GCA REPORT

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NEW DEVELOPMENTS

Acquisition Reform Proposals in New NDAA

The Senate and House versions of the FY 2018 National Defense Acquisition Act contains many proposals for procurement reform. The final version will be negotiated later but here are some examples of those proposals:

Many industry groups are touting a NDAA proposal requiring the Pentagon to provide enhanced debriefings for government contractors that have lost their bids. The DFARS would be revised to mandate that all post-award debriefing provide "detailed and comprehensive statements of the agencies' ratings for each evaluation criteria and of the agency's overall award decision." Agency contracting officials will need to fight their inclination to reveal a minimum amount for fear of providing contractors grounds for protests. The proposal would also lessen timeframes from 100 to 65 days to make their bid protest decisions.

Two amendments would restore some worker protections that were stripped by the Trump Administration's decision to kill the regulation requiring federal contractors to disclose their labor law violations. The amendments would prevent DOD to enter into contracts with firms that the Labor Department has determined to have engaged in "serious, repeated, willful or pervasive" gender based wage discrimination or who have owed more than $100,000 in unpaid wages. The proposed bans would apply if the violations occurred within three years of contract award and on all contracts for supplies and services worth more than $500,000. Many commentators give low odds for the provision to be passed since usually Democrats favor such provisions over the Republican majority.

Two bills were introduced to expand the range of what may be considered "commercial items." Intending to make commercial buying easier the House included a provision to establish online marketplaces to expedite purchases and ensuring price reasonableness. Certain current acquisition rules will be expected to be adhered to such as compliance with domestic sourcing mandates and small business participation requirements and suspended/debarment provisions. The House bill would increase the dollar threshold to provide cost data under the Truth in Negotiations Act to $2 million from $500,000 while the Senate version raises it to $1 million. The Senate version would broaden the definition of commercial goods to include sales to state, local and foreign governments, create a preference for commercial item contracting over small business set-asides and increase the simplified acquisition threshold from $100,000 to $250,000. Another proposal would require project managers to consider commercial item contracting before approving a non-engineering contract and would open the door for using cost and pricing for evaluation of commercial item pricing.

Evaluation of service contracting are added that, for example, would prohibit awarding service contracts unless they were measured by outcome or performance rather than effort unless there is some justification. In addition, 15-year contracts would be allowed over the current 5-year limit and there would be a limit of service contracting not to exceed 2010 levels.

Both bills seek to increase use of Other Transaction authority. Currently DOD allows its agencies to enter agreements for basic, applied and advanced research projects where it would be expanded to include prototypes, require OT training, and set a preference for OT contracting for science and technology projects.

The definition of contracting for information technology services would be expanded to include such services as cloud computing.

Requirement to Engage in Technical Exchanges to Allow for IR&D Has Ended

Contractors no longer need to engage in "technical exchange" meetings with DOD officials before incurring independent research and development costs. In Nov 2016, the DFARS was amended to require such engagement while, effective immediately, a class deviation to the rules has been implemented until the DFARS are changed. Industry groups have met the deviation with applause stating (1) the exchanges burdens time, resources and data disclosure (2) they represent an inherent conflict

with the mandated independence of IR&D and (3) it is doubtful the exchanges have been effective.

DCAA Issues Guidance on Requirements of Prime Contractors to Analyze the Cost and Prices of their Subcontractors

The purpose of the memo is to provide answers in a Q&A format to identify the requirements of prime contractors and upper tier subcontractors (referred here as the prime) to review their subcontractors' proposals to establish the reasonableness of proposed prices. Early engagement with DCAA and the prime to facilitate the prime's completion of its required cost and pricing analysis is emphasized. Auditors will meet to discuss general issues of the procurement, identification of major subcontractors, the prime's completion schedule for conducting its cost and pricing analyses and the need for assist audits from DCAA. Examples of Q&As include:

1. Can the buying command request an audit of a subcontract proposal before the prime submits its proposal? Yes if the CO believes such action is needed to ensure reasonableness of price.

