

# Avoiding Costly Landmines Associated with SCA



Redstone  
Government Consulting

*Helping You Navigate the Maze of Government Contracting*



**Instructors**

**Sheri Buchanan**

**Hibah Setayesh**





# Sheri Buchanan

Director – Human Resources Consulting

Sheri provides HR consulting services to our customers on a wide range of issues, from specific projects to an ongoing outsourced solution of the human resources function. Sheri has two decades of experience in providing a comprehensive assessment of all areas of HR, including establishing and implementing policies and practices, contract transition efforts/onboarding, and investigations. Sheri's experience covers a broad spectrum of compensation planning and analysis for total compensation projects, reasonableness assessments including executive compensation, compensation philosophy development, total reward strategies, benefits analysis, market pay and pay equity evaluations. She regularly supports clients with the analysis and mapping of labor categories and the preparation and analysis of wage calculations and supports clients in pricing disputes with DCAA. She stays abreast of the various requirements of the Department of Labor and, of great importance to government contractors, the Office of Federal Contract Compliance Programs, as well as other federal and state regulations impacting human resources.

CONNECT WITH ME  
**LINKEDIN** 

D. (256) 704 - 9893

Email. [SBuchanan@redstonegci.com](mailto:SBuchanan@redstonegci.com)



# Hibah Setayesh

Senior Managing Consultant



- Hibah provides HR consulting services to our customers on a vast array of issues, to include Service Contract Act, negotiations and administration of Collective Bargaining Agreements, resolving complex employee relations issues, conducting investigations, providing policy and procedure development and guidance, HRIS advisement and other HR-related compliance initiatives. Hibah stays abreast of the various requirements of the Department of Labor and, of great importance to government contractors, the Office of Federal Contract Compliance Programs, as well as other federal and state regulations impacting human resources.

CONNECT WITH ME  
**LINKEDIN** 

M. [\(256\) 652-7615](tel:(256)652-7615)

D. [\(256\) 704-9815](tel:(256)704-9815)

Email. [hsetayesh@redstonegci.com](mailto:hsetayesh@redstonegci.com)

# Common and Costly Issues

Failure to recognize applicability

Misclassifying employees

Incorrectly administering and calculating Health and Welfare

Misunderstanding intersection with Collective Bargaining Agreements

Poor recordkeeping



# Failure to Recognize Applicability



The McNamara-O'Hara Service Contract Act (SCA) applies to every contract entered into by the United States or the District of Columbia, the principal purpose of which is to furnish *services* to the United States through the use of *service employees*.

Major Provisions (service contract > \$2500):

Wage and  
Fringe Rates

Recordkeeping  
and Posting  
Requirements

Safety &  
Health



# How to Know?

- FAR 52.222-41 Service Contract Labor Standards
  - The contracting agency has responsibility for including in solicitations and contracts that meet the criteria, BUT...
  - Department of Labor has final authority for determination of SCA coverage
  - Ask questions
- GSA Schedule
- Do not assume commercial exemption

# “Commercial Services”



Contracts and subcontract for maintenance, calibration, and repair of:

- ADP & office info/word processing systems
- Scientific & medical apparatus or equipment where the application of microelectronic circuitry or other technology of at least a similar sophistication
- Office/business machines where services performed by supplier or manufacturer

For these 7 services:

- 1 – Maintenance and servicing of motorized vehicles owned by Federal agencies
- 2 – Issuance and servicing of credit, debit, or similar cards by Federal Employees
- 3 - Lodging, meals, and space in hotels/motels for conferences
- 4 – Real estate services
- 5 – Transportation on regularly scheduled routes
- 6 – Relocation Services
- 7 – Maintenance services for all types of equipment obtained from manufacturer or supplier under a “sole source” contract



