

# Government Contracts

# INSIGHTS

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## How to File an Incurred Cost Proposal Extension

By Courtney Edmonson, CPA Senior Managing Consultant at Beason & Nalley, Inc.

For most government contractors, it's that time of year when you realize that there is only a few days left to put the finishing touches on that dreaded Incurred Cost Proposal, assuming your fiscal year ended December 31. Provisions of FAR 52.216-7, The Allowable Cost and Payment Clause, require that contractors subject to this clause submit an adequate final indirect cost rate proposal to the Contracting Officer and auditor within six months after the contractor's fiscal year end. Therefore, if your fiscal year end is December 31, your proposal is due on June 30.

But what happens if this deadline slips up on you and you find yourself in a position where you can't meet this deadline? If you are faced with circumstances that do not allow for the preparation and submission of an adequate certified incurred cost proposal by this fast approaching deadline, an extension may be granted by the Contracting Officer. The Allowable Cost and Payment Clause states "Reasonable extensions, for exceptional circumstances only, may be requested in writing by the contractor and granted in writing by the Contracting Officer."

An extension request should be presented to your Contracting Officer in written form (i.e., letter form). Be aware that the FAR specifically states that extensions may be requested for "exceptional circumstances only" so present your case well and explain in detail the circumstances which prohibited you from completing your incurred cost proposal within the 6 month deadline. An example of exceptional circumstances may be the loss of key personnel responsible for the preparation of the incurred cost proposal or maybe the implementation of a new accounting system which utilized all internal accounting resources and inhibited the incurred cost proposal preparation process. Also be aware that "exceptional circumstances" are no longer viewed as liberally by the ACOs (and auditors who are often consulted by ACO on requested extensions)—meaning that you simply ran out of time, couldn't reconcile your books, or had incompetent personnel are not excuses that work well, unless your company is new to the government business and has had little or no experience in preparing incurred cost proposals and you have a sympathetic ACO.

### THIS ISSUE:

- How to File an Incurred Cost Proposal Extension
- DCAA Rescission of Incurred Cost Proposal Audit Reports – The Trend Continues
- DOD Interim Rule on Business Systems
- FAR Issues Final Rule on Contract Closeouts Significant Impact
- Training Opportunities

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*We deliver objectives.*

Be sure when requesting an extension, you allow yourself enough time to actually prepare the incurred cost proposal and meet the new extended deadline, whether that be an extension of one month or three months. You want to avoid having to go back to the Contracting Officer and ask for a second extension because you failed to give yourself enough time for the preparation in the first extension. Although these incurred cost proposals are not audited timely, you don't want to add to this inefficient administrative process through multiple requests for extensions. Moreover, requesting a second or third extension in today's myopic audit environment could have adverse consequences to include reportable billing system deficiency, rescission of direct billing privileges, and/or ACO required withholds in invoiced amounts for flexibly-priced contracts. In other words, requests for multiple extensions are equivalent to a self-declaration that one's accounting system cannot timely produce reliable and accurate data.

If you have any questions or want help filing an extension for your incurred cost proposal or need help in preparing the proposal, please contact one of our consultants at 256-533-1720.

## DCAA Rescission of Incurred Cost Proposal Audit Reports – The Trend Continues

*By Darryl L. Walker, CPA, CFE, CGFM Technical Director at Beason & Nalley, Inc.*

The Defense Contract Audit Agency (DCAA) continues to rescind, and re-audit, incurred cost proposals (ICP) if and when internal DCAA or external audit quality authorities assigned to post-audit reviews deem such audits were not conducted within professional audit standards (GAGAS). Factors driving DCAA's proclivity to render advisory audit reports and companion opinions null and void are well known, starting with GAO audit reports issued in July 2008 and September 2009 excoriating DCAA for failing to meet those standards—most notably, lapses identified by GAO included insufficient audit testing of transaction data, lack of supervisory review, and inadequate documentation of audit results.

