



DCAA ICP Adequacy Checklist 2016 Update

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

DCAA (Defense Contract Audit Agency) recently updated its seven-page ICP (Indirect Cost Rate Proposal) adequacy checklist (available at http://www.dcaa.mil/incurred_cost_checklist.html). The checklist is premised upon FAR 52.216-7(d)(2)(iii) which lists sixteen subparagraphs which define the requirements for an adequate final indirect cost rate (contractor) proposal. As with any audit policy or checklist, DCAA adds to the explicitly stated regulatory requirements; in part because regulations rarely include all details and in part because DCAA adds requirements to facilitate its audits (stated differently, to make life easier for the auditors by shifting requirements and administrative costs to the contractor/auditee).

The updated ICP adequacy checklist now includes some highlighted references to contractor blending of compensation caps (FAR 31.205-6(p)) which has been the subject of a DCAA MRD (Memorandum for Regional Directors) 16-PSP-005, February 2016. In particular, a discussion of the requirement for an advance agreement (i.e. a bilateral written agreement allowing the contractor to use a blended compensation cap to compute a single G&A rate opposed to using different compensation caps and computing different G&A rates for contracts before and after the effective date of the current cap). The ICP adequacy checklist does not mention any limitations on blended caps; however, it should be noted that only DOD has issued a procurement policy which allows blended compensation caps and rates (by implication civilian agencies will require compensation caps premised upon the contract specific execution date(s)). At any rate, the checklist specifically states that the auditor should perform an adequacy review for all ICPs, including those premised upon a blended rate cap, with or without an advance agreement.

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Beyond the highlighted section on blended rate caps, DCAA's latest checklist also highlights the following (in determining if the contractor ICP is adequate):

"In addition, the reviewer (auditor) needs to ensure that the math calculations and formulas use in each schedule are accurate".

Immediately following this highlighted statement, DCAA also acknowledges:

"If the contractor generates internal reports identifying the required information in lieu of the example schedule, the reviewer should reference the contractor report on this form (adequacy checklist) where the applicable schedule is listed."

What's the significance of these statements to a contractor audited by DCAA? Simply that the reviewer will focus on the highlighted statement; hence, expecting the required information to be transferred to the "example schedules" along with retaining the formulas and links within an Excel spreadsheet. In fact, rejected ICPs may include a DCAA reference to a deficiency related to "hard-coding" amounts rather than displaying an amount while also retaining the formula from which the amount was calculated. Considering DCAA's emphasis on visibility of formulas (and links), it is highly improbable that existing contractor reports will ever be an acceptable alternative to the "example schedules" preferred by DCAA auditors. Not that it matters, but the May 31, 2011 Federal Register (the publication which is the basis for the current FAR 52.216-7(d)(2)(iii)), specifically addressed this and clearly eliminated the need for any particular format. In response to a public comment that FAR now required the use of DCAA's ICE model:

"No specific format is prescribed for the submission. This information should be readily available in the contractor's books, records and systems".

The first sentence clearly eliminates any requirement for the DCAA ICE model or an equivalent Excel spreadsheet complete with formulas and links. Further, if the last sentence is true, there should be very few situations where ICPs using DCAA's ICE model (or equivalent Excel spreadsheets) are required; however, in reality, DCAA will not accept an ICP which is solely supported by existing books, records and

systems. For that matter, rest assured that they won't accept a fully adequate ICP which is in pdf (Excel file saved as a pdf).

In terms of the ultimate importance of an adequate ICP, in fact, the adequacy or inadequacy of a contractor ICP was a factor in a contract dispute which also involved the FAR 33.206(b) Six-year statute of limitations. ASBCA No. 58892 included a discussion of an adequate ICP as well as DCAA's discussion of certain inadequacies which precluded the auditor from being able to initiate the audit (the objective, to delay the start date for the government's six-year claim's clock). In particular, the auditor mentioned Schedule H and the subsidiary schedule H-1, which includes the government participation percentages in each of the allocation base amounts (note this is actually in reference to FAR 52.216-7(d)(iii)(H) although DCAA auditors rarely use the actual FAR reference because the auditors are accustomed to DCAA's use of "schedules"; as one auditor openly acknowledged, I don't read the actual regulations (FAR, I read DCAA's policies and checklists). In regards to the auditor's testimony during the ASBCA case, it apparently didn't matter that he/she could have easily calculated the government participation rates (easily creating Schedule H-1 using Schedule H), per the auditor, the contractor ICP was not auditable unless the contractor did the actual calculations. Unfortunately, one cannot successfully debate this with a DCAA field auditor (i.e. that a missing schedule H-1 just might not make the entire ICP un-auditable, particularly when the auditor can easily "do the math" and yield a schedule which serves only one purpose, to facilitate the audit risk assessment).

