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DCAA's Continued Quest for Access to Contractor Employees

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In recent months, there has been a noticeable increase in DCAA floor-checks wherein auditors arrive at a contractor facility (unannounced) with expectations of evaluating a contractor's timekeeping practices by determining that contractor employees are following policies and procedures; hence, labor costs are reliable. As with virtually every other DCAA audit, the audit process has expanded significantly, in the case of floor-checks larger numbers i) of employees to be interviewed, ii) of questions for each employee and a much broader range (the type of questions during or after the floor checks) along with the newly introduced need to also interview employee supervisors. For more details regarding the DCAA floor-checks, one can go to their audit programs, http://www.dcaa.mil/audit_program_directory.html, activity code 13010 or 13500.

The slightly shorter audit program, 13 pages for code 10310 (versus 17 pages for code 13500) which pertains to non-major contractors (less than $100 million in auditable dollars in a fiscal year) has evolved over time from a relatively simple and unobtrusive list of five questions. The original list was used during floor-checks solely to establish that at a point in time, a contractor employee was charging a work order (account or job number) which matched what they were demonstrably working on at that point in time. DCAA's initial logic for performing floor-checks was its realization (or rationalization) that labor costs are the only cost supported solely by a contractor's internally generated documentation (i.e. no third party documents such as with accounts payable). Hence, the need to supplement books and records with "real-time" physical verification. Historically, the only floor-check follow-up, was to check the accounting records to make sure that the employee work order (observed during the floor-check) was also reflected in the subsequent labor distribution. Although one would assume that every contractor would self-check for consistency (making sure that work orders matched for each employee who had been floor-checked), it is amazing that some contractors (then and now) never bother to self-check. The result, the occasional and inexplicable work-order mismatches only detected by DCAA's post-floor-check review of the labor distribution reports. Something of an awakening for both the employee and the contractor management and invariably

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a major finding for the DCAA auditor.

Spring forward to 2015, the 13 page audit program now includes questions which pertain to; i) timekeeping training, ii) employee knowledge of hotline posters and fraud risks/concerns, iii) if and how employees record idle time, and iv) documented evidence of supervisory control over work-at-home employees. The current audit program also requires the auditor to observe the actual work performance to determine that it is charged correctly. Not stated in the audit program and something of a trick question, auditors are also asking a floor-checked employee to identify the work order or account that will be charged for the time spent during the floor-check (which used to be five minutes, but now could involve an hour or more). A trick question, because most employees won't readily have an answer and/or the employee will not likely know that DCAA's expected answer is that the time will be charged to an indirect activity code even. Typically DCAA will expand this discussion into questions concerning the employee's knowledge of direct vs. indirect labor charging as if the employee has attended government contract cost accounting 101.

Hence, DCAA floor-checks have evolved from a nuisance activity into an operational disruption for the employee, his/her supervisor, nearby employees (observing the floor-check and making sure their timesheets are current) and the contractor compliance personnel who accompany DCAA and ultimately deal with DCAA assertions of "questionable procedures" or "discrepancies" which arise because the more questions one asks an employee, the more likely the employee won't have an answer acceptable to DCAA. It should be recognized that DCAA's continuous expansion of audit scope related to contractor labor charging is without any change in any relevant contract clause; in fact, nothing in FAR begins to address timekeeping procedures and even the DFARS Accounting (Business) System only requires "a timekeeping system that identifies employees' labor by intermediate or final cost objective" and "a labor distribution system which charges direct and indirect labor to the appropriate cost objectives".

Recently, large "major contractors" have been hit with a new DCAA strategy, multiple teams of DCAA auditors showing up unannounced and expecting multiple contractor representatives to join the fun (unannounced floor-check). For contractors who have balked at supporting multiple simultaneous floor-checks, the DCAA reaction can be a multi-paged letter accusing the contractor of being uncooperative and invariably ending with the threat of issuing a denial of access to records letter (which is supposed to generate the same level of fear as the elementary school threat of a letter home to one's parents).

In a recent experience, a large contractor went through a series of letters, DCAA to the contractor, the contractor to DCAA (akin to an endless loop) wherein DCAA asserted that it had the right to decide the scope of its audits which could include multiple simultaneous floor-checks (unannounced) which could include floor-checks during all three shifts. DCAA insisted that as long as DCAA mentioned multiple teams (during a meeting discussing upcoming audits in Fiscal Year 2015), that the contractor had thus committed to support multiple teams performing simultaneous floor-checks. Apparently, a contractor must express his or her disagreement at one of these meetings even though DCAA does not fully explain the concept nor does DCAA ever bother to support its expectations with a regulatory reference (contract terms and conditions). In fact, during the initial and ensuing exchange of letters (DCAA and Contractor) and during a three hour meeting, DCAA never once mentioned a contract clause. Instead, DCAA insists that Generally Accepted Government Auditing Standards (GAGAS) require that DCAA perform floor-checks (apparently something overlooked by DCAA when it was not consistently performing floor-checks, let alone performing multiple simultaneous floor-checks). Of passing interest (and contractor frustration) during meetings, DCAA refused to discuss what it used to do (or not do) or to discuss/explain the DCAA risk assessment which caused DCAA to divert substantial resources to floor-checks (even though the risk factors are exactly the same as during periods/fiscal years when DCAA performed no floor-checks). Apparently, if DCAA doesn't want to discuss its blaring inconsistencies, DCAA simply plays its "wild-card" declaring it off-the table.

