costs incurred that are in excess of either a contract price or amount of a grant for research and development are unallowable under any other government contract.

4. *Use of NAIC rather than SIC system.* An interim rule seeks to convert the size standards and other references from the Standard Industrial Classification system to the more relevant descriptions of U.S. industries of the North American Industry Classification.

5. *Changes to T&M and Labor Hour Contracts.* The final rule amends the "Changes" clause applicable to time and material and labor hour contracts (FAR 52.243-3) to make that clause consistent with policies pertaining to service contracts found at Alternative ll of the "Changes" clause for fixed-price contracts (FAR 52.243-3). The change was made because most T&M and labor hour contracts are for service contracts.

DOD Proposes to Revise Profit Guidelines

The Department of Defense is proposing a significant change to its policy of profit objectives appearing in the DFARS Part 215.4. The change would gradually eliminate facilities investment as a factor in setting profit objectives for negotiated contracts to meet "new economy" realities that minimize hard asset investments

and would seek to reward contractor performance risk and cost efficiency. The proposal would: (1) reverse a 1987 decision and return general and administrative (G&A) expenses to the cost base used to establish profit objectives (2) reduce the values assigned to facilities and equipment investment by 50 percent to a gradual goal of 0 percent (3) increase the values for performance risk by 1 percent and decrease the values for contract type risk by half a percentage point and (4) add a special "cost efficiency" factor if cost reduction efforts can be demonstrated which can increase the pre-negotiation profit objective by up to 4% of total contract cost.

BRIEFLY…

New Contract-Related Interest Rate Set for Second Half of 2000

The Treasury Secretary has set a rate of 7.25% for the period July 1 through December 31, 2000. The new rate is an increase over the 6.75% applicable in the first six months of 2000. The Secretary of the Treasury semiannually establishes an interest rate that is then applied for several government contract-related purposes. Among other things, the rates apply to (1) what a contractor must pay the government under the "Interest" clause at FAR 52.232-17 and (2) what the government must pay a contractor on either a claim decided in its favor under the Contract Disputes Act or payment delays under the Prompt Payment Act. The rate also applies to cost of money calculations under Cost Accounting Standard 414 and FAR 31.205-10.

CO to Unilaterally Decide on Final Voucher for Completed Contracts

A proposed FAR rule will explicitly give the CO the right to determine unilaterally the final contract payment amount when the contractor does not submit the final invoice or voucher within the time specified in the contract (normally 120 days after settlement of final indirect cost rates). DOD finds the main reasons old contracts are not closed is because contractors fail to submit their final voucher. Under the proposal, which will revise FAR 42.705, Final Indirect Cost Rates, the CO will issue a unilateral modification reflecting their determination of the amounts due under a completed contract and the decision will not be subject to the right of appeal under the Contract Disputes Act.

DOD Requires Use of Purchase Cards for Micropurchases

A final rule to the Defense Federal Acquisition Regulation Supplement amends DFARS Parts 208, 213, 214, 215, 232 and 252 to require that commercial purchase cards be used for micropurchases (at or under $2,500). Commercial purchase cards used by the government are similar to commercial credit cards and the rule implements a policy issued by DOD in 1998.

Proposal to Increase TINA Threshold 10 Percent

The Federal Acquisition Regulatory Council has proposed raising the threshold for the Truth in Negotiations Act from the current $500,000 level to $550,000. The threshold is the point at which a contractor must certify the cost or pricing data it submits for pricing government contracts is accurate, current and complete. Because numerous industry groups have cited TINA requirements as significant impediments to doing business with the government a DOD study group called for $1 million threshold after lowering it from $10 million but both suggestions were rejected by various DOD agencies.

Contract Pricing Guides Now Available

In a memo to DOD agency directors, it was announced that the Contract Pricing Reference Guides cited in FAR 15.404-1(a)(7) are now available in Hypertext Markup Language (HTML) at http://www.acq.osd.mil/dp/cpf. Contractors and agencies had complained the guides, previously available only as PDF files, were difficult to access and use.

DOD Proposes to Make MMAS Reviews More Risk-Based

The Defense Department proposed moving to a more flexible, risk-based approach to conducting contractors' material management and accounting system (MMAS) reviews. The government's current MMAS reviews are quite detailed and time consuming and DOD wants to (1) eliminate an automatic every-three-year requirement to conduct a review to one based on a case-by-case need (2) raise the minimum dollar threshold for MMAS reviews from $30 million to $40 million and (3) eliminate the requirement a contractor demonstrates its material management and accounting system and replace it with a requirement to have policies, procedures and operating instructions that provide evidence of sound internal controls.

CASES/DECISIONS

Successful Protest Does Not Guarantee Award

(Editor's Note. The following indicates that a successful protest does not necessarily result in winning a contract award.)