As long as DCAA devotes thousands of hours each year to evaluate the adequacy of contractor ICPs, it should be recognized that ICPs will be rejected for missing information actually required by FAR, but more likely for DCAA auditor interpretations of missing information (recent example was an individual auditor's expectations for added fields/columns which were not in FAR or in DCAA's ICE model). Optimistically, government contractors (subject to FAR 52.216-7) may be getting some coincidental relief by virtue of DCAA's inability to perform audits for civilian agency contracts (e.g. NASA, see the article on NASA Solicitation for Contract Audits). No other audit agency or auditing entity will devote the time and effort (as DCAA) to individual and subjective interpretations of ICP adequacy checklists which do little more



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than add costs and ultimately divert scarce resources away from actually performing the audits.

NASA Solicitation for Contract Audits

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

In early July, NASA released its solicitation for contract audit services; specifically, in support of NASA procurement officers to perform a broad range of contract audits that are not fully audited by the Defense Contract Audit Agency. The intent is to provide NASA with information that will assist in the pre-award, award, and administration functions of NASA contracts and modifications. The solicitation is specifically for commercial services (FAR Subpart 12.6) and it envisions the award of IDIQ (Indefinite Delivery-Indefinite Quantity) contracts to eight contractors (providing commercial audits in accordance with Government Auditing Standards). Of particular note, individual audits will involve competitively awarded task orders (TO), each TO will be firm-fixed price awarded to on an LPTA basis (Lowest-Price, Technically Acceptable).

In part, NASA's long awaited solicitation is NASA's delayed reaction to Section 893 of the 2016 NDAA (National Defense Authorization Act) which prohibited DCAA from performing audits for other than DOD (the 2017 NDAA may have a section which rescinds Section 893; however, the 2017 NDAA is not yet final). Additionally, NASA's requirement for commercial contract audit services may be implicitly connected to a NASA OIG report which was highly critical of DCAA's low-risk incurred cost sampling, a policy which writes-off the majority of the contractor indirect cost rate proposals (NASA OIG Report No. IG-15-010, December 17, 2014). As stated in the NASA OIG report, NASA was at increased risk of paying unallowable, unreasonable and unallowable incurred costs and of losing the opportunity to recoup improper costs because Agency contracting officers rely too heavily on DCAA's incurred cost audit process. The IG recommended revisions to the NASA FAR Supplement to allow NASA to allow independent public accounting (IPA) firms to provide supplemental audit coverage for NASA. Eighteen months later, NASA is finally embracing the NASA OIG recommendation which will presumably lead to audits

performed by IPAs; however, it remains to be seen if these audits "supplement" or "displace" DCAA audits.

NASA's venture into commercial contract audits is by no means new given that it was widely announced in 2011 that DOE (Department of Energy) would be engaging an IPA to "supplement" DCAA contract audits. DOE continues with its commercial contract audits, but it appears that the only application of supplementing DCAA might be for a contractor which is primarily DOD, but with a mix of DOD and DOE contracts. In that situation, DCAA will perform an audit of indirect rates; however, it will not audit the direct costs for the DOE contract (and the same would apply for primarily DOD contractors with a mix of DOD and NASA contracts). As noted or at least implied by the NASA OIG, without timely DCAA audits of indirect and direct costs on NASA contracts, NASA has been and will continue to be unable to timely close physically complete contracts.

Assuming NASA can speed through its source selection and contract award process (i.e. award contracts by September 30, 2016), it appears that FY2017 will involve one more civilian agency which has largely divorced itself from DCAA contract audits. To the extent that happens, it remains to be seen if DCAA will ever be able to recapture that business; particularly when NASA has been obtaining contract audits based upon competitively awarded, fixed price task orders. DCAA has never had to compete and it is highly unlikely that DCAA could compete if forced into fixed price competitively awarded audits. At one point, DCAA performed 90% of federal contract audits. Even if DCAA's audit staff and annual budget equates to 90% of the staff and budget associated with federal government contract audits, DCAA will most likely be performing fewer than 50% of the contract audits. If the civilian agency contract audits are clearly more economical than DCAA's reimbursable audits, the logical next step is for DOD to consider outsourcing contract audits. After all, DOD's Better Buying Power III is all about maximizing funds which directly benefit the warfighters and inefficient, non-competitive insourced contract audits should be subjected to the same scrutiny as are inefficient contractor operations.



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Lobbying Disclosure Act and FAR 31.205-22

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

On June 15, 2016 the LDA (Lobbying Disclosure Act) was revised/issued by the Clerk of the House of Representatives and the Secretary of the Senate. The details including Section 2—What's New, are available at http://lobbyingdisclosure.house.gov/amended_lda_guide.html.

