GCA REPORT
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OPEN LETTER TO DCAA…

(*Editor's Note. As we reported last issue and continue here, the General Accountability Office issued a highly publicized critical report on the Defense Contract Audit Agency asserting, in part, its supervisors" intimated, harassed and threatened" its auditors to alter audits in favor of contractors. We are very concerned that it will become extremely difficult (in fact, we are now seeing it in our consulting practice) for contractors and DCAA management to resolve audit issues once they have been put forth by auditors. This open letter to the Director of DCAA, April Stephenson, is the first time in our 14 year history we have put forth an editorial-like position.*)

Dear Ms. Stephenson:

I am writing to you as Publisher of the GCA REPORT and GCA DIGEST to express my concern that the normally good relationship between DCAA and the contractor community may be deteriorating as a result of the recent GAO report. We do not presume to take a position on the GAO assertions about the practices of the Southern California offices addressed in the report but rather want to bring your attention to what I fear may be a destructive aftermath of the report.

I am a former DCAA auditor and supervisor where I have also been CFO, controller and government compliance director for government contractors and consultant with both a large "Big 6" firm and a firm I started. In those positions I have come to respect and appreciate the unique relationship between DCAA and contractors and the internal workings of DCAA. In the past, DCAA put forth its audit opinion and if the contractor disagreed, was able to obtain a fair hearing by a normally informed ACO or CO where differences were usually ironed out. Similarly within DCAA, the auditor, who may have been relatively inexperienced, could take an aggressive approach in finding "questioned costs" (I was certainly one of them) and the contracting community could depend on the more experienced supervisors or branch manager to modify the original opinion to reach a reasonable position. If a faulty audit report fell through the cracks we almost always were able to take up the issue with the supervisor and even the branch manager to reach a fair conclusion both before and even after the audit report was issued. The system worked well where there could be a healthy exchange of ideas between reasonable people resulting in a mutually acceptable conclusion.

Two events, one gradual and one sudden, have occurred to undermine this cooperative process. First, ACOs and COs have gradually come to rely almost solely on DCAA's audit reports for their final position on cost accounting matters. Whether the causes are staff shortages (cost and price analysts are hard to find these days), increased workload or retirement of the most experienced the end result is the DCAA audit report has become the default ACO position rather than the starting point to reach a mutually acceptable result. The increased inability to appeal to the ACO has made resolution of issues at the DCAA level more important than ever. However, in the aftermath of the GAO report such resolution between the government and contractor is becoming more difficult. Though recent DCAA guidelines emphasize the need to "document" disagreements and work more effectively to get it right before a report is issued, in practice, fear of being perceived as reversing an audit opinion in favor of a contractor has made it very difficult to obtain a fair hearing from DCAA management once an audit position is put forth. In at least two recent occasions our request for reconsideration of an initial audit opinion, which was clearly questionable, was rejected out of hand where our position paper was simply sent to the ACO with no meeting or exchange of ideas. I have contacted several other consultants and attorneys who are in the "trenches" and received, with no exceptions, similar responses. One audit supervisor we know well has informally told me that it is far better for them to accept the audit position once the auditor surfaces an issue, even if it may be questionable, than to risk being perceived as inappropriately changing an opinion.

I certainly sympathize with your need to be responsive to the GAO assertions and can even understand an inclination to err on the side of caution. However, that excess caution not only can but I fear is beginning to undermine the long time process of effectively resolving audit opinions so that the government and contracting community can reach mutually acceptable results. We

respectfully ask you to ensure that the healthy give and take of ideas expressed once an initial audit position is taken be maintained. In spite of lots of internal controls within DCAA to prevent it the fact of life is that some audit opinions are faulty where supervisors and branch managers do not become aware of errors until the contractor brings it to their attention. DCAA can keep putting forth guidance but as long as management is fearful of being perceived as overruling subordinate auditors (no matter how erroneous the audit position is) or "caving" into contractors the healthy process of resolving audit issues in a reasonable manner will diminish. Erosion of this healthy give and take will be disastrous to the acquisition process. We have heard from a few contractors that they are on the verge of ending their relationship with the government because they feel there is no way to appeal what they consider to be an unfair audit opinion. The ability of contractors and auditors to come together and resolve their differences is critical to the acquisition process. Let me stress it is in your power to ensure this process continues and so I urge you to do so.