Government contractors are required to submit ICPs as a means of establishing final year-end indirect rates for contracts or subcontracts containing payment clauses demanding the audit of actual incurred costs—the most familiar of those clauses is the “Allowable Cost and Payment” clause, FAR 52.216-7.

In an over-reactive attempt to avoid future procurement and legislative criticism of the DCAA's audit quality standards, the agency is going back in time and essentially re-auditing its own work product, sometimes long after the initial completion and report issuance. In cases where an internal or external “after-the-fact” reviewer asserts a perceived problem in audit coverage, the most frequent audit flaw noted by reviewers is insufficient transaction testing. Given our recent experience with clients enduring DCAA mandates for contractors to re-open the books for more testing, there appears to be no clear parameters for establishing when audit report rescissions notices are issued—certainly not as to contractor size, flexibly-priced annual dollar volume, high risk cost transactions, specific audit procedures overlooked, or how far back in time costs were incurred.



The decision to perform more audit work of the incurred cost proposal will start with DCAA issuing a formal rescission of the audit results to the ACO (to include the reported results, if a report has been issued). DCAA decisions as to scope and depth to new audits of previously reviewed ICPs will depend on specific issues noted in the after-the-fact quality reviews, availability of records (FAR 4.7 contractor retention of records time limitations imposed on government), and other factors

such as contract close-out and agreement status of final indirect rates. Renewed ICP work is most often transaction testing of cost elements or contracts for which no such testing was performed in the original audit, or for which the testing was too limited. Nonetheless, the audit breadth may entail a completely new audit, involving all or most direct and indirect cost elements formerly evaluated, to include new transaction selections, except the second time, utilizing a detailed statistical sampling plan. Whenever DCAA asserts the authority to audit the same ICP a second time, be aware that all bets are off as to previous conclusions for that ICP.

The question most important to government contractors is whether DCAA has the right (or prerogative) within the regulations to audit ICPs a second time, even if only added work (e.g. transaction testing) not previously performed. After all, the reason for the added work, or new audit, is not due to contractor's failure to meet the regulations or restrictions on access to data, but rather because of DCAA's failure to follow auditing standards. Audit mandates for contractors to open its books and records a second time places a huge administrative burden on those companies, after the contractor in many cases has endured a stop and go audit the first time where the audit time frame for completing a single fiscal year incurred cost proposal review required months or years.

If final indirect rates have not been settled with a final audit report issued, or audit work has not been concluded, audit assertions to pursue renewed work may have regulatory merit, regardless of how unfair or cumbersome to the contractor. However, for incurred cost audits that come under the "audit determination" provisions (FAR 42.705-2), DCAA does not have a clear case in demanding new audit support if a final indirect letter rate agreement has been executed by both DCAA and contractor and no exceptions to direct costs were taken during the audit (approved audited direct costs shown in letter rate agreement attachment—see next paragraph). FAR 42.705-2 stipulates a clearly defined process for concluding the audit process which includes final rate settlement, and once that process is complete, there are no specified regulatory rights for plowing the same ground twice.

There is some good news for contractors where indirect rate agreements have been fully executed—DCAA has informally acknowledged that it has no right to re-open those agreements, thus no second chance to audit indirect costs, and no changes to rate agreement letters. However the government (DCAA in particular) essentially deems direct

costs incurred within a fiscal year to only have been "provisionally approved" after DCAA's ICP audit (e.g., a note to a letter rate agreement attachment entitled "Cumulative Allowable Costs Through FYXX for Flexibly Priced Contracts" notes "direct costs are subject to adjustment to final payment"). DCAA maintains that the door is always open for auditors to request more direct cost data presumably at any time until the contracts with claimed direct costs have been closed. If ICP audit results are rescinded, DCAA could assert that the ACO will not have provisional approval of direct costs and theoretically, a lack of DCAA approval could delay payment (or request re-payment) until the contract is closed. Oddly enough this potential assertion by DCAA would not address the question of provisional approval through DCAA's previous audits of interim vouchers which would have applied assuming DCAA followed its own policies and procedures requiring some form of audit coverage. Additionally, DCAA has never issued a formal policy which addresses the issue of rescinding an indirect and direct cost audit and if in fact DCAA's additional testing discloses additional findings impacting indirect rates, it remains to be seen if DCAA would attempt to rescind the rate agreement letter.

