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GSA Announces No Change in FY2015 Travel Standard Per Diem Amounts

By Darryl Walker, CPA, CFE, CGFM Senior Director at Redstone Government Consulting, Inc.

The General Services Administration (GSA) will not change any "Standard" location per diem (lodging and meals & incidentals(M&I)) amounts for Government Fiscal Year (GFY) 2015, which begins October 1, 2014, thus holding certain government employees and certain government contractors to the existing ceiling 2014 daily amounts for travel. The GSA announced GFY 2015 travel per diem rules and daily rates in a Federal Register notice on August 15, 2014, and new 2015 per diem amounts apply to all travel within the Continental United States (CONUS).

"Standard" GFY 2015 travel daily per diem rates will remain at $83 for lodging nationwide and range from $46 to $71 for M&I, depending on the individual State. However, some changes to per diem rules will be applicable to "Non-Standard Areas" (NSA) beginning GFY 2015, which include increases in certain NSA per diem daily amounts and the shifting of five formerly designated NSA category locations to "Standard" areas and two locations from "Standard" to NSA designations.

Locations identified as NSA are typically cities and counties of a state where travel per diem (lodging, meals, & incidental (M&I)) costs are deemed more expensive than other sections of the state or country. A single ceiling nationwide CONUS lodging amount and single M&I daily rate by State applies to all other travel destinations within the CONUS.

Because the per diem ceilings are incorporated within the Federal Travel Regulations (FTR), and FTR ceilings are incorporated within FAR Part 31.205-46 as allowable per diem benchmarks for government contractor employee CONUS travel, any contractor employee per diem costs charged to contracts subject to the cost principles which are above those ceilings are expressly unallowable.

THIS ISSUE:

Deputy under Secretary of Defense Admits DOD Short on Meeting Competition in Acquisition Goals

By Darryl Walker, CPA, CFE, CGFM Senior Director at Redstone Government Consulting, Inc.

In an August 21 2014 memorandum to Department of Defense (DOD) acquisition managers, Frank Kendall, Deputy Under Secretary of Defense for Acquisitions, Technology and Logistics, states that the DOD has not only fallen short in meeting DOD competition goals, but is experiencing a declining competition rate. Although building an environment that will foster more competition in DOD's procurement of services and supplies has been a long-standing center-piece of the government's better buying power initiative, DOD has, for the past four years, remained unsuccessful in achieving this goal.

In his memorandum, Mr. Kendall sets forth five actions to improve the competitive process:

- Address progress to improve competitive environment through quarterly discussions at the Business Senior Integration Group meetings, and to facilitate the DOD's analysis, deploy "business intelligence tools" to identify means for improvement;
- Issue "Guidelines for Creating and Maintaining a Competitive Environment for Supplies and Services in the DOD" which contains methods for enabling a competitive procurement process; in September 2014, publish and distribute an updated competition handbook which will include examples and case studies designed to help program managers establish competitive sources;
- Require contracting officers to obtain feedback from potential offerors who expressed an interest in submitting competitive bids in response to a solicitation, but ultimately did not do so;
- Require contracting officers to first issue Requests for Information (RFI) or Sources Sought (SS) notices to gauge interest in a solicitation, before utilizing non-competitive solicitations (FAR 6.302-1—Only One Responsible Source), and;
- Amend procedures for completing non-competitive justification and approval documents which will provide a better trail for determining why non-competitive acquisitions cannot be converted to competitive actions in subsequent purchases.

The generic actions listed within the memorandum do not address other options for generating more interest among private sector companies to enter the government contracting process.

Other options that could enhance developing a large base of competition include putting the brakes on the never ending implementation of cumbersome and useless regulatory hurdles for government contractors to navigate, which include a plethora of presidential Executive Orders aimed at government contractors, those orders of which are politically motivated, often redundant in purpose (e.g. labor laws), and constrictive in allowing new businesses to qualify for contract awards (one example of an Executive Order is discussed in this newsletter, DOL Proposed Rule Would Require Federal Contractors to Report Summary Pay Data). All of this begs the rhetorical question, "Why would any company consider entering the government procurement market place knowing that the Executive and Legislative branches of our government maintain a pre-determined notion that government contractors are inherently dishonest and thus require a good spanking from time to time with new reporting and oversight rules"?