Respectfully, William Lennett, Publisher

NEW DEVELPMENTS

FAR Council Issues New FAR Changes

The FAR Council is amending the Federal Acquisition Regulation. The following are particularly relevant to our readers:

Several measures were added to the FAR to enhance competition for task and delivery order contracts. The requirements for increased competition for task and delivery orders valued at more than $5 million placed against a multiple award contact requires all awardees be given a fair chance to be considered for each order. All awardees are to be provided, at a minimum, a reasonable notice of the order with a clear statement of requirements, a reasonable response period, disclosure of significant evaluation factors and subfactors and where award is on a best value basis a statement documenting the basis for award and relative importance of quality, price or cost factors. Also, offerors are to be provided an opportunity for a post award debriefing. The rule also authorizes protests alleging the order increased the scope, period or maximum value of the contract under which the order is issued. Protests are also authorized as a matter of right for orders in excess of $10 Million. For contracts valued at $100 Million, no such award to a single source can be made unless only a single source can reasonably perform the work, the contract is only for firm fixed price orders and only one source is qualified and capable of performing the work at a reasonable price or it is in the public's interest to award a single source.

The FAR Council also issued an interim rule to revise the contract clauses related to the administration of the Cost Accounting Standards to maintain consistency between the FAR and CAS. The CAS applicability threshold will be the same as the threshold for compliance with the Truth in Negotiations Act (currently $650,000). Separately, the FAR Council issued a final rule to implement recent decisions to the regulations related to CAS as they pertain to contracts with foreign concerns including the United Kingdom.

In addition, the Council extended agency authority for the use of simplified acquisition procedures for commercial items in amounts greater than the $100,000 simplified acquisition threshold but not exceeding $5.5 Million or $11 Million for certain commercial items described at FAR 13.500(e) (*Fed. Reg. 53990*).

Industry Weighs in on DOD Proposals

The Acquisition Reform Working Group (ARWG), representing numerous industry groups sent comments on recent proposed DOD provisions that we have previously reported on.

1. In efforts to reduce use of cost type contracts, a proposal would require agencies to identify circumstances under which cost reimbursement contracts and task orders are appropriate, annually assess use of such contracts and measure progress toward minimizing their use. ARWG said such a plan would result in use of fixed price contracts when risk of performance has not been reduced going back to the mid-late 80's practice of forcing inappropriate use of fixed price contracts resulting in near bankruptcy of many companies.

2. In response to a proposal to notify the government of violations of federal criminal law or overpayments on all contracts above $5 Million ARWG said such mandatory reporting is "unnecessary." They say voluntary disclosure should be the centerpiece because mandatory reporting requirements are inconsistent with due process for firms and their employees.

3. In response to a proposed requirement to have the OFPP review FAR to determine if there are sufficient policies to prevent and mitigate organizational conflicts of interest and add a standard clause to contracts

ARWG opposes it saying the FAR already contains language addressing OCOI and that it properly excludes a standard contract clause. It states DOD is already investigating the need for OCI change and the proposal would prejudice such action.

4. A proposal to prohibit excessive pass through charges on contracts, subcontracts and task and delivery orders, ARWG states it would "inordinately" affect small businesses who act as primes and subcontract a lot of work, it fails to target problematic contracts and may be contrary to cost accounting standards of cost allocation issues.

5. The proposal to require additional cost and pricing information for commercial items "of a type" found in the commercial marketplace should be delayed for non-defense agencies until the DOD implements such actions as required in the 2008 defense authorization bill.

6. Proposals to have privately held contractors with large federal contracts disclose the compensation of its top executives are unnecessary since the government already has access to such information in the course of its normal audits and current laws already mitigate against concerns about executive compensation.

Committee Hears Testimony on GAO Report Slamming DCAA

A highly publicized GAO report recently stated that 14 audits by DCAA field offices in Southern California (1) failed to comply with several auditing standards (2) working papers did not support reported opinions (3) supervisors dropped findings and changed audit opinions without adequate evidence and (4) insufficient work was performed to support audit opinions and conclusions. The report also asserted that DCAA supervisors used intimidation, harassment and threats to get their employees to alter audits in favor of contractors.