2. Citing its proposal adequacy checklist that states a subcontract price/cost analysis should be included in a proposal and if not then a matrix should be included identifying dates for receipt of the subcontract proposal, the guidance asks if the provision of the matrix without the analysis is adequate? No because FAR 15.404-3(b) requires the analysis where the inclusion of a matrix does not fix this inadequacy. However, this inadequacy alone is not grounds to stop auditing the proposal where if the analysis is not complete by the end of the audit fieldwork the proposed subcontract costs should be reported as "unsupported."

3. Does a government audit of the subcontract proposal or does the refusal of a subcontractor to provide cost data relieve the prime contractor from the responsibility to conduct its cost/price analysis? No to both questions since FAR 15.404-3(b) is clear about the need to conduct the analysis where in the case of refusal of cost data the prime must nonetheless document its efforts to conduct a price analysis and coordinate with the CO to obtain data from the government. Even if a government assist audit has been requested, if the prime's analysis has not been conducted by the end of fieldwork the subcontractor's proposed costs should be reported as "unsupported" *(17-PSP-007(R).*

DCAA Issues its Staffing Plan for FY 2018

DCAA has put forth its annual Staff Allocation and Future Guidance Plan for FY 2018 which identifies the number of audit work year anticipated. The Plan provides a strong basis for forecasting its audit priorities for the coming year. 4,710 work years, up from 4.398 in 2017, are broken down into:

1. 1,207 are identified with four "Contract Audit Directorates" which have cognizance over the seven largest defense contractors. The remaining DCAA staff is allocated across three regions and DCAA's field detachment where some auditors work out of branch offices while others are assigned to specific contractors.

2. An unspecified number of audit years go to reimbursable audits for civilian agencies such as NASA, and USAID. Some of these audits are "shared audits" where DCAA audits indirect cost rates and DOD direct costs while the other agencies may audit their agency contractors' direct costs.

3. Forward pricing proposals (bid proposal or forward pricing proposals) remain their first priority. Next are incurred cost proposals which may include either full audits or desk reviews of low risk proposals. Multi-year audits will be emphasized since they have been shown to be more efficient than stand-alone audits for each year.

4. DCAA continues to identify specific contractors it plans on conducting business system audits for that include accounting system (7,000 hours), estimating (2,700 hours each) and accounting/materials management accounting systems (3,500 hours each).

5. Post award audits (i.e. defective pricing). 15 contractors' contracts and task orders have been identified where 1,200 hours each is budgeted where additional audits will be performed for others as high risk is identified.

6. Post payment voucher audits (testing of paid vouchers) for non-major contractors for which such audits have not been performed for the last three years where 25% of vouchers will be targeted. The audit reports will seek to identify non-compliance with at least one of the 18 criteria in DFARS 252-242-7006.

HUBZone Spending Has Dwindled While Congress Seeks to Reverse This Trend

Federal contracts to HUBZone firms have declined over the last decade so as a response members of Congress are seeking ways to increase them. Whereas most small business programs have substantially increased by 24%

from 2007-2012, HUBZone awards have decreased 43% for the period though more modest gains have occurred since 2013. HUBZones are increasingly becoming recognized as a unique way to expand the government base, helping agencies meet their small business acquisition goals and spurring investments in distressed areas. A major reason cited for the decrease is that frequent boundary changes, sometimes every year, discourage longer-term investments by companies for fear they may not qualify for HUBZone status. To mitigate these risks a new bill introduced by Nydia Valasques (D-NY) and Steve Chabot (R-Ohio), the Chairman of the House Small Business Committee would extend the period of HUBZone status to at least five years. The bill would also redefine rural nonmetropolitan counties to increase the number of HUBZone companies, lengthen the amount of time disaster area firms can qualify for the program and spur private investment in distressed areas.

Efforts to End Delays in Security Clearance Backlog

Many industry groups are vociferously denouncing the backlog of security investigations that it is now estimated to affect 700,000 federal civilians, military personnel and industry employees who are not able to do their jobs because the security clearances have not been conducted. The Aerospace Industries Association (AIA) with other industry groups have laid out four near term goals: (1) streamline clearance standards to eliminate complexity and non-uniformity across agencies (2) a single system of record keeping where reciprocity should be established (3) the investigation process needs to be replaced by modern digital technology to eliminate the physical collection burden and (4) end the "first in, first out" approach and instead focus on mission critical clearances while delaying time consuming ones.