Here is a summary of key points for contractors to remember if notified of rescission of ICPs audit results/reports, and more work is coming:

- Understand the regulatory basis for "audit determined" rates and ICP audit process
- Ask specifically what was missed in the first audit—i.e. why the audit failed professional auditing standards in round one
- Request a list of audit procedures, and specific costs/contracts, etc., that auditors will be reviewing; if auditors appear to simply duplicating the same scope of work, with the same procedures (e.g., no added transaction depth or new procedures), challenge the auditor's request to re-open those costs
- Request additional funds from the ACO to support the added audit effort, especially if new or added work is specific to one identified contract; added contractor administrative costs will undoubtedly result from supporting auditors in added ICP effort, and but for DCAA's failure to comply with auditing standards in the original review, such costs would not have been incurred.

- DCAA should not re-open a settled indirect rate agreement—auditors should not request data, or assert added audit procedures toward indirect rates
- Ascertain if any flexibly-priced contracts identified in the ICP have been closed; if so, this could mitigate or eliminate added audit ICP work
- Remember that FAR 4.703—4.705 has restrictions on contractor retention of records; depending on data DCAA requests for a second audit, contractors are not bound to have retained certain data after specified periods of time
- Notify the ACO to confirm that the audit was rescinded and obtain the ACO's opinion on new audit work
- If the contractor decides not to cooperate with DCAA for a second ICP evaluation, determine potential consequences—although we know of no specific DCAA guidance on this issue, bear in mind that there could be adverse contracts administration consequences

To be fair, DCAA acknowledges its responsibility for creating redundancy in ICP audit effort, delaying contract close-out, and adding to contractor expense (which is passed on to the government) when it fails to perform audits properly the first round. In our experience, DCAA has been forthcoming and respectful to contractors in discussing the need for added ICP audit work.

Notwithstanding DCAA's attempt to mitigate contractor effort when this occurs and treating the situation respectfully, contractors are dealt another kick in the pants in getting to contract close-out. The process of achieving an ICP DCAA passing "adequacy" grade (before audits begin) is problematic as it is, often times hindering audit commencement and obstructing upward contract payment adjustments; May 31 2011 FAR revisions to the contract close-out process (see separate article in this newsletter) makes that approval process even more daunting since payment clauses now include the traditional DCAA required ICP schedules to be adequate before audit begins. Delays in DCAA in starting and completing audits (audit resource issues), compounded by the ghost of DCAA ICP audit report rescissions, pyramids contractor anxiety in wondering if they will ever gain final approval for payment on all government monies owed for flexibly priced contracts.

## DOD Interim Rule on Business Systems

*By Michael E. Steen, CPA Technical Director at Beason & Nalley, Inc.*

On May 18, 2011, DOD issued its interim rule revising DFARS (Defense Federal Acquisition Regulation Supplement) for Business Systems—Definition and Administration. The rule actually tracks back to the CWC (Commission on Wartime Contracting) which has asserted that contractor business systems are the first line of defense in preventing fraud, waste and abuse. As with many other reports involving defense contracts and contractors, the rule makers have seemingly overlooked the fact that the vast majority of the waste and abuse has been attributable to government actions or inactions and contractor business systems will do nothing to alleviate billions wasted because of government incompetence. Nonetheless, it was the CWC hearings which highlighted the fact that the government had no contractual mechanism to require contractors to implement adequate business systems (at least with respect to deficiencies asserted in DCAA audits since "business systems" are synonymous with audits of contractor systems of internal controls).