Although most government contractors have long since acquiesced to DCAA's floor-checks, there is a fundamental issue concerning DCAA's contractual rights for access to contractor employees. The Access to Records clause, FAR 52.215-2, defines records to include books, records, policies and procedures regardless of form (manual or electronic); however, that clause makes absolutely no reference to

contractor employees (other than the Comptroller General/GAO having the right to interview any current employee concerning contract or subcontract transactions). Annually (DCAA Annual Reports to Congress) has tacitly acknowledged that current contract terms do not extend "access to records" to contractor employees; hence, DCAA has been soliciting Legislative "relief" in the context of an amendment requiring a FAR revision. Unfortunately (for DCAA), there hasn't been any Legislative action, nor is there any included in the 2016 NDAA (HR 1735 RH). Thus, as evidenced by recent experience involving two DCAA letters (8 pages each) and a three hour meeting, DCAA only refers to GAGAS in support of its insistence that DCAA must have access to contractor employees. Notably missing is any reference to a contractual clause nor any explanation as to how FAR/DFARS incorporate DCAA's continuously changing interpretations of GAGAS.

A final consideration, there is a contract clause, 52.203-13, Contractor Code of Business Ethics and Conduct, which implicates mandatory disclosure (of specified violations) and full cooperation with Government agencies responsible for audits, investigations and corrective actions. When that regulation was published (November 2008) it addressed access to contractor employees within the context of full cooperation, but of more than passing interest, the FAR Councils made the point that a contractor would make its employees available to auditors or investigators, but there was no expectation that the contractor would be responsible for ensuring that the employees cooperate. A slightly different context, but in the more (potentially) egregious situation of an investigation, no regulatory expectation that the contractor could compel its employees to cooperate with auditors (during an interview). In tandem with FAR 52.215-2 (no reference to access to employees), the regulations don't seem to support DCAA's insistence that contractors must grant DCAA access to employees.

Miscellaneous Activities of Interest to Government Contractors

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

No Remedy for Plaintiff where Court Significantly Reduces Attorney Fees

In a case involving an environmental group which successfully challenged a California County's conditional issuance of a construction permit (for construction of a mosque), the environmental group only recouped $19,178 of $231,098 for attorney fees. In reducing the amount, the Fourth District, Div. 2 (Cal App 4th____, 2015 WL 1259781) found the amount to be "outrageous" and reduced it by approximately 92 percent. The environmental group could not establish that the Fourth District had abused its discretion because the environmental group could not demonstrate that the reduction involved any improper factors. Seems to be a good strategy by the Fourth District, don't provide any details other than the adjectival reference to "outrageous" making it almost impossible for the plaintiff to identify any improper factors. Not exactly the same, but reminds us of a contractor whose proposed costs were reduced by a DCMA (Defense Contract Management Agency) cost/price analysis based solely upon DCMA's application of "estimating techniques". Rather difficult to argue with cost reductions based upon undetailed estimating techniques.

Democratic Senators Urge Obama to Issue a "Model Employer" Executive Order

On the same subject as we discussed in our blog (www.redstonegci.com/blog) a group of Democratic Senators have written a letter to Obama imploring the President to provide incentives (e.g. source selection preferences) for government contractors who become "model employers". Consistent with the so-called "Progressive Caucus" (discussed in our blog), the more recent group of senators are pressing for a "living wage" (differentiated from a non-living wage?), fair healthcare and retirement benefits, paid sick leave, and full-time hours/stable work hours. However, the latest urging also includes giving workers a voice through collective bargaining (which they already have if the majority of the workers vote for collective bargaining/union representation).

One reason given for the "model employer" contract preference is to eliminate the current situation where taxpayers are double billed for low paid contractor employees who also qualify for public assistance like food stamps and Medicaid. The proposal to eliminate double-billing taxpayers would be a worthwhile objective, if only it had an element of validity. For anyone who understands basic math and accounting, eliminating double billing through higher wages and higher fringe benefits for government contractor employees does nothing to reduce the cost to the taxpayer.