In his summary of the GAO report in testimony to a September 10 Senate Committee hearing on the report, Gregory Kutz of the GAO said DCAA took "short cuts" due to pressure from the contracting community and buying commands for favorable opinions to expedite negotiations and from DCAA management to meet performance metrics, report favorable opinions to reduce future audit work and allow contractors to have direct billing authority. Kutz stated that two supervisory auditors told him that contracting officers told them to issue reports within 20 days with whatever information they had at the time and not to qualify the report with audit scope limitations so the quality of the audits suffered. Sen. Joseph Leiberman stated one of the reasons for DCAA issuing favorable audits to contractors is because the agency is "obsessed with speed of the process rather than accuracy of results."

DCAA Director April Stephenson also testified assuring senators that DCAA took the report "very seriously" and had taken several key actions including (1) assessing the need for additional staffing (2) determining whether appropriate metrics and benchmarks are being used (3) increasing the number of levels of management to resolve disagreement (4) termination of DCAA participation in integrated product teams (i.e. mechanisms adopted several years ago to expedite both assessment of contractor bid proposals and resolutions of outstanding issues) to allay concerns such participation compromises DCAA's independence and (5) requesting DOD office of inspector general to investigate allegations of inappropriate management actions against agency personnel. The Director stated with respect to deficient working papers and audit work the agency agreed that audit work should have been better documented and that in some cases, supervisors should have assessed the need to perform additional work. Discussions with the affected management team revealed the pressure they felt to issue reports by the due date resulted in the inappropriate decision to remove audit findings rather than take the additional steps to determine the merit of the findings. Stephenson added that audit work must be completed prior to issuing a report or in the case of constraints the report should clearly state the reasons why the report could not be completed. Moreover, supervisors and managers that change audit findings should document their decisions in the working papers.

CAS Board Proposes to Harmonize PPA with CAS

The Cost Accounting standards Board recently issued a proposed rule on the harmonization of CAS 412 and 413 with the Pension Protection Act (PPA) of 2006. The PPA amended the minimum funding requirements of contributions to pension plans under ERISA (generally resulting in higher contributions than that prescribed by CAS) which required the CAS Board to revise the two pension related standards to "harmonize" them with the PPA. The lengthy 72-page proposal is available at www.whitehouse.gov/omb/procurement/cash/2008-anprm.pdf where some noteworthy items are:

1. Change the amortization period for gains to 10 years which is down from the current CAS required 15 year period but longer than the 7-year period required under ERISA.

2. A different interest rate assumption from that used by ERISA would hold though the same actuarial methods and valuation assumptions used for ERISA and financial statement purposes would apply to government contracting.

3. For pension plans close to being fully funded that have several recurring problems, the assignable cost limitation does not apply until the actuarial value of assets equal or exceed 125 percent of the actuarial liability plus normal costs.

4. Actuarial gains that give rise to surplus assets would be amortized over 10 years to reduce the surplus in an "orderly and timely fashion."

5. A five year transition period would apply that would delay recognition of the increased costs of harmonization. The proposed phase-in of the minimum actuarial liability would also apply to segment closing adjustments.

6. The transition method would apply to all contractors covered either by CAS or FAR 31.205-6(j) (*Fed. Reg. 15261*)

Fallout From Excessive Pass-Through Rule

We are seeing many critical observations related to a recent Defense Department interim rule passed to implement the 2007 DOD Authorization Act intended to encourage prime contractors and subcontractors to "add value" in connection with subcontract work or be prohibited from adding indirect cost and fee to certain subcontract work. DFARS Clause 252.215-7003 and 7004 now require an offeror to disclose the total costs of its proposal along with the total subcontract costs and when more than 70 percent of total costs are subcontracts the offeror must disclose the total amount of indirect costs and profit applicable to subcontract costs and describe how it adds value to the subcontract work. Industry representatives have expressed considerable concern with the new rule stating the stakes are increasing since it appears the new rule will be incorporated into the FAR and hence apply to all government contracts and will likely generate considerable scrutiny by government auditors. When the issue is taken up with DOD representatives the responses are always the same – our hands are tied by the statute's clear language that prohibits payment of indirect costs and fee unless the contractor seeking payment can establish added value.