Subsequent to CWC hearings and reports, there were two proposed business systems rules (January 2010 and December 2010), voluminous public comments with respect to the proposed rules and we also had Section 893 of the National Defense Authorization Act (NDAA). The NDAA, much more than public comments, resulted in changes to the published, interim rule (for which additional public comments can be made and submitted on or before July 18, 2011 to be considered in the final rule).

In terms of the interim rule in contrast to the proposed rules, suffice to say that public comments were given favorable consideration when the public comment(s) identified "technical inconsistencies" within the rule; however, public comments suggesting substantive changes were summarily discounted. In particular, the DAR council (rule makers) deferred to a generic response to many public comments such as "it is not unreasonable for a contractor to establish and maintain an acceptable accounting system" rather than "answer the mail". It is what it is other than the fact that the final rule (at some point after July 18, 2011) will presumably provide minor refinements to the interim rule.

The interim rule made significant changes to the withhold provisions which are now 5 percent for a single system with one or more significant deficiencies and a maximum withhold of 10 percent for multiple systems with significant deficiencies (withholds could have been as high as 100% under the original proposed rule in January 2010). These withholds are mandated by the NDAA and in no context concessions to public comments recommending lesser withholds. However, it should be recognized that these withholds are to protect the government from potential harm, generally when the actual harm cannot easily be determined (i.e. risk of harm). The interim rule indicates that the government will pursue the actual harm when circumstances allow the government to determine the actual harm (e.g. unallowable costs, fraud, etc.).

In addition, the Business Systems withholds applicable to a small business are totally eliminated because the rule will not apply to a small business because the interim rule made a significant change to the applicability provisions, specifically incorporating the NDAA mandate that a covered contractor (subject to the rule) is one that is subject to the Cost Accounting Standards (CAS), 48 CFR 9903.201-1. This change is designed to remove all small businesses from the business systems rule (a small business is exempt from CAS); however, the new applicability language effectively lowers the applicability threshold to \$7.5 million (the threshold for modified CAS applicability under FAR 52.230-3) in lieu of the proposed rule which defined applicability as \$50 million contract award value.

It should be recognized that the "limited" applicability of the business systems rule has absolutely no mitigating impact on the applicability of FAR 9.104-1 Contractor Qualifications, including the requirement for an adequate accounting system. In fact, the business systems rule incorporates 14 of the basic accounting system requirements which pertain to the FAR 9.104-1 criteria as prescribed in the SF (Standard Form) 1408. As further discussed herein, it remains to be seen if and how the DFARS interim rule will impact the more ubiquitous DCAA audits of any contractor's accounting system.

In addition to using CAS to define the applicability, the rule also defines the contract types to which certain systems apply; in particular, the accounting system requirements apply to contractors receiving cost-reimbursement, incentive type, time and materials, or labor hour contracts or contracts which provide for progress payments based on costs or on a percentage of completion. Hence, a fixed price contract

whose progress payments are based upon a percentage of completion would be subject to all accounting system criteria albeit there is no logical reason to apply all 18 criteria to that particular contract type.

The interim rule (252.2XX-7002 through 7006) defines the six business systems to include:

- Accounting System Administration
- Cost Estimating System Requirements
- Contractor Purchasing System Administration
- EVMS (Earned Value Management System)
- Contractor Property Management System
- MMAS (Material Management and Accounting System)

In terms of the desired outcome, the government will be reviewing each applicable contractor business system to determine if the "system" conforms to the prescribed criteria defined for that particular system. For example, the accounting system contains 18 system criteria as prescribed by DFARS 242.7503 and the following definitions:

"Accounting system means the contractor's system or systems for accounting methods, procedures and controls established to gather, record, classify, analyze, summarize, interpret, and present accurate and timely financial data in compliance with applicable laws, regulations and management decisions and may include subsystems for specific areas such as indirect and other direct costs, compensation, billing, labor and general information technology."