Obviously the DOD has no authority (without the U.S. Congress) to eliminate procurement rules that impair the competitive process. Nonetheless, credible evidence exists supporting a clear correlation between a cumbersome government procurement regulatory environment and commercial companies avoiding or leaving seller/buyer relationships with the government.

DOL Proposed Rule Would Require Federal Contractors to Report Summary Pay Data

By Darryl Walker, CPA, CFE, CGFM, Senior Director at Redstone Government Consulting, Inc.

Implementation of President's Executive Order on Equal Employment Opportunity

The Department of Labor (DOL) issued a proposed rule on August 8, 2014 which would require certain federal contractors and subcontractors to annually report company employee pay statistics, segregated by contractor employee race, ethnicity, and sex. The "Equal Pay Report" rule, a compensation reporting requirement never before placed on government contractors, would amend one of the implementing regulations of President Obama's Executive Order 11246 which bars race or gender discrimination. Contractors subject to the new reporting rule are those required to file EEO-1 reports with more than 100 employees and holding federal contracts or subcontracts valued at $50,000 or higher.

Contractor summary pay data statistics would be submitted to DOL's Office of Federal Compliance Programs (OFCCP) who will monitor contractor data for evidence of apparent pay disparities among gender, race and ethnic groups. OFCCP will also compile reported data by industry and publish summary data for publication of aggregate pay information by industry and the EEO-1 job classifications. That summary labor compensation information by industry will be made available to contractors and subcontractors as a means to determine if a contractor's employee wages, within a specific classification, significantly vary from (lower than) industry standards and therefore require pay adjustment evaluation.

Contractor employee pay data will be presented in a separate EEO-1 Report addendum, entitled Equal Pay Report, the data of which would be derived from the EEO-1 reports supplemented by information contained in the Form W-2 Wage and Tax Statement. The Equal Pay Report will display:

- Total employee compensation extracted from W-2s, segregated by job category and sex, race, and ethnicity;
- Total labor hours worked by labor category, by sex, race, and ethnicity;
- Total number of employees, by EEO-1 labor classification, race, ethnicity and sex.

The stated purpose of the new pay reporting requirement is to enable the government to more effectively identify contractors engaged in potential pay violations and target those companies for audit by the DOL's Office of Federal Compliance Programs (OFCCP), rather than utilize resources for audits of companies where there appears little risk of violations.

The proposed rule states emphatically that the contract pay data collection is "a critical tool for eradicating compensation discrimination". The DOL also notes that the rule will actually serve as a deterrent to contractor pay discrimination, assuming that contractors will be more pro-active in self-assessing their wage and compensation for possible labor law violation risks and consequently implement corrective action to overcome wage gaps. Along this line, the rule states, "more contractors will voluntarily change their policies and practices. These contractors will rightfully assume that OFCCP is strengthening its enforcement in the area of compensation discrimination…".

Many observers see the usefulness of the proposed rule quite differently, and some warn that the new rule, if implemented will create problems exclusively for government contractors. Some contractor executives fear that OFCCP will rely too heavily on the W-2 pay information (primary source for contractor pay disclosure) as the primary risk indicator of pay discrimination, without considering other factors affecting wage levels such as employee experience, education, work schedule, work location, and seniority. Also worrisome is that contractors could be targeted for audit year after year because of recurring blips between company and industry wage averages, even though there is no evidence of pay discrimination. And contractors with a history of dealing with government auditors with preconceived conclusions (using only a preliminary risk analysis before conducting the audit) fear that OFCCP will conclude, before their audits begin, that the contractor has violated DOL regulations because pay is lower than industry averages—thus just a matter of auditors finding enough summary data (while conveniently ignoring other factors) to support a largely predetermined case for pay discrimination. In tandem with another recent Executive Order which will ultimately require contractors to disclose violations of labor laws (in responding to government solicitations), DOL will have significant leverage in convincing contractors to "remediate" alleged pay disparities else risk future government contract awards.