In a separate move, House members are vetting a proposal to shift Pentagon security clearances to the Defense Department. The plan, approved by DOD Secretary Mattis, would give the Pentagon responsibility over its personnel and defense contractors and take control from the current Office of Personnel Management. Some critics assert the move would not solve the problem while others say things cannot get worse where currently 75% of all requests for investigations are delayed for over 14 months while another 10% are delayed for over 24 months.

Contractor Labor Audits Differ By Location

Companies doing business with the federal government are finding that labor department audits differ by location where some DOL regions take a more aggressive approach (e.g. Pacific region) than others. While DOL's Office of Federal Contract Compliance, which has not had political leadership for 10 months, sets agency policies and priorities, regions and their district offices actually conduct the audits to find discrimination where they have been acting semi-autonomously. This can be particularly frustrating for firms who have offices and facilities in several locations where they face different auditing standards, requests for employee data and time frames to respond. Following the lawyerly adage that "a good lawyer knows the law while a great one knows the judge", some legal advisors are urging firms, at least until new leadership is appointed, to get to know local auditors, build relationships and know how they are apt to respond to contractor information and responses.

Mentor-Protégé Programs Creates Over 300 Partnerships in First Year

Government contractors have been agitating for years to make the mentor-protégé program available to all contractors where recent efforts to expand the base has shown great success. The Small Business Administration's program allows small business protégé companies to grow and successfully compete while allowing mentor companies to affiliate with small companies and hence compete in other categories not available to them. Now all companies defined as small can participate where in its first year more than 300 partnerships have emerged. The mentors include the usual behemoths such as Leidos, Booze Allen, SAIC, CACI while the protégés include service disabled firms (40%), HUBZone (17%), 8(a) (21%) and Women-Owned firms (21%)c.

New Source Selection Technique is Gaining Acceptance

The Nov issue of the Nash & Cibinic Report has observed that the General Services Administration has developed a new source selection approach called the highest technically rated offers with fair and reasonable pricing. In illustrating the new technique they point to a recent Alliant 2 procurement where the agency selects 60 awardees where offerors assign themselves points in such categories as relevant experience, past performance, systems, certifications, clearances and organizational risk assessment where they are to submit evidence of their points. After the 60 highest offerors are identified they are to submit a narrative of the basis for their pricing estimates for labor rates, indirect costs and profit and a pricing spreadsheet containing all cost elements of labor rates, overhead, G&A, fringe benefits and profit. The pricing spreadsheet will be used to identify ceiling rates

for the first year on T&M contracts and be based on computing the highest rate for each category of labor. If any of the 60 offerors' prices are determined to be fair and reasonable, they will be awarded a contract while those whose prices are not considered fair and reasonable will be excluded from the competition. The writers point to two additional large contracts that utilize the technique where, thus far, numerous protests have been submitted delaying awards.

Status of LPTA Bids Are Being Debated

The number of times agencies have required lowest price technically acceptable bids have shot up over the last decade (from 920 in 2008 to over 12,000 in the last two years). However, industry groups and Congress have been advocating for a best value purchasing approach which take into account other factors even if it means paying a higher price.

Contracting Opportunities Soar

GSA's One Acquisition Solution for Integrated Services (OASIS) multiple award contract vehicle for acquiring complex professional and engineering services is hitting its stride. Three years into the projected 10-year life of OASIS Small Business and OASIS Unrestricted account for $5.2 billion in total prime contracts where DOD and Homeland Security account for 95% of awards. GSA is seeking to consolidate billions of professional services into the two vehicles. All OASIS SB is set aside for small businesses where most of the $2.4 billion is characterized as small business set-asides where $149 million went to 8(a) firms and $118 million was set aside for disabled veteran firms.