Obviously, the accounting system is all inclusive including the reference to subsystems which more than coincidentally "map" the business systems to DCAA's previous audit categories within DCAA's "ICAPS" or internal control audits. As we and others have previously noted and continue to note within the public comments to the proposed rules, neither DCAA nor DCMA appear to have sufficient, competent resources to timely review contractors for compliance with the business systems rule. This is painfully obvious with respect to the one accounting (business) system which now encapsulates six subsystems for which DCAA previously audited (or attempted to audit) each on a stand-alone basis. In two previous years, DCAA has cancelled hundreds of these audits involving thousands of hours because the audit fieldwork had become so dated as to no longer be an acceptable basis for an audit opinion. Apparently, DCAA is now going to combine six of these subsystem audits into the accounting system audit and in response to public comments concerning DCAA's inability to

timely audit, the DAR Council replied that “the need to have effective oversight is unrelated to resources”. It seems more than obvious to anyone that effective oversight is at least partially related to resources and for what it is worth, DCAA has been continuously declaring that its ability to effectively implement its contract audit oversight has been seriously hampered by its lack of resources (apparently the DAR Council disagrees or more likely does not want to publicly acknowledge the problem).

Another controversial component of the proposed rules has been the definition of a deficiency, noting that a single deficiency would lead to a contracting officer determination that the system was inadequate and the implementation of mandatory withholds. In response to public comments that the proposed rule did not define a deficiency, the DAR Council advised that they no longer needed to address that concern because the interim rule now applied the terminology “significant deficiency” (disingenuously avoiding the question by slightly modifying the verbiage). Further, the interim rule defines a significant deficiency as “a shortcoming in the business system that affects materially the ability of officials of the DOD to rely upon information produced by the system”. Hence, in response to public comments that the terminology is highly subjective thus subject to interpretation, we now have the criterion, “the ability of officials to rely upon the information”. In our opinion, the rule has gone from “vague and subjective criteria” to “vague and subjective criteria” (i.e. nothing has changed to add any objectivity to the process).

An interrelated debate has focused upon the DCAA definition of a reportable internal control deficiency and in fact one public comment made specific reference to a December 2008 DCAA audit policy which defined an accounting system deficiency as “less than a remote possibility that potential unallowable costs will be immaterial”. In responding to public comments, the DAR Council reassured contractors that DCAA will report significant deficiencies in accordance with the definition of significant deficiency in this rule, as set forth in the NDAA and Generally Accepted Government Auditing Standards (GAGAS)”.

Apparently the DAR Council does not comprehend or does not want to acknowledge that the December 2008 DCAA audit policy is DCAA’s interpretation of GAGAS; in fact, the DAR Council quotes GAGAS with the exact words used by DCAA in DCAA’s December 2008 Audit Policy. It is all too apparent that the audit interpretation of a deficiency or a (significant

deficiency) will not change as long as DCAA applies its ultraconservative interpretation of GAGAS in reporting internal control deficiencies. In mimicking the DAR Council, DCAA will presumably modify its audit policy by simply using text search to insert the word “significant” before the word deficiency and leave the remaining audit policy intact.

In terms of roles and responsibilities, the interim rule reconfirms that the decision making authority belongs to the contracting officer and in the case of each applicable system, the audit and other functional specialist inputs will be advisory in nature. The DAR Council conveniently avoids the public comments which express concerns with the realities of the current environment wherein contracting officers are routinely second-guessed by DCAA auditors who extract revenge through hotline referrals to the DOD-Inspector General (IG). Although DCAA will not be reporting an opinion in the context of recommending that the system be deemed unacceptable / disapproved, the DCAA audits will be reporting significant deficiencies using DCAA’s interpretation of significant deficiencies with the expectation that under the interim rule, the contracting officer will have no choice but to deem the system unacceptable and disapproved. From a process perspective, this is identical to CAS administration wherein the contracting officer clearly has the authority to make a final determination, yet those which have gone against DCAA’s view of the facts have been referred to the DOD-IG for its unbiased skewering of the contracting officer.