# “Commercial Services” Continued

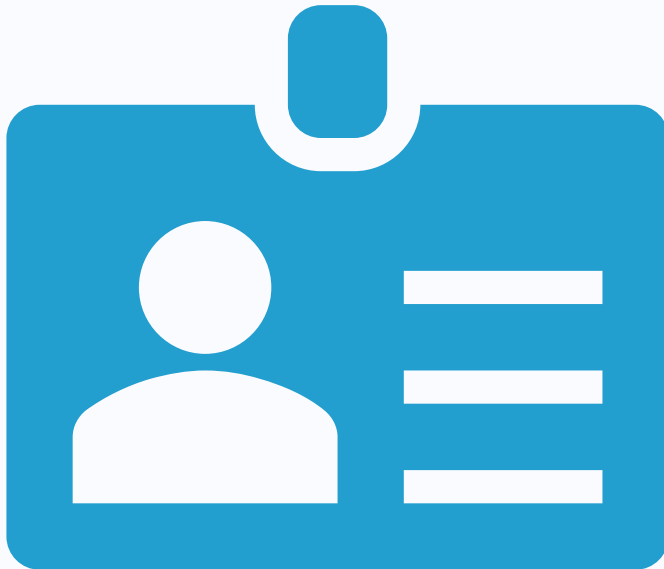


If ALL of these criteria are applicable:

- Services offered and sold regularly
- Contract awarded on “sole source basis” or on basis of factors in addition to price
- Services furnished at “market” or “catalog” prices
- Employee spends small portion of available hours on government contract
- Employee receives same compensation plan
- Contracting officer and prime contractor certify that criteria can be met and complied with



# Misclassifying Employees



- 1) Exempt or Non-Exempt per Fair Labor Standards Act?
- 2) If non-exempt, determine SCA labor category. Employees are classified based on the job descriptions listed in the SCA Directory of Occupations.
  - Wage per WD or \*minimum wage?
- 3) Is a conformance needed?

# \*Minimum Wage for Contractors



On February 12, 2014, President Obama signed Executive Order 13658, “Establishing a Minimum Wage for Contractors,” to raise the minimum wage to \$10.10 for all workers on Federal construction and service contracts.

January 1, 2020, the EO 13658 minimum wage rate increased to \$10.80 per hour\*

January 1, 2021, the EO 13658 minimum wage rate increased to \$10.95 per hour\*

January 1, 2022, the EO 13658 minimum wage rate increased to \$11.25 per hour\*

January 1, 2023, the EO 13658 minimum wage rate increased to \$12.15 per hour\*

January 1, 2024, the EO 13658 minimum wage rate will increase to \$12.90 per hour\*

\*Requirements for tipped workers varies.



# EO 14026 Increasing the Minimum Wage for Federal Contractors



On April 27, 2021, President Biden signed an Executive Order requiring federal contractors and subcontractors to pay their employees a minimum of \$15/hour\* beginning on January 30, 2022, for new contract solicitations. Covered contracts are principally those subject to SCA and DBA.

By March 30, 2022, all agencies were required to include this increased minimum wage requirement in existing contracts at such time that the parties exercise their option to extend the contracts. (Coverage is triggered by the exercise of an option on or after January 30, 2022.)

- January 1, 2023: \$16.20\* per hour
- January 1, 2024: \$17.20\* per hour

**Note: Applicable contracts that were entered into, extended, or renewed prior to January 30, 2022, are generally subject to a lower minimum wage rate established by Executive Order 13658, “Establishing a Minimum Wage for Contractors.”**

**\*Requirements for tipped workers varies.**

# Applicability of EO 14026



**Workers performing on or in connection with covered Federal contracts whose wages are governed by the Fair Labor Standards Act (FLSA), the SCA, or the DBA are generally entitled to receive the Executive Order minimum wage for all time spent performing on or in connection with covered Federal contracts.**