Congressional defense committees have approved shifting more than $400 million from other accounts into missile defense programs as North Korea threats increase. Boeing, Raytheon and Orbital ATK are likely to be the major beneficiaries.

The Veterans Affair departments' multiple award contract known as the Veteran Enterprise Contracting for Transformation and Operational Readiness (VECTOR) is expected to award up to $25 billion in awards over the next 10 years. The winning SBVOSB firms will bid on task orders for a variety of services including program management, data analysis and business process re-engineering. Many commentators are saying these awards will likely make many of these winning firms enticing targets for being acquired by other companies.

Spending on small businesses is surging at the Air Force Materiel Command driven by enormous contract vehicles such as OASIS and Alliant as the command seeks to save money, streamline its contract portfolio and shorten the buying process. Though OASIS and Alliant offer a broad range of services the Air Force is also planning on utilizing other contract vehicles in such areas as category management, customized technology solutions, cooperative agreements and other transaction authority to meet its diverse needs.

The Navy plans to streamline one of the largest and most important government-wide contracts, the $51 billion multiple award professional services contract known as Seaport. The Naval Sea Systems Command will continue to manage Seaport- NwG, the follow-on vehicle to Seaport-e, after it expires in 2019 where it will provide all federal agencies with a way to acquire engineering and program management support services. The new contract lessens the number of vendors receiving contracts but no task order where changes will include removing zone requirements (from 7 to none), cutting functional groups (from 22 to 2), reducing ordering offices (from 121 to 75), using a single NAICS code for engineering services (541330) and creating off-ramps for companies receiving slots but no orders.

About 9,500 federal contracts worth $14 billion that were awarded contracts using the 8(a) set-aside program will be up for grabs starting Sept. 1 when the 3,300 8(a) companies that received work will have graduated from the program and will be ineligible for follow-on awards. About 3,000 of these contracts, worth a combined $6.2 billion are ending in the next 24 months. 8(a) companies still active in the program will be at a competitive advantage if they secure information about expiring set-aside contracts and task orders with known size where there will likely be an incumbent change.

The Air Force has recently released an RFP for its $13.4 billion multiple award known as Small Business Enterprise Application Solutions (SBEAS). SBEAS, which replaces NETCENTS-2, will be accessible to all agencies that have Air Force related requirements and will provide a wide range of IT services such as documentation, operations, deployment, cybersecurity, configuration management, training, product management and utilization, technology refreshes, data and info services, information display services and business analysis for IT programs.

CASES/DECICIONS

Acquisition by a Large Company Did Not Require Cancellation of Set-Aside Contract

GlobalSubmit submitted an offer for software services that was a small business set aside. Before award it notified the government that is had been purchased by a large company resulting in loss of its small business status. Though the companies believed the solicitation would have to be cancelled the buying agency disagreed saying there was no requirement to cancel the small business set aside competition since as long as there was a reasonable belief it would receive two or more offers from a small business prior to issuing a solicitation the set aside was still valid. The fact that one of two offerors are no longer eligible to bid does not mean the procurement should be considered an improper sole source award for the other bidder. It stated small business offerors may leave a competition for many reasons, including loosing a size protest where then an agency may award the remaining offeror the contract for a fair reasonable price *(Synchrogenix, GAO B-414068).*

Loss of Employees – Justify a Termination for Default?

Asheville Jet lost three key employees and hence could not perform its contract. The government asserted the contract should be terminated for default while Asheville said it was an excusable delay because it was tantamount to a strike. Citing FAR 52.212-4 Asheville said a contractor is liable for non-performance unless nonperformance is caused by an occurrence beyond the reasonable control of the contractor such as a "strike." The Board rejected the strike argument for two reasons: (1) the resignation of three key employees is not a strike and (2) the resignation was not beyond Asheville's control since it rejected the employee's offered terms to return to work. Commentators on the case state there is additional case law to reject Asheville's arguments. The issue of excusable delay was not addressed *(Asheville Jet Charter & Mgt vs Dept of Interior, CBCA 4079).*