A recent article in the September issue of the CP&A Report is a good example of the comments we have encountered where the authors, Brent Calhoon and Pete McDonald of Navigant Consulting, assert there are four areas that contractors should be aware of and take necessary action:

1. Define and document expected added value. The DOD defines added value as "subcontract management functions" which is distinguished from normal subcontract administration activities such as soliciting, awarding and administering subcontracts. Subcontract management instead is more closely aligned with program and operations management which includes such efforts related to cost, scheduling, quality and technical aspects of contract performance such as defining requirements or deliverables and integrating product and services into higher level contract execution or deliverables. If subcontracts represent a significant portion of contract costs offerors should identify and articulate elements of added value so they can document their intention to add value to their subcontracting efforts.

2. Insist on Alternative 1. When a CO determines a contractor will add value, Alternative 1 of DFARS 252.215-7003 must be used to affirm no excessive pass-through charges exist. The authors point out that there is no language that prohibits post award audit assessments of added value on contracts or subcontracts below the 70 percent reporting threshold. In other words, on post award audits, excessive pass through costs may be unallowable under any circumstance which turns on demonstrating added value not the 70 percent threshold. It is advised this Alt 1 be incorporated into all contracts where subcontract work could be used – not just where the 70 percent threshold applies. The authors state that if Alt 1 is not present then offerors proposing subcontracting of significant amount, say 50 percent, government auditors will be able to second guess added value with the full benefit of hindsight. If the CO does not make an added value determination and use Alt 1 the prime contractor should show in its files evidence of intent of added value for its subcontract efforts.

3. Monitor compliance with the 70 percent rule. Even if a contract or subcontract was below the 70 percent threshold but ultimately exceeds it during performance the 7004 clause requires contractors and subcontractors to verify added value (essentially it's a reopener clause). So contractors need to monitor the 70 percent threshold by modifying their project cost procedures and contractors need to ensure their subcontractors comply with the 70 percent threshold.

4. Accounting for excess pass through costs. To its credit the DOD has established an all or nothing approach to allowability - any amount of added value that is more than a negligible amount renders all pass-through charges allowable. DOD also states that excessive pass-through charges are not expressly unallowable which makes penalties not applicable.

Panel Hears Testimony on MAS Pricing

The Multiple Advisory Panel heard testimony on deficiencies in the most favored customer (MFC) pricing policy in the General Services Administration's MAS program. The Veterans Affairs IG counselor stated that price reasonableness should be measured not only at the time of contract award but also through the contract's duration. The IG asserted a lot of vendors wait until after contract award to give discounts to its commercial customers so as not to trigger the price reductions clause requiring the vendor to offer discounts to the government at time of award. Also, competition at the order level may not ensure fair and reasonable prices because since the FAR does not require competition for offers below the micropurchasing threshold of $3,000 if there is no statement of work and the order is not for services at an hourly rate many agency customers simply split the orders into multiple orders that fall below the threshold. Several industry groups also questioned the use of the MAS program's information technology schedules since they are often only the "starting point" for order pricing negotiations where the customer agencies then negotiate prices at the order level despite the schedule price.

GSA Schedule Will Apply to State and Local Purchases of Certain Items

The GSA issued a rule Sept 19 to allow state and local governments to now use the General Services Administration's schedules program to purchase homeland security and public safety equipment and services. The rule implements a provision in the 2007 DOD authorization act. The GSA schedule generally provides federal agencies a simplified process for acquiring commonly used commercial supplies and services at prices associated with volume buying where the GSA negotiates and awards indefinite delivery/ indefinite quantity contracts and customer agencies issue task and delivery orders under those contracts to make buys from the schedule vendors. Now state and local government may order available items under Schedule 84 that covers alarm and signal systems, facility management systems, firefighting and rescue equipment, law enforcement and security equipment, marine craft and related equipment, special purpose clothing and related services (*Fed. Reg. 54334*)