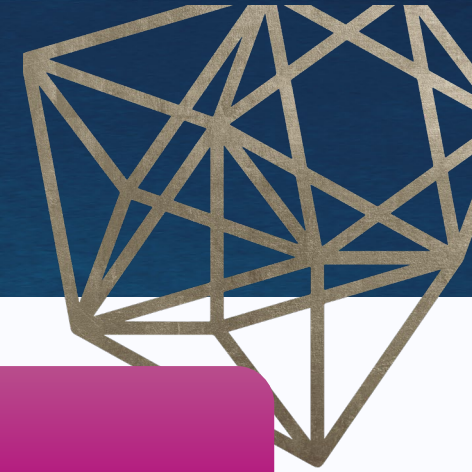
- employees who are entitled to the FLSA minimum wage;
- service employees who are entitled to prevailing wages under the SCA; and
- laborers and mechanics who are entitled to prevailing wages under the DBA.

**FLSA exempt employees are not entitled to this minimum wage.**

**FLSA-covered workers performing “in connection with” covered contracts are also excluded from coverage of the Executive Order if they spend less than 20% of their work hours in a particular workweek performing in connection with covered contracts.**



# Incorrectly Administering and Calculating Health and Welfare



## H&W can be comprised of

- Cost of “bona-fide fringe” benefits
  - Cannot include benefits which are legally required
  - Cannot include vacation, holiday, sick which is required per the WD
- Cash-in-lieu

## H&W payments are to be calculated per the “Average Cost” or “Fixed Cost” method as specified by the Wage Determination:

- Odd numbered WDs are Fixed Cost (29 CFR 4.175(a))
- Even numbered WDs are Average Cost (29 CFR 4.175(b))

# Bona-Fide Benefits | 29 CFR 4.171



## Review the regulations!

- Specified in writing and made pursuant to terms of the plan, fund, program
- Primary purpose is to provide systematically for payment of benefits to employee on account of death, disability, advanced age, retirement, illness, medical expenses, hospitalization, supplemental unemployment benefits, and the like
- Must contain a definite formula for determining the amount to be contributed by the contractor and a definite formula for determining the benefits for each of the employees participating in the plan
- Contractor's contributions must be paid irrevocably to a trustee or third person pursuant to an insurance agreement, trust or other funded arrangement
- ERISA considerations
- Cannot require deductions from wages
- Consideration of unfunded self-insured plans



# Use the Correct Wage Determination

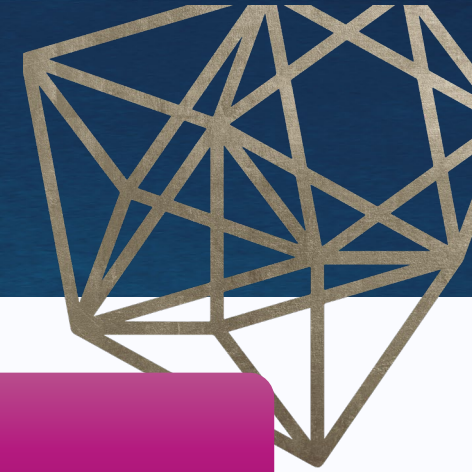
Contracting  
Agency provides  
to Prime

Agencies must  
obtain new WD at  
least once every  
two years.

New WD may be required each year if:

- Contract is subject to annual appropriations.
- Annual contract option being exercised.

# What are the Impacts?



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- Proposal pricing
- Price adjustments
- Back wages

Withholding of contract funds or debarment

Significant impact on internal resources

Public Relations



# Pricing

## Proposal Phase

- Minimum rates of pay
- Fringe Benefits
  - Health & Welfare
  - Vacation vesting requirements
  - Holidays
  - Sick Leave
- Uniform allowance
- Hazard duty pay
- Other CBA requirements

# Price Adjustments

## Price Adjustment

- If FFP, FAR 52.222-43/44 Fair Labor Standards Act and Service Contract Labor Standards –Price Adjustment.
- Gives right to adjustment due to WD change if:
  - Request is made within 30 days of the new WD being issued
  - No escalation was included for Option Years
- Can include increases/decreases in wages and fringe along with accompanying increase/decrease in social security tax, unemployment taxes and workers' comp premiums.
- CANNOT include G&A, overhead or profit.