Unequal Discussions Taint Contract Award

The YWCA protested a $100 million award to MTC to provide career advice at a Jobs Core center asserting the government engaged in unequal discussions with MTC because it allowed it to substitute a new center director when the first one was ruled unqualified by the government without reopening discussions with YWCA. The GAO ruled in favor of YWCA asserting the government should have reopened discussion with offerors, allowing them to submit new proposals and making a new selection decision. The GAO said allowing for this proposal modification constituted discussions which obligated the government to conduct discussions with YWCA which it did not do concluding that equal discussions could have given YWCA a chance to improve its lower priced proposal *(YWCA of Los Angeles, GAO, B-414596).*

No Contract Fix for Bid Mistake

Baldi won a contract to repair combat aircraft where after award it learned it had left out state and county taxes in its proposal and sought an additional $961K. The court ruled against Baldi saying the FAR does not allow for a contract price modification because doing so would make Baldi's revised bid higher than the next-lowest one. It said an agency may correct for a bid mistake if doing so would be favorable to the government without changing the essential requirements of the specifications but here it could not show that an upwardly adjusted price would not have exceeded the next lowest acceptable bid *(Baldi Bros v US, Fed. Ct. No. 15-1300).*

Contractor Can Recover Legal Fees on Government's Hundredfold Demand

The government accused Circle C of underpaying certain employees under a construction contract and sought $1.66 million in damages. The appeals court ruled the employees were entitled to only $9,916 and since the case was unreasonable and excessive it sought recovery of its legal costs to defend itself over several yeas of $468,704 under the Equal Access to Justice Act that allows recovery of legal costs when the government's recovery in a civil action substantially exceeds its recovery. The court ruled in favor of Circle C stating the government made a demand for damages a hundred fold greater than it was entitled to and pursued a "near frivolous" case for nearly a decade of litigation *(US Wall v Circle C Constr 6th Cir., No.16-6189).*

Evaluation of Compensation Plan is Inadequate

The RFP contained FAR 52.222-46, Evaluation of Compensation for Professional Employees where SEC protested the award asserting, in part, the government did not properly analyze ERC's compensation plan because it did not evaluate the complete plan or compare

proposed salaries with incumbent salaries. The Air Force noted ERC was going to use the incumbent's employees and it would provide the same salaries and fringe benefits. The government found the proposed fringe benefits were standard for the market but significantly lower than the government's estimates. Following discussions ERC adjusted some of the salaries which the Air Force found acceptable. The Comp. Gen. ruled in favor of ERC noting FAR 52.222-46 requires that when an offeror proposes compensation lower than its predecessor for the same work it is required to compare incumbent and proposed rates. The Comp Gen. ruled there was no record that this comparison occurred but rather the proposed rates were compared with the government's estimates *(SURVICE Eng'g, Comp. Gen. Dec B-414519).*

NEW/SMALL CONTRACTORS

Considerations for Creating a New Business Unit

(Editor's Note. The following represents a short, edited response we prepared for a colleague whose client was seeking a large $200 million contract who put several questions to us.)

The client is a mid-sized mainly commercial company who is a leading contender for a large $200 million federal IDIQ contract. Our colleague asked us several contract accounting questions related to the large contract. The questions included: (1) would the contract be CAS covered (2) can a separate business unit be created that would insulate the rest of the company (3) if a separate company is created can costs of other parts of the company and the corporate home office be allocated to the CAS covered contracts (4) are other parts of the company CAS covered (5) can we use people from other parts of the corporation to work on the contract (6) would it make sense to create service centers and how should we charge the contract for these services (7) could we use just an overhead pool to accumulate the costs at the new business unit when G&A costs are usually one of the rates (8) does G&A allocation make sense (9) since a small percentage of the entire corporation will be working on this contract should we have a separate fringe benefit rate.

The following represents our brief responses to the questions.

1. Is the contract CAS covered? Either the contract as a whole or at least some or most of the task orders will likely be CAS covered. A determination of whether the individual task orders or the entire IDIQ contract is CAS covered is a rather controversial issue these days which we won't get into here. However, even if CAS determination is made at the task order level, given the size of the contract and likely size of the TOs, it appears as if at least some of the task orders will be CAS covered (e.g. one is more than $50 million or the cumulative value of more than one award in a year exceeds $50 million then all subsequent others exceeding $7.5 million become CAS covered).