The fact that the LDA has been revised serves as a reminder (to government contractors), that Lobbying Costs and directly associated costs are unallowable for proposals and/or contract costs which are subject to FAR Part 31.2. In fact, lobbying was one of the cost principles at issue in the June 2015 ASBCA Case Nos. 57576, 57679, 58290 wherein it was noted that FAR 31.205-22 uses the terminology, “cost associated with the following (lobbying) activities are unallowable” and those activities include activity attempting to influence legislation and/or contributions to political parties, campaigns, PACs, or other organizations established for the purpose of influencing the outcome of elections (editors comment: based upon recent events and media speculation, this last item apparently includes Russia).

In addition to defining unallowable lobbying activities, FAR 31.205-22(d) imposes a requirement for contractors to maintain adequate records to demonstrate that the certification of costs as being allowable or unallowable pursuant to this subsection complies with the requirements of this subsection. Translated, FAR 31.205-22 is one of the few cost principles with explicit requirements for records demonstrating compliance.

One obvious question, does FAR 31.205-22 invoke any of the requirements of the LDA? The answer is “no”; hence, nothing specified within the LDA is directly incorporated into the FAR cost principles; however, that does not stop a government auditor (e.g. DCAA) from using the LDA as a resource during an incurred cost audit. In particular, the LDA has the following:

Section 3 – Definitions

Actively Participates:

An organization “actively participates” in the planning, supervision, or control of lobbying activities of a client or registrant when that organization (or an employee of the organization in his or her capacity as an employee) engages directly in planning, supervising, or controlling at least some of the lobbying activities of the client or registrant. Examples of activities constituting active participation would include participating in decisions about selecting or retaining lobbyists, formulating priorities among legislative issues, designing lobbying strategies, performing a leadership role in forming an ad hoc coalition, and other similarly substantive planning or managerial roles, such as serving on a committee with responsibility over lobbying decisions.

Organizations that, though members of or affiliated with a client, have only a passive role in the lobbying activities of the client (or of the registrant on behalf of the client), are not considered active participants in the planning, supervision, or control of such lobbying activities. Examples of activities constituting only a passive role would include merely donating or paying dues to the client or registrant, receiving information or reports on legislative matters, occasionally responding to requests for technical expertise or other information in support of the lobbying activities, attending a general meeting of the association or coalition client, or expressing a position with regard to legislative goals in a manner open to, and on a par with, that of all members of a coalition or association – such as through an annual meeting, a questionnaire, or similar vehicle. Mere occasional participation, such as offering an ad hoc informal comment regarding lobbying strategy to the client or registrant, in the absence of any formal or regular supervision or direction of lobbying activities, does not constitute active participation if neither the organization nor its employee has the authority to direct the client or the registrant on lobbying matters **and** the participation does not otherwise exceed a de minimis role.

Guidance Section 6

Organization Expenses Using LDA Expense Reporting Method

Organizations that employ in-house lobbyists may incur lobbying-related expenses in the form of employee compensation, office overhead, or payments to vendors, which may include lobbying firms. Organizations must report expenses as they are incurred, though payment may be made later. The quarterly activity report (LD-2) provides for an



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organization to report lobbying expenses of less than \$5,000, or \$5,000 or more. If lobbying expenses are \$5,000 or more, the organization must provide a good faith estimate of the actual dollar amount **rounded to the nearest \$10,000**. Organizations using the LDA expense reporting method mark the "Method A" box on the quarterly activity report (LD-2).

To ensure complete reporting, the Secretary and Clerk have consistently interpreted [2 U.S.C. § 1604\(b\)\(4\)](#) to require such organizations to report all of their expenses incurred in connection with lobbying activities, including all payments to retain lobby firms or outside entities, without considering whether any particular payee has a separate obligation to register and report under the LDA. Logically, if an organization employing in-house lobbyists also retains a lobbying firm, the expense reported by the organization should be greater than the fees reported by the lobbying firm of which the organization is a client. An organization must contact any other organization to which it pays membership dues in order to learn what portion of the dues is used by the latter organization for lobbying activities. It is necessary for the former organization to include the portion of the dues that is designated for lobbying activities in the total of lobbying expenses reported by the former organization. A registrant cannot apportion the lobbying expense part of the dues to avoid disclosure. Dues payments for lobbying activities should be included in the estimate for the quarter in which they are paid.

All employee time spent in lobbying activities must be included in determining the organization's lobbying expenses, even if the employee does not meet the statutory definition of a "lobbyist."

Example: The CEO of a registrant, "Defense Contractor," travels to Washington to meet with a covered DOD official regarding the renewal of a government contract. "Defense Contractor" has already determined that its CEO is not a "lobbyist," because he does not spend 20 percent of his time on "lobbying activities" during a quarterly period. Nonetheless, the expenses reasonably allocable to the CEO's lobbying activities (e.g., plane ticket to Washington, salary and benefit costs, etc.) will be reportable.

Lastly, the LDA provides two websites which provide publicly accessible information concerning lobbyist and clients.