# Misunderstanding Intersection with Collective Bargaining Agreements

## Section 4(c) of the SCA

### Proposal pricing

- Base year
- “Predecessor”

### Price Adjustments

- Notice from KO
- Notice to KO

# Timing is Critical with CBA and SCA Price Adjustment (FAR 52.222-43)



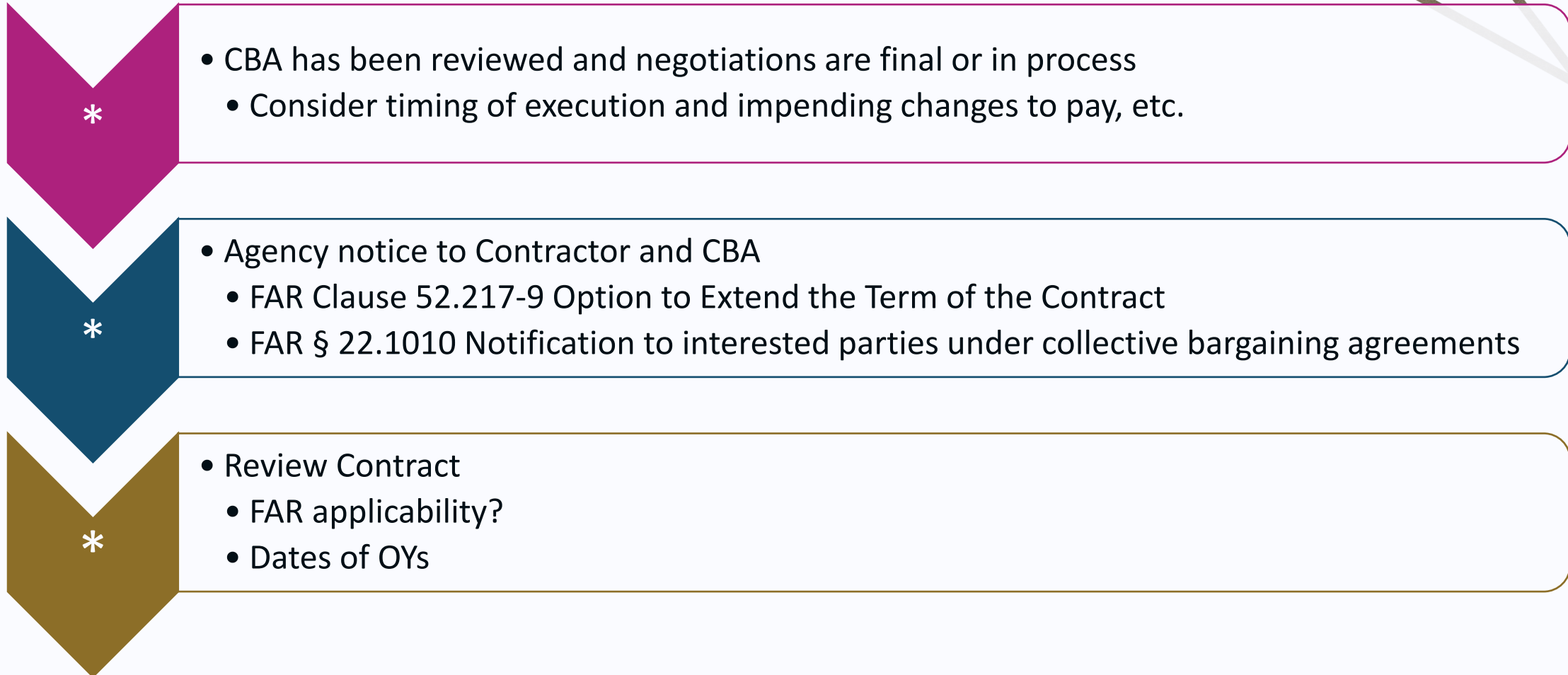
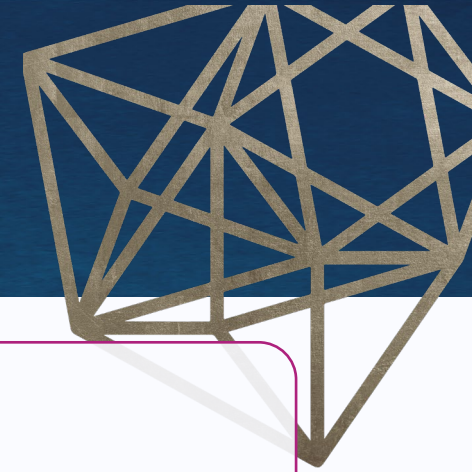
CBA needs to be “current” at beginning of OY

