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newsletter

Government Contracts Consulting

Provided by Beason & Nalley, Inc.

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DCAA Incurred Cost Electronic (ICES) Model Update

On June 15, 2009 DCAA released a Memorandum for Regional Directors (MRD 09-PPD-009(R)) entitled "Audit Alert on the Use of the Incurred Cost Electronically (ICE) Model." This memorandum is intended to address errors noted within the previous version of the ICE Model (Version 2.0.0). DCAA has released a new version of the ICES Model (version 2.0.1), which is supposed to correct all previously noted errors. The new version of the ICES addresses the following inconsistencies noted in version 2.0.0:

- Cost of Money (COM) calculations when using a value-added G&A base.
- Application of Value Added G&A.
- Allocation of intermediate fringe on B&P/IR&D within the G&A cost pool.

- Overhead and Overhead COM rate where fringe is included in the overhead base.
- G&A COM pool when material COM is applied to IR&D/B&P material.

There is an enclosure to this memorandum that explains the conditions under which the errors noted above would have occurred in version 2.0.0 and the necessary steps to manually correct these errors.

B&N has reviewed the areas addressed in the new version released (version 2.0.1), and, although it appears that most of the issues have been corrected, we have noted that the calculation of the value-add input G&A base on Schedule H and additional schedules that are linked to this calculation does appear to have some remaining inconsistencies. It appears that regardless of how the base of your additional primary pool is setup (Material only, Subcontracts Only or both) the ICE model defaults to pulling both total direct subcontract costs and total direct material costs out of the base of

G&A on Schedule H in the G&A Base column. This formula inconsistency will cause an incorrect calculation of your valued-added G&A rate if you had a Subcontract Administration pool as a standalone final cost rate, allocated on total subcontract dollars only or a Material Handling pool, as a standalone final cost rate allocated on total direct material dollars only. This issue further causes inconsistencies in the calculation of the G&A Base on Schedule E (where the ICE model defaults to the removal of both Direct Subcontract Costs and Direct Materials), the calculation of the participation in the G&A base on Schedule H-1, and the application of G&A on Schedule K. Of course if both direct material costs and direct subcontract costs are included in the base of your additional final indirect cost pool, under a value-add cost input structure, the default calculation of the base of G&A where of both direct materials and direct subcontract costs are removed would not cause any problems.

The moral of the story, there is no substitute for a strong understanding of your indirect rate structure and a thorough review of your annual indirect cost submission. We recommend that you review the DCAA memorandum located at www.dcaa.mil/mmr/09-PPD-009.pdf to ensure that no updates are necessary to ICE models submitted between the original release date of May 2008 and the release of the newest version in June, 2009. The new ICE Model can be downloaded at www.dcaa.mil/ICE/ICE.zip. Feel free to email comments about the new model and any additional inconsistencies you may note to agilliland@beasonnalley.com or cedmonson@beasonnalley.com and we will be happy to add them to our list of ICE Model issues which we plan to submit to DCAA.

DCAA and Access to Contractor Records: The Continuing Saga of Re-Writing the Regulations

In an Audit Guidance Memorandum issued dated December 19, 2008 (08-PAS-042(R)), DCAA reasserted and redefined its access to records under FAR 52.215-2. Since issuing that document, DCAA has been informing contractors of these new expectations represented as a "brave new world" in presentations by DCAA's Director to industry associations. In turn, Beason & Nalley and virtually every other consultant have discussed the implications of this "brave new world". In revisiting this particular audit policy, it is most meaningful to do so in the context of actual applications; that is DCAA auditor requests for records (inclusive of contractor employees). In one recent example, as a component of an entrance conference for initiating an audit of a contractor's Control Environment and Overall Accounting System Controls, DCAA's request included 29 separate line

items including several which are premised upon the December 12, 2008 effective date of Contractor Business Ethics Compliance Program and Disclosure Requirements ("COBEC" effected by FAR 52.203-13 and -14). In requesting data from the contractor, DCAA wholly ignores the provisions of FAR 52.203-13 and -14 and the extensive and thorough discussion in the Federal Register Vol. 73 No 219, November 12, 2008. Of particular note:

- DCAA requests that the contractor "cite consequences for violations" of a contractor code of conduct by providing DCAA with a list of all violations which occurred in the past 12 months. However, the mandatory disclosure requirements effective December 12, 2008 contain no such requirement. There are specific violations which are subject to mandatory disclosure; however, they are very specific (FAR 52.213(b)(3)(i) and by no means include all violations of a contractor's code of conduct.
- DCAA requests that the contractor provide appropriate disclosure to the government and "we (DCAA) define appropriate disclosure to DCAA and the ACO within 5-10 days of identification". However, the mandatory disclosure requirements explicitly stated in the regulation do not provide for any disclosure to DCAA or directly to the ACO. The mandatory disclosure is to an Agency IG (Inspector General) with a copy to the Contracting Officer. Further, the implementing regulation thoroughly vetted the concept of "timely" disclosure and specifically avoided a stated time period (although many respondents suggested a specific number of days). Finally, in re-writing the regulation, DCAA applies timely disclosure to the term "identification" whereas the actual regulation uses the terminology "credible evidence".
- DCAA requests that the contractor identify the location of DoD IG Hotline posters after citing FAR 52.203-13(c)(2)(ii)(D) which, taken in conjunction with FAR 52.203-14(c), explicitly permits a contractor to utilize an internal reporting mechanism, such as the company equivalent of a hotline poster, in lieu of posting DoD-IG hotline posters. Somewhat related to this, DCAA has insisted upon knowing the location of hotline posters for contracts performed entirely outside the United States in total disregard to FAR 3.1004 which excludes these contracts. As it relates to the regulatory requirement for posting Agency IG Hotline posters, DCAA is once again re-writing or otherwise ignoring the explicit criteria within the applicable regulation.
- DCAA requests that contractor furnish documentation to "verify that the external CPA does not provide accounting service to the contractor". This is a matter which pertains to PCAOB Independence Standards for which DCAA has no authority whatsoever. In fact, it is unlikely that DCAA is qualified to render an opinion or even interpret matters of compliance with PCAOB independence standards. Nonetheless, DCAA is requesting this information as if it has applicability or relevance to DCAA's audit.
- DCAA requests copies of the annual report or 10K report for publicly traded corporations. Of note, DCAA makes a similar request when performing financial capability reviews. In all cases, if DCAA would merely access the publicly accessible website, DCAA would be able to obtain these documents. Such ready access has apparently not deterred DCAA from insisting that the contractor provide the documents.
- DCAA requests that the contractor complete a "contractor's basic organizational structure" questionnaire

for the contractor's next fiscal year. This four page document is for DCAA's convenience in developing DCAA's audit plans for the next fiscal year; however, this data has absolutely no connection to any DCAA audit opinion concerning the allowability of contract costs. As such, this request for data falls outside of FAR 52.215-2; nonetheless DCAA requests the information as if the data is subject to the access to records provisions. Of further note, FAR 52.215-2(d)(2) states that the audit and records clause "may not be construed to require the contractor to create or maintain any record that the contractor does not maintain in the ordinary course of business or pursuant to a provision of a law".

DCAA's request for data under the provisions of FAR 52.215-2 suggest that perhaps Senator Chuck Grassley is on point when he recently challenged a civilian agency's continuing use of DCAA audits for CMS (Centers for Medicare and Medicaid Services). On June 3, 2009, Senator Grassley expressed his concerns referring to CMS' reliance on substandard audits in the context of audits which have been identified by the GAO as failing to comply with auditing standards. In the case of DCAA's wholesale disregard for the "COBEC" regulations as, it is indeterminable if this is an intended disregard or mere ignorance of the regulations. The fact that DCAA's demands are being replicated across multiple contractors suggests intentional disregard; but in either case, such requests are a failure to follow auditing standards. In particular, due professional care given that DCAA's failure to adhere to the contractual terms (as clearly stated and vetted when published in the Federal Register) is far short of "due professional care".

On a related but slightly different note concerning DCAA's interpretation of

timely access to records, DCAA often requests "same day", "next day" or "day two" response times to very lengthy requests for data. Failure to accomplish such response times is then translated by DCAA into a systems deficiency report. Apparently there is no similar concept of timeliness when applied to DCAA audits and audit operations. Specifically, the concurrent article on DCAA's ICE model refers to a DCAA memorandum issued on June 15, 2009 correcting errors in the DCAA electronic ICE model issued in May 2008. Although the actual corrections were presumably made sometime before June 15, 2009, the fact remains that it took several months for DCAA to identify (with the help of frustrated contractors) and correct errors in its ICE Model, all the while expecting contractors to work around the errors and submit and timely support incurred cost proposals. This issue is indicative of a double standard when applied to DCAA's definition of timeliness.