2. Does it make sense to create a separate business unit? Yes, creating a separate business unit is not at all uncommon and will likely be a good idea in order to insulate the rest of the company from CAS requirements. Even if the separate business unit is not a legal entity, if it meets certain conditions (e.g. separate management control) it can be considered a separate unit for accounting purposes.

3. Can we allocate some administrative costs from the corporate center to the new contract? Yes, this is known as a home office allocation and you need to make sure it is consistent with CAS 403 provisions. If not CAS covered, it is still a good idea to follow the requirements in CAS 403 since most auditors use its criteria to determine reasonable home office allocation of costs.

4. Is the rest of the company CAS covered? Not if there are no government contracts at the other business units or they do not meet the CAS threshold. The home office is not CAS covered but the manner of accumulating costs and the way costs are allocated to CAS covered contracts must be described in the CAS Disclosure Statement.

5. Can we use people from other parts of the company on the new contract? Yes, you can transfer people and costs to your contract. Two ways are possible – transfer them at a commercial rate or a cost basis. You will need to meet the conditions specified in FAR Part 12 to establish a commercial item (do a word search at our website where we have addressed qualifications for commercial items extensively). Otherwise, you would transfer them at "cost." I would recommend transferring these peoples' costs at their base hourly rates only and not try burdening it with indirect costs incurred at the transferring business unit since you open yourself up to having the indirect burdened costs being audited. For T&M task orders, you can probably bill the government at the billing rates established in the T&M contract at the new business unit. Under cost reimbursable task orders, it get a little tricky – if you can argue the transferred person is a direct labor person, similar to other direct labor, then you can burden their labor at the new business units' rates (make sure to

have this transferred labor included in the relevant bases). Otherwise, you would need to treat the transferred labor as an other direct cost, and apply only G&A (again, make sure transferred intracompany labor is included in the G&A base) and fee.

6. Creating service centers are often a good way to be able to charge government contracts for a variety of services (e.g. reproduction, vehicles, computer related services). Establishing a usage rate on cost (e.g. cost per page, cost per mile) often produces problems when the service center costs are audited. Either the pool of cost or basis for computing a unit cost is often challenged so to avoid this, establish negotiated rates at the time of the proposal. Interestingly, we are finding that even auditors prefer this rather than having to audit the cost basis of the usage rates.

7. Use just an overhead rate? It makes sense to accumulate the indirect costs incurred at the new business unit into overhead. You can argue all the indirect rates are incurred in support of the large contract and it makes it easier than attempting to distinguish between overhead and G&A activity.

8. Don't we want to apply G&A at the new business unit? Maybe. You way want to be able to apply G&A to your direct equipment, material and subcontract costs where overhead cannot be applied (it is usually based on direct labor only) rather than depending only on applying a fee. Be aware that fee (profit) on equipment and material costs are not allowable on T&M task orders. Your G&A pool could logically consist of the home office allocation and any IR&D or bid and proposal costs (CAS 420 basically requires that IR&D/B&P costs be included in G&A).

9. Create a separate fringe benefit rate? Unless the fringe benefits for the 100 people working in the new business unit are significantly different than for the other 2,000 people in the rest of the company, I would compute a company-wide fringe benefit rate and use that for the labor at the new business unit.

QUESTIONS & ANSWERS

Q. We normally charge our training costs indirectly, either to overhead or G&A. We have recently entered a new field where we have one cost reimbursable federal contract where our employees need special training that our others don't and we are hoping to charge these costs directly to the contract. I seem to remember we must be consistent in how we charge contracts so can we charge them direct?