Notice of Government to Contractor

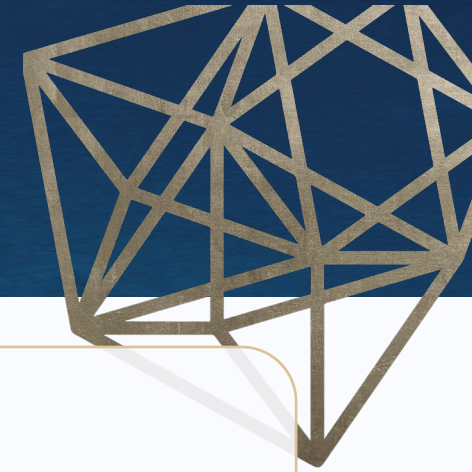
Timely Notice of Contractor/Union to Contracting Agency



# Timeline of Successful Price Adjustment



# Timeline of Successful Price Adjustment (cont.)



- Timely submission of CBA to Contracting Agency



- Modification of contract/Incorporation of CBA as “new WD”
  - Must they accept the CBA?
  - Notify agency within 30 days that you will seek a Price Adjustment per FAR 52.222-43



# Common and Costly Issues for Collective Bargaining Agreements

Vague Language

Inadequate Compensation Provisions

Unclear Terms for Contract Duration and Renewal

Ignoring Legal and Regulatory Requirements

Ignoring Future Trends and Needs



# Vague Language



Vague or unclear language in a Collective Bargaining Agreement (CBA) can lead to different interpretations among the parties involved, resulting in misunderstandings and conflicts.

## Potential Impact

- Legal Disputes
- Damage to Working Relationships
- Decrease Employee Morale
- Reduce Productivity
- Increase Turnover

## Avoidance

To mitigate the risks associated with ambiguous language, it is essential to use precise and unambiguous language in the CBA.

- Defining Terms Explicitly
- Consult Legal Experts
- Test for Clarity

# Inadequate Compensation Provisions



Insufficient or poorly structured compensation terms can result in employee dissatisfaction and disputes, impacting overall morale and engagement.

## Potential Impact

- Employee Dissatisfaction
- Increased Turnover
- Conflicts and Disputes
- Decreased Engagement

## Avoidance

- Benchmark Compensation
- Regular Reviews
- Adjust as Needed
- Ensure Sustainability



# Unclear Terms for Contract Duration and Renewal



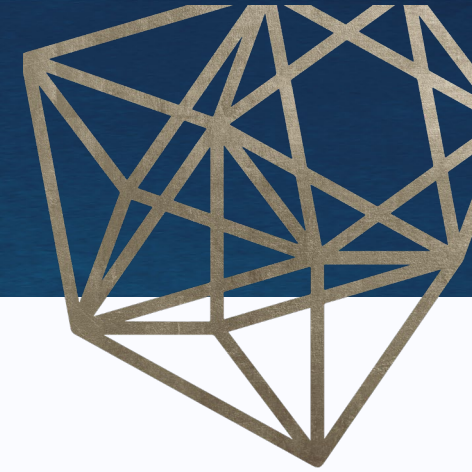
- **Define Contract Duration**
- **Outline Renewal Procedures**
- **Specify Renegotiation Terms**
- **Ensure Mutual Understanding**