Two contractors were considered technically capable and in spite of a higher cost proposal, the Forest Service awarded a contract to SRI on a best value basis. The protester argued that SRI had not complied with the solicitation requirements to identify key personnel and prevailed. Though the Court ordered the contract not be awarded to SRI it declined to order the award be made to the successful protester in spite of it being the only other technically qualified offeror. The Court said such a directive would "infringe on the agency's right to decide to make a contract" and said if the agency did not award the contract to the successful protester it must either amend the solicitation to inform offerors who were in the competitive range it had relaxed its solicitation requirements or resolicit the contract and only consider those bids that were technically compliant (Mangi Environmental Group Inc. v. United States Fed. Cl. No. 00-29C).

Courts Again Apply "No Benefit to the Government" Rationale to Disallow Costs

During the period 1982 through 1992 the contractor was found guilty of criminal violations on three occasions and incurred a civil False Claims Act liability on a fourth occasion. Four shareholders brought a suit against several of the contractor's directors alleging they had breached their fiduciary responsibilities and had engaged in a "wrongful course of conduct" on federal contracts. A settlement was reached without a finding of wrongdoing where the contractor was to pay the legal fees and expenses of its shareholders and directors. When the contractor included $4.8 million of these fees in its overhead pool the government disallowed them asserting (1) they were unreasonable under FAR 31.203-5 and (2) they were similar to costs disallowed by FAR 31.205-15, Fines and Penalties and FAR 31.205-47 Legal Proceedings. The contractor asserted they were necessary professional service costs under FAR 31.205-33 and were allocable to government contracts under FAR 31.201 that made costs incurred for the business as a whole allocable to federal contracts. The Board ruled for the government claiming (1) "the government should not pay for wrongdoing, the defense of wrongdoing or the results of wrongdoing by contractors" and (2) the cost were not allocable to government contracts citing *Caldera V Northrup Worldwide Aircraft Services* that ruled there was "no benefit" to the government in a contractor's "defense of a third party lawsuit in which the contractor's prior violation of federal laws and regulations were an integral part of the allegations." (Boeing North American, Inc., ASBCA 49994).

(Editor's Note. The above case has generated considerable criticism from the legal community and we are seeing the "no benefit" rationale more frequently used by auditors to question numerous costs in areas unrelated to legal costs. Much of the criticism we have encountered was leveled at both the Northrup case cited in the decision and the Boeing case where the courts are taking a basic cost accounting concept of "benefit" (whether a cost benefits a cost objective) and turning it into an issue for lawyers (whether the costs benefit the government). They are saying that the Boeing case went further than the Northrup case because in the later the Court ruled the costs did not benefit the government and hence were not allocable to government contracts because a state court ruled against Northrup while in Boeing no such conviction was made in the settlement of the shareholder case. The criticism, confirmed by recent audit reports we have encountered, is that the government will be free to argue against reimbursing any cost that it subjectively believes does not "benefit the government" whether or not it applies to a contractor who did not break a law.)

Must Follow Evaluation Method Expressed in the RFQ

The Navy sought a Federal Supply Schedule contract for financial services where the Request for Quote stated the award would be made on a best value basis where the evaluation criteria would be, in descending order, "past performance, personnel and cost." Vendors were also informed the Navy would follow the General Service Administration's new FSS procedures that required, in part, the order be placed with the schedule contractor representing the lowest overall cost to the Government. Though CPI had extensive experience and a trained staff ready to do the work and the evaluator expressed reservations on Tessada's past performance and personnel, both offerors were considered technically acceptable and the award was given to Tessada who submitted the lowest price quote. CPI protested the award arguing the RFQ stated technical merit was more important than price and that the Navy ignored CPI's material advantages; the Navy responded that a cost/technical tradeoff was not required since the GSA's new FSS ordering procedures required the award be based on lowest cost. The Comp. Gen. ruled for CPI stating that when an agency decides to conduct a competition,

it cannot announce one basis for award and then make the award on a different one. Under the RFQ, if one vendor offered superior technical merit and another low price then a cost/technical tradeoff was required. The FSS procedures did not change this because the GSA procedures stated proposals should be evaluated against factors identified in the solicitation (Computer Products, Inc. Comp. Gen. Dec. B-284702).

Past Performance Information Older than 3 Years Can be Considered

The RFP asked offerors to submit references about prior contracts that shed light on quality of past performance under a negotiated procurement. Two of the contracts identified had been completed more than three years prior to the time of the RFP and poor performance on these contracts had a decided impact on not being awarded the contract. The contractor protested stating that FAR Part 42.1503(a) had been violated because past performance older than three years had been considered. The government stated consideration of the older contracts was justified by FAR 15.305 that covers government negotiated procurements because it states past performance information that is relevant and "current" can be considered where there is no time limit stated. The Court said that there was a conflict between the two FAR provisions and that the Navy complied with FAR 15 which had no "blanket prohibition" against considering past performance older than three years and hence reliance on that information was not invalid simply because some of the referenced contracts had been completed 3-5 years earlier (Oregon Iron Works, Inc. Comp. Gen. Dec. b-284088.2).