At the risk of sounding overly negative, we acknowledge that the interim rule is better than the December 2010 proposed rule which was better than the January 2010 proposed rule. There is a prescribed administrative process which includes an initial determination of one or more significant deficiencies, a thirty day time period for the contractor to respond, and a contracting officer evaluation of the response followed by a final determination including the provision to withhold five percent of payments for the applicable contract(s) should the final determination conclude that there is/are one or more significant deficiencies (sort of a due process analogous to the CAS administrative process).

The withhold provisions have been substantially reduced (in comparison to the original proposed rule) and there are several opportunities for withhold reductions as a function of corrective actions plans as opposed to withhold reductions which would have been dependent upon a much more extended three part process involving corrective action plans,

implementation, and government verification (the entire process could take years, particularly the government verification if that involves DCAA).

There are many “wildcards” or unknowns within the implementation of the business systems rule primarily dealing with DCAA’s “adjusting” its current interpretations of GAGAS in relation to the interim rule. It simply isn’t clear how DCAA will react, how DCAA will be involved throughout the process and how DCAA will deal with requests to audit corrective action plans because DCAA currently asserts that GAGAS does not permit DCAA to solely rely upon corrective action plans to express an opinion (DCAA may acknowledge a corrective action plan has been implemented, but DCAA will not rely upon the corrective action plan in terms of altering DCAA’s audit opinion). Of course, it may be years before we know the answers given the fact that neither DCAA nor DCMA apparently have the resources to timely audit or review contractor business systems for compliance with the DFARS interim rule. That said we can all be reassured that effective oversight is unrelated to resources.

**Note:** *Beason & Nalley will be discussing the DFARS interim business systems rule in a [June 28, 2011 Webinar](#) and there is additional webinar information at the end of this newsletter.*

## FAR Issues Final Rule on Contract Closeouts Significant Impact on the Annual Incurred Cost Proposals

*By Michael E. Steen, CPA Technical Director at Beason & Nalley, Inc.*

In an amazingly expeditious manner, on May 31, 2011, the FAR Councils published a final rule on Contract Closeout. The final rule was actually initiated by public meetings in September 2005, a project to further study the matter was announced in May 2007, and the proposed rule issued on August 20, 2009. From start to finish, it took a mere six years to arrive at the point of a final rule; hence the term “amazingly” is not necessarily in a positive or favorable context. In terms of the changes from the proposed rule to the final rule, there were some substantive changes in response to public comments but more often, the FAR Councils summarily discounted public comments with implications that the final rule was largely predetermined with or without public comments. The final rule revises procedures for clearing final patent reports and quick close procedures and sets forth a

description of an adequate indirect cost rate proposal and supporting data. As we will discuss later in this article, the description of an adequate indirect cost rate proposal and supporting data is now incorporated into FAR 52.216-7(d)(2) and specifically includes the data contained in Schedules A through O of the DCAA Model Incurred Cost Proposal or “ICE” model.

On a positive note the final rule includes some relief regarding the timing of final patent reports which have apparently been an occasional roadblock to contract closeout. FAR 4.804-5 now permits the contracting officer to potentially proceed with contract closeout before receiving and/or clearing the final patent report. It is impossible to determine if this will provide any measurable efficiency or timeliness to the contract closeout process given the fact that very few contracts are being closed as a function of DCAA’s inability to plan, execute or complete the audit of the annual incurred cost submissions. If DCAA actually audits the annual incurred cost submissions, we can be reassured that the final patent reports will not hinder the contract closeout process.