# Ignoring Labor Laws and Regulations



- **Can lead to non-compliance, resulting in legal penalties and disputes.**
- **Potential fines, legal fees, and damage to the organization's reputation.**
- **Regularly update your knowledge of current labor laws and regulations.**
- **Seek advice from legal professionals to ensure compliance and prevent legal issues.**

# Ignoring Future Trends and Needs



- **Failing to Consider Remote Work Trends**
- **Neglecting Technological Advancements**
- **Ignoring Changes in Industry Standards**
- **Overlooking Evolving Employee Expectations**
- **Not Addressing Future Economic Conditions**



# Key Considerations

**Historical Context:** Understanding the terms of previous agreements can provide context for current or future negotiations.

**Economic Conditions:** The broader economic environment can influence bargaining positions, such as inflation rates or industry profitability.

**Legal and Regulatory Framework:** Labor laws and regulations may impact what can be negotiated and how the process is conducted.

# Poor Recordkeeping



- Basic records such as name, address and social security number of each employee must be maintained for three years from completion of the work. In addition, the following records must also be maintained for 3 years:
  - The correct work classification(s), wage rate(s) and fringe benefits provided (or cash equivalent payments provided in lieu of fringe benefits);
  - The total daily and weekly compensation of each employee;
  - The number of daily and weekly hours worked by each employee;
  - Any deductions, rebates or refunds from each employee's compensation;
  - Any list of a predecessor contractor's employees which had been furnished showing employee's length of service information;
  - A list of wages and fringe benefits for those classes of workers conformed to the wage determination attached to the contract.
- Provide notice to employees.
- Flow down to subcontractors.



# Questions and Discussion





# About Redstone Government Consulting, Inc.



Redstone Government Consultants are a team of the most senior industry veterans and the brightest new talent in the industry. Our Consultants are: Former executive level DCAA and DCMA, CPAs, Attorneys, and GovCon industry executives.

We support and assist government contractors with government contract compliance, proposal pricing, contracts and subcontracts administration, HR consulting, accounting systems implementation and accounting outsourcing.

- Compliant Accounting Systems
- Incurred Cost Proposals
- Proposal Pricing and Cost Volume Support
- Forecasting & Budgeting
- DCAA Audit Support
- Human Resources GovCon Consulting/Outsourcing
- Contracts and Subcontracts Administration

- DFARS Business Systems Reviews
  - Accounting & Billing Systems
  - Material Management and Accounting System (MMAS)
  - Contractor Purchasing System Review (CPSR) Service
  - Estimating Systems
  - Government Property
  - Earned Value Management System (EVMS)

- Litigation Consulting Support
- Labor Law Compliance and Support
- REAs, Claims & Terminations
- Cost Accounting Standards (CAS)
- Contract Closeout Assistance
- Deltek and Unanet implementations
- ITAR/EARS Consulting

# Newsletter and Blogs



## Sign up for our newsletter for information on:

- Current industry trends in Government Contracting, including latest DCAA and DCMA audit issues
- Informative Blogs and Whitepapers on many topics, including:
  - Accounting and FAR Compliance
  - Contracts Administration
  - HR for Government Contractors
  - Project Controls
  - Deltek and Unanet Hot Topics

[www.redstonegci.com](http://www.redstonegci.com)





Redstone  
Government Consulting

501 Madison Street SE, Suite 100  
Huntsville, AL 35801  
(256) 704 - 9800



info@redstonegci.com  
www.redstonegci.com