The aggregate cost isn't reduced, it's merely shifted into (higher) government contract costs instead of (lower) contract costs plus public assistance. Assuming the concept of a "model employer" (with significantly higher wages and fringe benefits than in the commercial market-place) becomes an Executive Order, there will also need to be waivers from existing cost allowability principles. In particular, FAR 31.205-6(b) which defines reasonable compensation as that which is comparable to similar sized companies engaged in similar non-Government work. Although it should come as no surprise to anyone following the actions of the current Administration, its slightly ironic that it continues to press for artificially higher compensation for lower paid employees, but artificially low (allowable) compensation for executives and managers (reference to the June 24, 2014 compensation cap of $487,000 which is less than one-half the amount based upon companies engaged in non-Government work).

Government Employees Misuse Travel Charge Cards---Again

In fairly recent IG (Inspector General) reports, it's been noted that a number of government employees have misused the government issued travel credit cards. Most recently, the DOD-IG reported that a relatively small number of DOD employees (military or civilian) had used their government-issued travel credit card at Casinos and Adult Establishments (DODIG-2015-125). As with far too many IG reports, the results are anything but conclusive, stated as "DoD Cardholders improperly used their Government travel charge card (GTCC) for personal use a casinos and adult establishments. From July 1. 2013 to June 30, 2104, DOD cardholders had 4,437 transactions totaling $952K (at casinos) where **they likely used** their travel cards for personal use" (emphasis added). In its audit, the IG used a non-statistical selection of seven cardholders and 76 transactions to determine that many of the 76 transactions were not related to official travel in which case there is a risk that some of the other 4,437 transactions were not related to official travel. Begs the question, why use a non-statistical sample and why stop at seven cardholders which results in a non-conclusive opinion? Equally, why spend significant IG resources on an issue which ultimately does not involve taxpayer funds (lost in the details, the fact that the traveler and not the government is responsible for paying the GTCC balance).

In 2014 the Postal Service IG determined that a number of travel card transactions were not for official travel and/or did not comply with regulations concerning use of the travel card. As with most IG reports, it noted the most egregious examples which included a manager using the card for $32,000 in cash to gamble and additional amounts for personal rental car charges. The punitive actions taken against the employee….the employee accepted an early retirement "offer" (seemingly the most common solution to misbehavior by a government employee, manager or executive).

In 2014, the DOT (Department of Transportation) IG issued a report concluding that DOT has implemented effective controls to block purchases at merchants who do not provide travel services (simply using the name of the merchant which would tend to block casinos and adult establishments); however, DOT lacks a robust system to detect instances of travel card abuse and misuse such as excessive cash advances, advances while not on travel and purchase misuse (apparently undetected by the effective controls). To its credit the DOT IG did use statistical sampling including a test of 400 cardholder cash advances from which the IG conclusively reported that 24 were excessive (excessive is defined as more than the total meals and incidentals allowance for the travel period). The DOT-IG also explained the cost to the Government, cash advances don't generate any rebate to the Government; however, using the card at merchants (e.g. restaurants) does yield a rebate. The DOT-IG also conclusively reported a statistical estimate that $183,000 in cash advances were unrelated to official travel and that program officials failed to detect 6 of 24 excessive cash advances.

The issue of government employees misusing their GTCC is not new and apparently it will never be eliminated in spite of legislative actions requiring absolute compliance along with fail-safe detection systems. Just because Congress mandates the elimination of a slightly embarrassing problem doesn't mean that it will happen. Congress continues to press Government agencies to self-monitor, but does nothing to mandate personnel rules which would require that more agencies terminate employees who repetitively abuse their GTCC. This is the same Congress which blocks any efforts to terminate government employees who are delinquent on their federal income taxes. There are many basic issues and unanswered questions such as the lack of any centralized or shared-knowledge (across Government agencies) concerning the more effective automated (analytics) and/or administrative procedures to effectively detect and prevent GTCC misuse. Perhaps Government agencies simply don't have the same

motivation as government contractors who face unallowable/unrecoverable costs if employees/managers misuse purchase cards or travel cards as well as mandatory disclosures (FAR 52.203-13). One thing is relatively certain, when the next IG report is issued concerning GTCC use by government employees, there will be issues of employee misuse and weaknesses in agency detection and prevention.

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Hilton Head Island, SC

August 18-20, 2015 – The Masters Institute in Government Contract Costs
Sterling, VA

August 20-21, 2015 – Government Contract Audits: Dealing with Auditors and Mitigating Audit Risk
Sterling, VA

October 5-6, 2015 – Accounting Compliance for Government Contractors
Arlington, VA

Instructors:

- Mike Steen
- Scott Butler
- Cyndi Dunn
- Asa Gilliland
- Sheri Buchanan
- Darryl Walker
- Courtney Edmonson
- Cheryl Anderson
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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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