Hence, auditors can and will use these links to compare LDA reported data to a contractors claim for lobbying costs ("claimed" in the context of listed as an unallowable cost). A reminder that auditors will consider information and data sources other than that provided by the contractor.

Training Opportunities

2016 Redstone Government Consulting Sponsored Seminar Schedule

August 30, 2016 – Recent Developments Government Contract Incurred Cost Audits

WEBINAR – [REGISTER HERE](#)

September 8, 2016 – The Life Cycle of an Indirect Cost Rate Proposal

LIVE event; Huntsville, AL – [REGISTER HERE](#)

2016 Federal Publications Sponsored Seminar Schedule

August 22-23, 2016 – Cost and Price Analysis in Government Contracts

Arlington, VA

August 25-26, 2016 – Government Contract Audits: Dealing with Auditors and Mitigating Audit Risk

Arlington, VA

September 19-20, 2016 – Cost and Price Analysis in Government Contracts

Fort Worth, TX

October 24-25, 2016 – Accounting Compliance for Government Contractors

Sterling, VA

November 3-4, 2016 – Cost and Price Analysis in Government Contracts

Sterling, VA

Go to <http://www.fedpubseminars.com/> and click on the Government Contracts tab.



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Save the Date:

The Redstone Edge Conference

September 22, 2016
Jackson Center
600 Genome Way
Huntsville, AL

We will have a wide range of topics including:

- Policy & Strategy briefing from Kenneth Saccoccia, Deputy Director, Defense Contract Audit Agency
- Current Events & Better Buying Power 3.0 Update from Jon Shire, Director DCMA Cost & Pricing Center
- Morning Panel Session on Acquisition and Exit Strategies with insight from Jeff McGrath, Managing Director, Wells Fargo Securities and Jerry Ripberger, VP Consulting, Principal Financial Group. Joining them on the panel are Walter Batson, co-founder of InterFuze Corporation and Camber Corporation and Bill Roark, co-founder and CEO of Torch Technologies, Inc. to provide a first-hand insight on Acquisitions and ESOP transactions from a company's perspective.
- Afternoon Session on Changes in SBA Regulations affecting small business government contractors, including changes to Limitations on Subcontracting; the new universal Small Business Mentor-Protégé Program; and the overhaul of Joint Venture requirements. This session will be led by Steve Koprince, noted attorney and small business advocate, with participation from other small business industry and government experts.

8 hours of NASBA CPE credits will be offered for this event

Breakfast, a plated lunch and snacks throughout the day will be provided to all attendees. Immediately following the event we will have an after-hours networking session at the Jackson Center Pub sponsored by Deltek where conference attendees will be able to meet and interact with speakers.

[CLICK HERE](#) to receive The Redstone Edge Conference Updates



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Blog Articles to our Website

Unanet 2015 Partner of The Year: Certified Implementation Consultant

Posted by Katie Donnell on Mon, Jul 25, 2016 – [Read More](#)

DOE Withdraws Contractor Business Systems' Rule

Posted by Michael Steen on Thu, Jul 14, 2016 – [Read More](#)

DCAA Incurred Cost Audits Yield New and Novel Audit Cost Recovery Issues

Posted by Michael Steen on Fri, Jul 8, 2016 – [Read More](#)

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Posted by Sheri Buchanan on Tue, May 24, 2016 – [Read More](#)

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Posted by Michael Steen on Tue, May 17, 2016 – [Read More](#)

Appealing to the Armed Services Board of Contract Appeals (ASBCA)?

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Posted by Michael Steen on Tue, May 3, 2016 – [Read More](#)

The Risks of Fixed-Price-Incentive (FPI)

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Work Authorizations Missing During Labor Floor Checks?

Posted by Wayne Murdock on Fri, Apr 8, 2016 – [Read More](#)

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The Audit World's Biggest Myths

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Commercial Item Determination

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For More Whitepapers:

<http://www.redstonegci.com/resources/white-papers>

CFO Roundtable

Redstone Government Consulting, Inc., Radiance Technologies, Inc., & Warren Averett will be sponsoring a CFO/Controller roundtable for Government Contractors.

All Government contractor CFO's or Controllers are invited to participate. The meetings will be held quarterly and will include lunch and networking from 11:30am – 1:00pm. The next meeting is being rescheduled in August at a date TBD in Research Park at a location TBD. Participants will be notified via email announcements for all future locations and seminar topics.

The CFO Roundtable is **free** to attend. All participants will be invited to share topics of interest and the group will be interactive. Redstone GCI, Radiance Technologies, and Warren Averett will strive to provide speakers on topics that are of interest to the group each quarter. Please provide us your email address and we will notify you 30 days in advance of each meeting. RSVP's are required.

Sign up for CFO Roundtable [here](#)



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About Redstone Government Consulting, Inc.

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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