Entitled to Price Adjustment Even if Contract Not Delayed

(Editor's Note. The following demonstrates that a contractor is entitled to a price adjustment even it its contract was not delayed by government action.)

The appeals court ruled that the standard changes clause provides for an equitable adjustment if any change "causes an increase or decrease in the contractor's cost of, or the time required for, the performance of any part of the work under this contract, whether or not changed." The Court ruled the Navy's failure to follow an installation schedule was a constructive change and hence any increased cost flowing directly from that change is to be compensated whether or not completion of the contract was delayed (Sauer Inc. v. Secretary of the Navy, Fed Cir. No. 99-1206).

Defense Legal Costs Allowable When Employee, Not Contractor, Is Convicted

Under an Army contract for support services a contractor employee was charged and convicted after a long investigation of fraudulent use of credit cards and recording false data. The contractor's bylaws require it to pay legal costs of employees if a lawsuit is related to their employment. The contractor submitted legal costs related to the investigation of $756,000 and the Army rejected them claiming both the Major Fraud Act and FAR 31.205-47(b) disallows costs incurred in connection with an investigation brought by the federal government in connection with a civil, criminal or administrative proceeding if the result is a conviction. The Contractor argued the regulations bars recovery of legal defense only if the *corporation* is convicted. The Appeals board agreed with the contractor stating recovery of legal fees is not barred unless the contractor itself is convicted ruling the Major Fraud Act and FAR cost principle did not intend for a corporation to be criminally responsible for the wrongdoing of its employees (Dyncorp, ASBCA No. 48714).

NEW/SMALL CONTRACTORS

The Five Acquisition Vehicles

Whether you are considering a solicitation from the government or prime contractor or you are procuring a subcontract for your firm, we frequently encounter numerous errors of mixing aspects of one type of contract with another that can adversely affect bidders. For example, techniques for negotiated procurements might be mistakenly included in commercial item purchases, set aside procedures may be incorrectly used for federal supply schedule purchases and high levels of competition requirements included in purchases using simplified acquisition procedures. We thought it would be a good idea to present some of the basics for a general understanding of the five major types of acquisitions since we recently came across an interesting article by Bob Welch and Ann Costello of Acquisition Solutions, Inc. in the August issue of Contract Management addressing this topic.

Whereas the type of acquisitions used to be mainly sealed bid and negotiated contracts, recent efforts to reform buying activities have resulted in basically five acquisition vehicles that have their own distinct

requirements and authority in the FAR that should not be confused with each other.

1. *Sealed Bidding (Invitation for Bids).* FAR Part 14. Sealed bidding is a method of contracting for supplies or services that use competitive bids and public opening of bids. Its use is most common when the award will be made on price or price-related factors, when there is an expectation of receiving more than one bid and discussions will not be necessary. Contracts are either firm fixed-price or fixed-price with economic price adjustments and evaluation of cost or pricing data is prohibited.

Variations include two-step sealed bidding where there often is a combination of competitive procedures such as a technical evaluation in step one followed by a price evaluation. The two step procedure might be used in lieu of a negotiated procurement when the available specifications are not definite or complete requiring technical evaluation and discussion to ensure a mutual understanding is reached.

2. *Contracting by Negotiation.* FAR Part 15. Contracting by negotiation usually follows issuance of a request for proposal and is used when other contracting vehicles are inappropriate. This is used for best value selections and better pricing over initial offers is expected. It may be used for a single contract or multiple awards. All types of contracts may be used such as fixed price, time and material/labor hour and cost type contracts. Evaluation of cost or pricing data or other than cost or pricing data is most common under this type of acquisition.

3. *Simplified Acquisition Procedures.* FAR 13. Simplified acquisition procedures are used when projected costs are expected to be below the simplified acquisition threshold, generally under $100,000. SAPs over $2,500 that are under the threshold are set aside for small businesses and generally use streamlined approaches authorized by FAR 13. These include emphasis on electronic commerce, oral solicitations under certain circumstances, do not require evaluation subfactors or statements of relative importance (e.g. past performance, technical proficiency, price, etc.), allows innovative evaluation schemes, renders certain laws and regulations inapplicable and lessens documentation requirements (e.g. note to file summarizing telephone quotes are sufficient to demonstrate adequate competition). Numerous contract forms are used including purchase card buys, purchase orders, electronic purchasing and blanket purchase agreements

Variations include (1) micropurchases ($2,500 or less) can be awarded without soliciting competitive bids and purchase credit cards for payment are now required and (2) use of simplified procedures are authorized for purchases of supplies and services expected not to exceed $5,000,000 (including options) if the contracting officer expects the items to be purchased will be commercial items.