In spite of the FAR Councils self-serving hyperbole that the rule will streamline and expedite the contract closeout process, there is nothing in the “contract closeout” rule which will do anything to expedite contract closeout. The best opportunity for expediting contract closeout is incorporated into the quick closeout authority; however, the changes to the quick closeout decreased the threshold of unsettled direct and indirect costs from that proposed of 20% to 10% of total claimed contract costs (the larger percentage in the proposed rule would have effectively permitted twice as many contract dollars to be closed using quick closeout rates). Undoubtedly the “public comments” suggesting this lower percentage (10%) were in fact one or more government oversight agencies (DCAA or an IG). In final form, FAR 42.708(a)(2) defines costs which will be considered relatively insignificant (thus subject to quick closeout) when direct and indirect costs to be allocated to any one contract, task order or delivery order do not exceed the lesser of \$1,000,000 or 10% of the total contract, task order or delivery order amount. The councils believe that the “lower thresholds will provide increased oversight and reduced risk to the government.” We believe that the FAR Councils have muddled the intended wording and the 10% test is intended to be a percentage of total contracts; hence, leaving at least 90% of that contractors contracts’ values for that year ineligible for quick closeout.



In terms of the other opportunity to actually streamline and expedite contract closeout, the FAR Councils completely avoided and in fact made excuses for not imposing due dates on either the DCAA audits or the contract administration process. Per the FAR Councils, “Timelines should not be instituted for auditors to make a written determination of adequacy or for completion of audits or for contracting officers to settle rates, sign off on reports in order to ensure quality and allow flexibility, based upon the size and complexity of each contract.” Apparently the FAR councils are not familiar with the OMB A-133 Single Audit Act process which does impose rigid due dates on audits of compliance with government contract regulations, but of course those due dates primarily apply to IPAs (Independent Public Accountants/Auditors) and only coincidentally to government auditors and as expected, DCAA has been incapable of completing those audits within the prescribed due dates.

Notwithstanding the fact that the government cannot be held to timelines for anything, the contract closeout process will purportedly be improved by a rule which does nothing more than limit the opportunity for quick closeout rates and prescribe uniformity and consistency in terms of the requirements for an adequate indirect cost rate proposal. Unless all participants (contractor, auditor and contracting officer) are held to some timelines, there are absolutely no assurances that anything positive will happen to the contract closeout process.

In terms of what is required for an adequate indirect rate proposal, FAR 52.216-7(d)(2) now includes the statement that an adequate indirect cost rate proposal shall include the following data unless otherwise specified by the cognizant federal agency official (that data includes schedules A through O from DCAA’s model incurred cost proposal, and only

excludes Schedule T which was compensation data of the five most highly compensated executives). The final rule has clarified that the cognizant agency official is a contracting officer and not the auditor (the rule had explicitly stated that the auditor would be solely responsible for determining the adequacy of an indirect cost rate proposal). Unfortunately, the final rule does nothing to prevent the auditor from second guessing contracting officer decisions which are contrary to DCAA “advice” and in fact current DCMA policies typically preclude such independent contracting officer decisions (a decision contrary to a DCAA recommendation requires a DCMA internal review). If there is any relief from the required schedules, it is far more likely that it will come from contracting officers representing civilian agencies who may be willing to specify less than Schedules A through O.

In response to public comments critical of DCAA’s insistence for the required data in specific formats (i.e. Excel spreadsheets), the FAR councils responded that the data is not required in any particular format and in fact the FAR already allows flexibility for the content based upon the situation, e.g. complexity and size of the contractor (the latter statement cannot be reconciled with the absolute requirements for Schedules A through O, but that fact has been ignored by the FAR councils who by all appearances closely coordinated with DCAA to assure that DCAA’s requirements were in the proposed and final rule). In spite of the FAR Councils blind allegiance to DCAA’s required schedules, the FAR Councils have perhaps unintentionally created a problem for DCAA in terms of the statement that the “data is not required in any particular format”. Clearly that opens the door for contractors to provide the data in a format chosen by the contractor which would potentially exclude Excel spreadsheets. DCAA will predictably fail to read this discussion within the rule and DCAA will continue to insist that final indirect cost rate proposals be submitted in Excel spreadsheets inclusive of links, etc.