Industry Opposes Mandatory Use of E-Verify

A recent proposal has been put forth to amend the FAR by adding a new clause requiring agencies to award certain contracts to firms that utilize E-Verify to prevent illegal immigrants from working on federal contracts intended to carry out Executive Order No. 12980. The new clause would be included in all prime contracts valued at more than $3,000 and in subcontracts for commercial and non-commercial services including construction. Two groups representing numerous industry groups oppose the proposal saying it would be difficult to implement and presents many challenges though it does not oppose voluntary use of E-Verify. It stated the proposal (1) does not clearly define the types of contractor personnel that are required to be covered (2) does not address what extent the E-Verify requirement flows down to subcontractors (3) is unclear about its applicability to commercial items (4) provides an unreasonably short time frame for contractors to enroll in E-Verify and (5) does not fully recognize the burden and costs to comply

NASA Extends Mentor-Protégé Program

NASA proposes to revise its NASA FAR Supplement to update procedures for NASA's Mentor-Protégé program. Under the program, eligible entities approved as mentors will enter into mentor-protégé agreements with eligible protégés to provide appropriate developmental assistance to enhance capabilities of protégés to perform as subcontractors and suppliers. The changes are intended to streamline the program, align the mentors with technical skills and expand the program to include small disadvantaged businesses, women-owned and small businesses, HUB Zone small business, veteran-owned and service-disabled veteran owned small businesses, historically black colleges and universities, minority institutions of higher learning and NASA Small Business SBIR Phase ll small businesses. There will also be award fee incentives (*Fed. Reg. 54340*).

CASES/DECISIONS

Awardee Provided Inadequate Evidence of Commitment; Improper Discussions Held

TCC protested an award for building an office to be occupied by the Justice Department because (1) the

awardee failed to identify amenities (e.g. childcare facility, restaurants, etc.) it would provide and (2) inadequate discussions by the government were conducted. For the first, the awardee in its final offer included a letter committing to provide its amenities where TCC argued had it known a letter would suffice it would have included its own adding more amenities to increase its score. TCC also argued the government failed to engage in meaningful discussions because it did not advice TCC its offer had been downgraded based on qualifications of key personnel, arguing had it known of the problem it would have substituted other personnel. The GAO agreed with TCC on both counts. For the amenities, the GAO stated there was nothing in the solicitation that informed offerors that a mere promise would be accepted as opposed to evidence from third parties such as signed leases or construction contracts. As for discussions, the GAO ruled that it was clear that evaluation of key personnel was a "significant" subfactor of evaluation and the failure to advise TCC "was inconsistent with its obligation to conduct meaningful discussions" (*New Jersey & H Street, GAO B311314*).

Small Concern Lacked Negative Control

(*Editor's Note. The following case illustrates the need to be careful in crafting ownership agreements to, for example, make sure the small business status remains in tack.*)

After selecting EA for a small business set aside for an ID/IQ contract for architect/engineering services FPM protested the award to the Small Business Administration asserting EA was not a small business. The SBA field office noted the Louis Berger Group (LBG), a large business, owned 49.5% of EA's stock and since it could block certain transactions outside the ordinary course of business it had "negative control" of EA in spite of the fact EA's ESOP owned 50.5% of the stock. In addition to the negative control the field office ruled that EA depended financially on LBG and shared an "identify of interest" and therefore did not qualify as a small business. In its appeal to the SBA's Office of Hearings and Appeals (OHA) OHA disagreed with the field office ruling that the supermajority voting provisions in the stockholder agreements between EA, EA's ESOP and LBG did not affect EA's ordinary operations but rather were crafted to protect LBG's interests and not interfere with the ESOP's operating control of the company. Further OHA found that EA and LBG were not affiliates, did not share common investments and did not have an identity of interests which meant they were not even affiliated (*Size Appeal of EA Engrg., (SBA No. SIZ 4973*).