A. Your memory does not fail you - both CAS and FAR do require consistent treatment for costs that are similar in nature and are incurred under similar circumstances. However, you may be entitled to direct charging if the costs are incurred in dissimilar circumstances where you probably can make a case for different treatment. Indirect costing of training costs is usually justified because employees presumably work on multiple contracts. However, the nature of the training you describe is different than other training and the fact that only one contract receives the benefit of that training represents good grounds for a different treatment. In anticipation of challenges by the government, you should prepare a written policy for training costs that may represent different treatment where you want to provide a description with examples for the varied treatments so you can show your practices are based on established accounting policies

Q. Our cost type contract ends in July after which we will likely incur lower direct costs resulting in higher indirect cost rates. We use a calendar year for our fiscal period so do I need to prepare an incurred cost submittal based on January through July or for the entire year?

A. CAS 406-40(a) prescribes a full fiscal year unless certain circumstances exist (e.g. an indirect function exists for only part of the year, its established practice is to use a different period, a change in fiscal year occurs where a transition accounting period might be used). When CAS 406 was promulgated some asserted that only indirect costs incurred during contract performance be used if the period was less than one year but the CAS Board ruled against this. Even if you are not CAS covered (remember that CAS 406 applies to modified CAS covered contractors) it is instructive. In addition, FAR 31.203(e) stipulates one year – "the base period for allocating indirect costs will normally be the contractor's fiscal year." Keep in mind FAR 31.203 provides for a shorter period "for contracts in which performance involves a minor portion of the fiscal year" or when it is your industry's normal practice to use a shorter period so government auditors may seek a shorter period based on these exceptions.

Q. We are being audited by a state agency and they are telling us we should be deleting a portion of our industry association fees related to lobbying costs. I never heard of this and DCAA has never questioned it. What do you think?

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A. On some association fee invoices, lobbying costs are identified for tax purposes since lobbying costs are not deductible. Though we initially thought the state auditors were in error (after all, it is not a contractor's responsibility to identify "unallowable" costs incurred by organizations they purchase goods and services from) we took a look at the DCAA Contract Audit Manual and found in the section for auditing Dues and Membership Fees in Chapter 7-1102(b) it states lobbying portions of association dues should be identified and deleted from charges on government contracts. The fact DCAA did not review these costs (as former DCAA auditors we never did) was, most likely, because such costs are usually immaterial.

Q. One of the suppliers we are considering using informed us there would be a $10 drop in unit prices they had previously quoted for a key component after we submitted our proposal but before we have negotiated a price with the government. Must we divulge this to the government?

A. I assume you are concerned about defective pricing. First, it depends whether the contract is covered by the Truth in Negotiations Act (e.g. does the contract require submission of certified cost and pricing data, does it exceed $550,000). Many contracts are not covered by TINA and hence there is no requirement to divulge this information. If TINA covered, you most likely have to divulge the information if it is factual, relevant to negotiations and would have a significant impact on price. Failure to do so means you did not submit the most current, accurate and complete cost or pricing data as of the date of price agreement which makes the contract subject to a defective pricing reduction. However, even if covered by TINA, you may not have to divulge the information if it does not meet the definition of cost or pricing data or you do not intend to use the supplier because, for example, there are quality or delivery schedule problems.

Q. We have T&M contracts where we apply our G&A rate to labor costs to derive a fully burdened labor rate but are not allowed to apply our G&A rate to our other direct non-labor costs. Since we use a total cost input base to compute our G&A rate, how do we recover all of our G&A costs if we can't charge G&A to non-labor direct costs?

A. We are seeing that such contract provisions are becoming increasingly common. You need to be somewhat creative. So, for example, you should compute the G&A costs that would be applicable to your non-labor costs and make sure that amount is added to the labor portion of the contract.

Q. Though I am purchasing equipment primarily for one contract, the contracting officer is adamant about not charging the equipment direct. How can I maximize recovery on the equipment without charging it direct?

A. Depending on your accounting practices, you may be able to create a separate indirect cost rate (e.g. based on location, type of contract, facilities costs) where either all or a disproportionately higher amount of the depreciation costs can be allocated to the contract. In addition, you may be able to use different assumptions about the equipment – e.g. shorter economic life, accelerated depreciation, etc. – that will not change the allocation method but will provide a faster amortization period.

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