In one slight victory for the contractors, in response to public comments concerning DCAA’s insistence that adequate indirect cost rate proposals include “supplemental schedules”, the final rule, FAR 52.216-7(d)(iv) states that “the following supplemental information is not required to determine if a proposal is adequate, but may be required during the audit process”.

The supplemental information does include a separate set, coincidentally Schedules A through O (supplemental information as defined in FAR 52.216-(d)(2)(iv) is separate and

distinct from the required Schedules A through O). Unfortunately, the “may be required during the audit process” will be translated by DCAA as required during the audit process including the indefensible DCAA requirement for comparative analysis of indirect expense pools detailed by account to prior fiscal year and budgetary data (data which serves only one purpose which is to require the contractor to prepare comparative data specifically for DCAA’s risk analysis).

In terms of the FAR councils responses to public comments, it is all too apparent that the FAR councils simply are not concerned with public comments which interfere with the predetermined objective of prescribing an adequate indirect cost rate proposal inclusive of the schedules deemed necessary to facilitate a DCAA audit (excluding only Schedule T which is the compensation of the five most highly compensated executives which migrated to the supplemental schedules). The FAR councils apparently have no accountability in terms of actually addressing public comments or with respect to providing accurate responses. In terms of the worst of the worst, we’ve highlighted two discussions wherein the FAR council’s responses are disingenuous at best. With respect to public comments which disagreed with the need for the required schedules A through O, the FAR councils responded that the “contractors are already required to support their indirect cost rate proposals with adequate supporting data. No new requirement is imposed on contractors by this rule. The data required by FAR 52.216-7(d)(2) is already cited in FAR 42.705-1”. In point of fact, “cited” as an example in FAR 42.705-1 is significantly different than “required” by FAR; apparently the FAR councils do not understand this distinction.

In terms of the most disturbing and disingenuous response from the FAR councils (in response to public concerns for the administrative burden on small businesses) they asserted: “nor is there any evidence of any effect on small businesses when this information is required”. Of course, there is no evidence because the FAR councils made no attempt to obtain any. We know for a fact that there is evidence that the requirements for an adequate indirect cost rate proposal do affect small and large businesses in terms of the massive amounts of resources to convert books and records into the prescribed schedules; however, the FAR councils obviously did not want to consider this evidence which would have interfered with the objective of predetermined requirements. It is what it is.

## Training Opportunities



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### 2011 Beason & Nalley Sponsored Seminar Schedule:

**June 28, 2011 – Mid-year Update Recently Issued Contract Regulations and Trends in Contract Audits**

Webinar

**November 15, 2011 – Cost and Price Analysis in Government Contracting**

Reston, VA

**November 16, 2011 – Understanding Government Contract Audits and Dealing with Audit Issues**

Reston, VA

If you need additional information, please contact Lori Beth Miller at [lmiller@beasonnalley.com](mailto:lmiller@beasonnalley.com) or 256-533-1720.

### 2011 Federal Publications Sponsored Seminar Schedule

**July 12-14, 2011 – The Master’s Institute in Government Contract Costs**

Hilton Head, SC

**July 11-12, 2011 – Government Contract Audits: Dealing with Auditors and Mitigating Audit Risk**

Hilton Head, SC

**August 1-2, 2011 – Government Contract Accounting Systems Compliance**

Washington, DC

**August 3, 2011 – The Master’s Institute in Government Contract Costs**

Washington, DC

**August 3-4, 2011 – Government Contract Audits: Dealing with Auditors and Mitigating Audit Risk**

Washington, DC

**October 13-14, 2011 – Government Contract Audits: Dealing with Auditors and Mitigating Audit Risk**

Orlando, FL

**October 24-25, 2011 – Government Contract Accounting  
Systems Compliance**

Washington, DC

**December 7-8, 2011 – Government Contract Accounting  
Systems Compliance**

Las Vegas, NV

**Instructors**

- Mike Steen
- Darryl Walker
- Scott Butler
- Courtney Edmonson
- Cyndi Dunn
- Asa Gilliland

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