Appeals Court Disallows Fees Incurred in Defending Clear Water Act Lawsuit

NDRC, a third party environmental group, sued Southwest Marine (SM) for violating the Clear Water Act where the court found it was in violation. SM incurred $2.7 Million in legal fees and expenses and DCAA questioned the costs as unallowable which was upheld by the Board of Appeals and a District Court. An Appeals Court affirmed the ruling stating though no FAR provision specifically addressed SM's costs, they were similar to costs disallowed by FAR 31.205-47(b), costs related to legal and other proceeding. The Court next dismissed SM's argument that its claimed costs were allowable under FAR 31.205-33, professional and consultant service ruling though the later cost principle arguably includes some legal costs the relevant costs were primarily legal fees assessed against it which are properly covered by FAR 31.206-47 and not fees incurred to "enhance its legal, economic, financial or technical position" covered by FAR 31.205-33. The Court also dismissed SM's assertion the costs were not included in the list of unallowable costs found in U.S.C. $ 2324(k) ruling the list is not exhaustive and the statute does not address allowability of defending a Clear Water lawsuit (*Southwest Marine Inc v US, 9th Ct. 07-55229*)..

No Constructive Change When ECP is Unapproved

(*Editor's Note. The following provides some good illustrations of what constitutes a constructive change and the need to obtain proper authorization to do work.)*

The Navy command that received most of ISN's services identified several changes to the contract and asked ISN to submit an engineering change proposal (ECP). A Navy contract specialist advised ISN the command would review the ECP and that a modification would be issued to formally accept it. After the command's review, the Navy allocated $739,000 to the contract for the ECP. The CO signed the funds allocating document but the Navy later reallocated the funds to another project. Despite the Navy's technical approval of the ECP the CO never issued a contract modification approving the ECP. Later the contract was terminated where the termination contract officer offered $891,000 to settle all claims which ISN agreed to. When the TCO asked for funding for the settlement the CO refused stating ISN's claim for the ECP lacked merit because the CO never approved it. In its appeal, ISN asserted the Navy constructively changed the contract by approving the work under the ECP. The court noted a constructive change occurs if an informal order or some

faulty government action causes the contractor to perform work. Several "core principles" must apply where the government must require the contractor to perform the extra work, a contractor's unilateral decision to perform work does not entitle it to an equitable adjustment and an informal order or other conduct causing extra work must originate from someone with authority to bind the government. In ruling against ISN the Court concluded ISN did not perform extra work by an informal order or conduct by someone with authority to bind the government but instead decided on its own to perform this work in anticipation of the ECP being approved despite the contractual risks of performing without that approval (*Info. Sus. & Networks, Corp. v US, 81 Fed Cl. 740*).

Navy Failed to Consider Awardee's Unrealistically Low Costs in Proposal

(*Editor's Note. Though we have reported on cases where low ball bids should not be rejected the following demonstrates conditions when it may be rejected.*)

MCT challenged an award to Metro for ship maintenance asserting contrary to terms of the solicitation, the Navy unreasonably accepted Metro's unrealistically low capped indirect rates where since its capped rates were below forward pricing rates it would be operating at a loss. MCT asserted the Navy failed to consider the risks such capped overhead and G&A rates presented. The GAO sustained the protest noting the Navy RFP warned offerors of proposing unrealistically low estimated costs/prices because of possible performance problems and stated the government may reject a proposal if it was too low. The GAO stated the Navy could not "simply ignore the risks presented by the capped rates" and added the rates exacerbated DCAA's concerns about Metro's financial condition which would further hamper its performance. The GAO stated a consideration of risk of performance stemming from proposed unrealistically low capped rates must be a matter of consideration when evaluating a proposal and the failure of the Navy to consider this risk was wrong (*MCT JV, GAO B-311245*).

Agency Failed to Consider Conditions for HUBZone Set Aside

(Editor's Note. The following case shows the preference for HUBZone firms over other types of firms.)

IPG, a HUBZone firm, protested the Marine Corps decision to make a sole-source award to a service-disabled veteran-owned small business concern (SDVOSBC). The contracting specialist considered a HUBZone sole source award and contacted companies to gauge interest but ultimately decided that only one VGS, a SDVOSBC company, was interested and when a second SDVOSBC set aside was awarded IPG protested. GAO sustained the protests recognizing that under the FAR the HUBZone program provides an award will be restricted to HUBZone small businesses if not less than two qualified HUBZone will submit offers at a fair market price. The SDVOSBC program provides an agency "may" set aside acquisitions if conditions permit. The GAO concluded the agency was required to consider whether a HUBZone set aside was warranted before proceeding with a sole source award to VGS under the SDVOSBC program (*Int'l Program Group, GAO, B-400278*).