Stimulus Oversight Board Actions to Prevent Waste and Fraud

In June 2009, the Recovery Accountability and Transparency Board (RATB) issued a contract checklist as one step designed to help agencies in preventing waste, fraud and abuse when making contract awards under the Economic Recovery Act (checklist can be obtained using an internet search for "ARRA contract checklist"). Fundamentally, the pre-award and the award checklists are a listing of award expectations/preferences including:

- Award was announced on FBO (Federal Biz Ops) and identified as recovery act.
- Clear, plain language description of the products or services.
- If not fixed price and competitively awarded, does the solicitation include the rationale for other than fixed price and/or competitive.
- Does the solicitation/award include required clauses including whistleblower protection, reporting requirements, special buy-American provisions, and expanded GAO/IG access.

These checklists and the board's risk analysis are intended to reduce the chances that stimulus funds will fall prey to the same levels of fraud, waste and abuse attributed to overall government spending (estimates range as high as seven percent, depending upon the definition of waste or abuse). Strangely, these recovery act checklists appear to be nothing more than a very abbreviated set of criteria and in fact far less comprehensive than procurement checklists used for traditional contract pre-award and awards. But of course, the recovery act relies heavily on hotlines to identify fraud, waste and abuse; but alas, so do the traditional FAR-based contract awards.

In short, it appears that the RATB has created nothing to improve the chances that Stimulus funds will avoid fraud, waste and abuse. Ultimately only time will determine if recovery act funds are better protected from fraud, waste and abuse; unfortunately we will never know given that no one has developed a means to accurately measure waste and abuse and even fraud is only measured to the extent it is discovered.

Training Opportunities

2009 Beason & Nalley Sponsored Seminar Schedule

Understanding Government Audits and How to Resolve Audit Issues

Date: August 11, 2009

Location: Beason & Nalley, Inc.
Huntsville, AL

Time: 8:15 am – 4:45 pm

Cost and Price Analysis in Government Contracting

Date: September 10, 2009

Location: Beason & Nalley, Inc.
Huntsville, AL

Time: 8:15 am – 4:45 pm

FAR Part 31 Cost Principles Basics Class and Advanced Workshop

Date: November 17-18, 2009

Location: Beason & Nalley, Inc.
Huntsville, AL

Time: 8:15 am – 4:45 pm (each day)

2009 Federal Publications Sponsored Seminar Schedule

A Practical Guide to Incurred Cost Submission

September 15-16 – Washington DC

October 20-21 – Las Vegas, NV

A Manager's Guide to EVMS

November 5-6 – Washington DC

December 2-3 – Las Vegas, NV

Government Contract Accounting Systems Compliance

September 22-23 – Huntsville, AL

October 6-7 – Washington DC

December 8-9 – Las Vegas, NV

Government Contract Audits: Dealing with Auditors and Mitigating Audit Risk

September 15-16 – Washington DC

Instructors

- Mike Steen
- Mary Beth Jackson
- Darryl Walker
- Scott Butler



- Chad Braley
- Courtney Edmonson
- Cyndi Dunn
- David Miller

Go to www.fedpubseminars.com and click on the Government Contracts tab or call Beason & Nalley, Inc. at 800-416-1946.

Specialized Training

Beason & Nalley, Inc. will develop and provide specialized Government contracts compliance training for client / contractor audiences. Topics on which we can provide training include estimating systems, FAR Part 31 Cost Principles, TINA and defective pricing, cost accounting system requirements, and basics of Cost Accounting Standards, just to name a few. If you have an interest in training, with educational needs specific to your company, please contact Ms. Sandra Baker at sbaker@beasonnalley.com, or at 800-416-1946.

Reader Inputs for Future Newsletters

Beason & Nalley, Inc. develops its topics based upon recent regulations, information, publicly accessible Government policies and our experience in assisting clients with regulatory compliance. However, we are also interested in the ongoing compliance experiences of our readers; hence, we invite your input in terms of suggestions for topics based upon your compliance experiences. Suggested topics along with any background information (i.e., your experience) should be sent to lmiller@beasonnalley.com.

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