The DOL proposed rule, given birth through an Executive Order directed only at government contractors, is viewed by many as nothing more than a politically expedient device to artificially demonstrate the Executive Branch's "commitment" for protecting taxpayers. Because of this widespread belief, the more paranoid observers believe that the DOL will be very aggressive in conducting future pay discrimination audits

simply to substantiate that the new rule was necessary to rectify allegedly long-standing discriminatory pay.

DFARS Business Systems Rule – Discussions at the August 18 Public Meeting

By Michael Steen, CPA, Senior Director at Redstone Government Consulting, Inc.

As noted in our July newsletter, on July 15, 2014, the Federal Register published a proposed rule to amend DFARS 252.242-7005 to entrust contractors with the capability to demonstrate compliance with the existing DFARS system criteria for contractors accounting, estimating and MMAS (material management and accounting system) based upon contractor's self-evaluations and audits by independent Certified Public Accountants (CPAs). The proposed rule has a 60 day period for public comments while also included a provision for a three-hour public meeting which was held on August 18, 2014. Redstone Consulting and three others made presentations during that public meeting and the meeting also included statements by the Government, in particular prepared statements delivered by the DCAA Director, Patrick Fitzgerald. Of passing interest the proposed rule is the responsibility of the DAR Council; however, the DAR Council essentially deferred to DCAA for all discussions of the substance of the proposed rule. That said, one can assume that the DAR Council will heavily involve DCAA in responding to public comments and ultimately in authoring the final rule.

DCAA's prepared comments were little more than restatements coming from the Commission on Wartime Contracting (CWC), in particular that contractor internal controls and business systems are the first line in defense against fraud, waste and abuse (It remains ironic that the CWC actually reported substantially more waste attributed to government actions which resulted in billions spent on unnecessary and/or redundant facilities and billions for which there was no Government accounting for use of the funds all endemic of grossly inadequate internal controls on the part of the US Government…as if contractor business systems can somehow eliminate the Governments' failings).

DCAA also emphasized that the reason for the proposed rule was DCAA's lack of resources to timely perform contract oversight/audits of contractor business systems and that this lack of resources was a primary factor in a GAO (Government Accountability Office) report that recommended that DOD "needs to consider alternative methods to accomplish these critical audits in a timelier manner" (GAO 12-83). Unfortunately no one (the GAO, the DOD Inspector General, or Congress) has ever challenged DCAA in terms of its efficient or inefficient use of audit resources to plan and execute business systems audits. As a point of reference suggesting that DCAA might be inefficient in terms of planning these audits, in one of its fiscal year audit planning exercises, DCAA offices estimated 235,000 hours to audit one business system at one large, multi-segment contractor. Although the estimate was never mentioned during the public meeting, it remains to be seen if or how DCAA's internal estimates will impact its expectations if and when DCAA is placed in the role of overviewing the audit risk, planning and execution by independent CPA firms.

In terms of the public presentations, one focused on the vague definition of a "significant deficiency", which is the basis for system disapproval within the existing regulation. Specifically, the determination that a significant deficiency exists would require a contracting officer to disapprove the system and implement payment withholds. The less than objective and controversial definition is:

> **"**A shortcoming of the system that affects materially the ability of officials of the DOD to rely upon information produced by the system that is needed for management purposes"

It remains to be seen if or even why the DAR Council would re-visit that definition which was vetted in both the interim business systems rule (May 18, 2011) and the final business systems rule (February 24, 2012). At those times, the DAR Council insisted that the terminology is "sufficiently common to enable reasonable parties to agree on necessary characteristics to meet each threshold given the unique set of circumstances."

Other public comments focused on the cost involved with independent CPA audits at a time when DOD is attempting to reduce administrative costs to yield more warfighting resources. As stated by one presenter, "no enemy of the

United States will ever be deterred or defeated by the excellence of our audits". With respect to the costs of independent CPA audits, there were attendee questions concerning the allowability and the allocability of these potential costs. It was somewhat disconcerting that the Government representatives failed to respond to either question other than the DCAA Director finally stated that "he knew of no reason why the costs would not be allowable". No Government representative responded to the question of limiting the allocability to only those Government contracts which include the explicit requirement (see the final paragraph in this article concerning "public statements").