QUESTIONS & ANSWERS

(*Editor's Note. The high number of relevant questions received lately along with our unusual letter to DCAA means we will not provide a feature article this issue but will provide an expanded Q&A section.)*

Q. As President of a small business, in what instances should I charge my time to Overhead and what instances should I charge my time to G&A? Can you give me examples of the type of activities in each category?

A. Yes, the President should be able to charge his time as G&A, overhead or direct. If you have them, you should follow the guidelines reflected in your written policies and procedure. If you don't have them, G&A is considered to be effort related to overall management of the company while overhead is in support of contract work that can not be identifiable to a particular contract. Examples of G&A would be board meetings, marketing effort, overall corporate activities. Examples of overhead might be meeting with project management, contracts activities, Q&A. In practice there is a great deal of flexibility in how to handle these costs. If you want to be more certain of avoiding challenges, write up some policies related to labor charging of executives.

Q. We are moving our headquarters from Atlanta to Washington DC. The accounting staff would still be at the Atlanta office and would be required to travel to the DC office for the audits. Would this help us in any way since all the information, paperwork and records would still be in our Atlanta office? Or would DCAA still use the Atlanta DCAA branch to do their audits for DC?

A. General guidance is that DCAA will conduct their audit at the office where the majority of accounting

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records are located. It seems that the Atlanta office would qualify and if your audits were out of the DC office DCAA would change their cognizant office to the location closest to your DC office. In this age of electronic communication, you probably have flexibility on where you want to locate the audit liaison activity so what is your preference? Based on your preference, you can often justify where you want to go. For example, if you prefer DC, you can always state your government liaison and senior financial people are located in DC and you can electronically access all relevant accounting information from any location, including DC.

Q. Several agencies are requesting Firm Fixed Price Quotes but they are insisting upon us sharing the breakout of our rates. Is there anything we can use to combat delivering our rate information to the contracting officer - we have no issue with delivering this info to DCAA but we think it is not appropriate for the contracting officer to ask for this information in a firm fixed price environment. Can we resist?

A. Of course if the proposed price for the contracts in question are cost based and covered by the Truth in Negotiations Act then you need to provide cost data that is certified. Even if not, recent changes we have been reporting on give contracting officers greater latitude in determining whether prices they pay are reasonable including requesting cost or pricing information (cost data that is not certified). If you can demonstrate the supplies or services you are providing can qualify as commercial items or that the award is based on competition or the prices you are offering are based on market rates you provide to others you can ask why cost or pricing data is needed to determine price reasonableness. Though they may still ask for cost data a reminder that the items are exempt from cost analysis could give them ample justification for claiming the prices are reasonable and can avoid audits. Same applies if you have GSA scheduled prices.

Q. We compute a G&A rate in the 20 percent range and the government always accepts it in pricing our contracts. Is there a need to change it?

A. Why change it – I would be dancing in the street if I could add a 20% mark up to subcontract costs. (Of course you now need to be aware of assertions of excess pass-through costs – see our article above.) The only condition that would give me pause is if I had little to no subcontract costs or other direct costs but most direct costs were direct labor. In that case, you might want to lower the rate applicable to subcontracts and ODCs and increase overhead applicable to direct labor only.

Q. We are implementing activity based costing methods. Do we need to notify DCAA?

A. It largely depends on whether you plan on changing your accounting practices to incorporate new ABC methods or use the ABC approach off line as a kind of profitability analysis. If the former, DCAA guidelines indicate contractors and DCAA should both be involved in the process as early as possible. This "early as possible" admonition will take some judgment – you want to garner DCAA acceptance but you don't want them to dictate the metrics you will want to decide upon.

Q. We often stay in hotels a distance from where we are meeting. Is the per diem applicable to where we stayed or where our meetings were held.

A. Where you stayed.

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