4. *Multiple-Award Delivery Order and Task Order Acquisitions.* FAR Part 16.5. Purchases are made through either a government-wide agency contract (GWAC) which are also known as government-wide acquisition contracts (MACs) or multi-agency contracts. Both contracts are an existing contract vehicle offering a large and varied selection of products, services and contractors where there is usually multiple contractors whose products and services are ordered following a competitive process. The competition often involves best value procurements where past performance is often weighted quite heavily. Abuses of lack of competition in awarding task orders has been stressed lately. The only difference we can ascertain are that GWACs are authorized under either the General Services Administration (GSA) or Office of Management and Budget (OMB) whereas the multiagency contracts are authorized only by the OMB and require an Economy Act determination for a government activity to place an order. The original contract may require cost or pricing data, other than price or costing data or may use competitive pricing schemes to establish hourly billing rates or fixed unit prices for all tasks ordered. It is not uncommon, however, to encounter different type of contracts for individual orders under one contract where some task orders may be fixed price, others time and material and still others cost type.

5. *Federal Supply Service (FSS) Multiple Award Schedule (MAS) Acquisitions.* FAR Party 8. Authorized by the GSA, the FSS MAS program provides a suite of existing contracts that currently exceed 6,000 vendors providing over 4 million commercial products and services via simplified and streamlined catalog-like ordering processes. There are four variations: Ordering (1) products under FSS MAS contracts (2) services under FSS MAS contracts and establishing (3) MAS basic purchasing agreements for products and (4) for services. Though too detailed to get into here, each variation may require different steps and the guidance is widely dispersed (GSA recently published a manual entitled *Multiple Award Schedules: Owners Manual* which is electronically available at www.fss.gsa.gov.) For example, MAS BPAs may be ordered when an agency determines there are products or services that are on

GCA REPORT
P.O. Box 1235
Alamo, CA 94507

an FSS contract and instead of conducting a competition for each service, a one time competition is held and no further competition need be applied for ordering. However, for non-prepriced professional services, a competition at the task order level is usually required to establish that the mix of prices proposed for the task is reasonable.

The jury is still out on whether the creation of these five distinct acquisition vehicles are in everyone's best interest. It is still quite common for both government and contractor personnel to apply what they are used to where they take one rule from here and another from there resulting in a confusing acquisition. These five acquisitions are compartmentalized. For example, FAR 15 rules covering negotiated procurements or FAR 19 small business rules should not apply to FAR Part 8 FSS MAS orders or FAR Part 6 full and open competition rules do not apply to less rigorous simplified acquisition procedures.

QUESTIONS & ANSWERS

Q. Our salaried employees frequently work overtime especially during busy periods and we want to establish a policy of allowing employees who work over 45 hours in a week to "bank" credit hours to be taken during slower periods when they want to work less than 35 hours. How do we account for this?

A. A couple of our clients reflect total hours worked on their time sheets and charge the jobs/indirect functions at their normal hourly rate and book the "comp" time to a separate account (e.g. comp time over 45 hours). This account should be credited to the overhead pool – that is reduce the overhead pool by the comp hours multiplied by the hourly rate. When the comp credit hours are taken, another account is charged (e.g. Comp Time Taken) and the balance is added to the overhead pool. Alternatively, the first account can be used for both banking and using credit time by crediting or debiting it and the balance reflected in the overhead pool.

When these comp hours are not significant our experience is that government auditors usually accept the practice. If they become significant, then the auditors are more likely to question the practice if they suspect government contracts get heavily charged for the direct non-credit hours while the excess hours get credited to an overhead pool charged to all contracts. In this case, you may want to consider a different method (e.g. calculate a quarterly or annual average hourly rate taking into account the comp hours credited and debited).

Q. We are a Subchapter S corporation and want to wait until the end of the year to pay our principles to conserve expenditures. We are working on two cost type contracts where the principles are charged at quite a high billing rate. If we are not paying them can the invoices be rejected for not reflecting actual costs?

A. If the billed rates reflect their actual salaries then the fact you are waiting to actually pay them should not result in problems with the invoices. If at the end of the period when you submit your incurred cost proposal and it is audited, if the salaries were not paid or compensation to the principles look like a "distribution of profits" rather than salaries, you are likely in for a fight. If you are not paying the principles, make sure you establish a liability for their salaries during the year.

Subscription: $125 for one year, $225 for two years.