Redstone Government Consulting provided a presentation and comments which focused on three areas including access to and reliance on contractor internal audits, the fact that the current business systems rules already include requirements for self-monitoring and reporting and the widely disparate oversight between DCAA and DCMA. Regarding internal audits, there has been an ongoing Government initiative triggered by Section 832 of the FY2013 NDAA (National Defense Authorization Act) for DCAA to access and to utilize contractor internal audits to assess the efficacy of contractor internal controls/business systems. That initiative is further supported by a GAO review and report (GAO-12-88) wherein the GAO concluded that contractor internal audits follow Internal Audit Standards, particularly independence, which would implicate Government reliance on the work of the internal auditors. Although DCAA could not entirely rely on the work of the internal auditors, DCAA could adjust (reduce) its audit scope. In response to Redstone's discussion of contractor internal audits, DCAA's Director stated that "As you know, because of independence issues, DCAA cannot rely on the work of contractor internal audits. The reason DCAA acquires contractor internal audits is for DCAA's risk assessment". Translated, DCAA is using contractor internal audits solely for audit leads or "what went wrong when". Apparently neither the GAO nor Congress is aware of this (DCAA) self-imposed limitation which is seemingly at odds with the intent of Section 832 as well as the GAO conclusions in GAO-12-88.

Relative to existing business systems regulations which already impose self-monitoring and reporting requirements on contractors, Redstone provided DAR Council statements from the final rule published on February 24, 2012 that "each business systems clause contains system-specific requirements for contractor monitoring and disclosure". Of passing interest, no one representing the Government had any comment.

With respect to the very different contract oversight roles (DCMA vs. DCMA), Redstone noted that the Government objective is the same for each of the six business systems; however, the Government methodology for contract oversight is widely disparate. In particular, DCMA can perform a review (without any particular authoritative standards such as auditing standards) and that review can be performed in one to two weeks (field work). In contrast, DCAA audits involve weeks of fieldwork and under the proposed rule, contractors would be required to provide system specific certifications for three of six systems while also being required to engage independent CPA audits of those three systems (none of this would apply to the other three business systems covered by DFARS 252-242-7005). Perhaps as expected, no one representing the Government had any comment.

One final observation, in terms of the presentations by DCAA as well as most of the statements made by those representing industry, the public meeting served as a reminder that the prepared comments and the ensuing discussions are anything but unfiltered viewpoints. With rare exception, the comments are subjected to rigorous internal reviews and approvals and the presenter is limited to presenting only that which has been specifically reviewed and approved for public presentation. This concept also permeated the follow-up discussions, notably a number of defense contractors were attending, but there were very few who actually participated in any discussions (the three hour meeting only took 90 minutes). At least in appearance, the lack of public comments and/or questions could be interpreted as tacit concurrence with the proposed rule; however, the more telling discussion will likely come in the form of written public comments submitted on or before September 15, 2014. For anyone interested in the public comments posted thus far, the website is www.regulations.gov (search on DFARS Case 2012-D042). For anyone interested in obtaining Redstone's presentation made during the public meeting, please click here.

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Instructors:

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- Scott Butler
- Wayne Murdock
- Cyndi Dunn
- Asa Gilliland
- Darryl Walker
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Our Company's Mission Statement: RGCI enables contractors doing business with the U.S. government to comply with the complex and challenging procurement regulatory provisions and contract requirements by providing superior cost, pricing, accounting, and contracts administration consulting expertise to clients expeditiously, efficiently, and within customer expectations. Our consulting expertise and experience is unparalleled in understanding unique challenges of government contractors, our operating procedures are crafted and monitored to ensure rock-solid compliance, and our company's charter and implementing policies are designed to continuously meet needs of clients while fostering a long-term partnership with each client through pro-active communication with our clients

In achieving government contractor goals, all consulting services are planned and executed utilizing a quality control system to ensure client objectives and goals are fully understood; the right mix of experts with the proper experience are assigned to the requested task; clients are kept abreast of work progress; continuous communication is maintained during the engagement; work is managed and reviewed during the engagement; deliverables are consistent with and tailored to the original agreed-to scope of work, and; follow-up communication to determine the effectiveness of solutions and guidance provided by our experts.

Specialized Training

Redstone Government Consulting, 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. Lori Beth Moses at lmoses@redstonegci.com, or at 256-704-9811.

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