



Timekeeping: Government Employees vs. Contractor Employees

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

In a recent report, the IG (Inspector General) for the VA (Department of Veteran's Affairs) noted that a researcher had been paid in-excess of \$100K for hours not worked. Additionally, the researcher simultaneously "worked" for both the VA and Johns Hopkins University drawing dual compensation from both sources, unbeknownst to the two employers. To accomplish this feat, the employee worked remotely for the VA (without authorization) and (sort of) explained this phenomena by noting that Johns Hopkins did not require the researcher to input his hours which yields the implied logic of being paid a salary for physically being on site at Johns Hopkins while recording compensable hours charged to the VA. As absurdly explained by the researcher, "had I been required to input time and sign a timecard for Johns Hopkins, I would have been getting double pay---but I never signed a timecard at Johns Hopkins". A timeless example of rationalizing unethical, if not criminal behavior. Lastly, the IG also found and reported that the researcher misused official time (for at least 66 days) to travel for non-VA sponsored lectures.

The obvious question, how could this happen, doesn't the VA have a timekeeping system which requires supervisory review and approval of employee timesheets? The answer, the VA does have such a system of controls, but in this case, it was form over substance as illustrated by the responses of the supervisor (notably the researcher was fired and the supervisor resigned from the VA). Some of the critical failings by the supervisor:

- Rarely checked to see if the employee was working on site (for the most part, the researcher/employee had not been authorized to telework; hence, he should have been onsite in Oklahoma City when charging hours to the VA).
- Certifying electronic timecards without any evidence that the researcher was working (no work product over a period of time and apparently little or no supervisory requirement for status reports). In many cases, a supervisor might not have much insight into a researcher's efforts for "a" pay period, but not to the extent that the accumulative impact was almost 2,000 hours for which the researcher had no accountability (when questioned by the IG).

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The IG recommended criminal prosecution (of the researcher) and administrative actions against the supervisor; however, the Department of Justice declined to pursue criminal charges and the VA noted that the supervisor had already resigned (resignation or retirement seems to be the unwritten universal solution for government employees to avoid more serious consequences). And the good news...the VA is "working on" sending a bill to the ex-researcher (don't hold your breath).

How does any of this relate to contractors and contractor employees? The answer, although there is almost nothing in the FAR, DCAA does have a long list of its expectations (controls) for a contractor timekeeping system to ensure that labor is charged to the appropriate direct or indirect account (a fundamental requirement of an adequate accounting system per the SF 1408). Among other things and similar to the VA policy, contractors must have a policy which requires supervisory review and approval of employee timesheets; but just like the VA, if a contractor supervisor/reviewer treats his/her responsibility as a perfunctory administrative task, the contractor is at risk for labor mischarges. Unlike the VA, contractor employee mischarges will be treated as contractor misbehavior which could include treble damages (assessed to the contractor) for violations of the False Claims Act (particularly if the labor mischarging only becomes known to the contractor after an IG shows up with a subpoena). In situations where a contractor becomes aware of potential mischarging, the contractor must timely complete its internal investigation and potentially file a mandatory disclosure (FAR 52.203-13). In some cases, the government may decide to investigate ("supplementing" the contractor internal investigation) and at the very least, the government will expect evidence of contractor actions to mitigate risks and to eliminate the tainted labor charges from any allowable cost accounts.

The moral to the story, government agencies and government contractors must have controls over timekeeping; however, unlike a government agency, government contractors have significantly more financial exposure from labor mischarging. Almost no one (employees and/or supervisors) are particularly happy with contractor timekeeping policies and procedures (heavily influenced by DCAA expectations), but in the end, those policies and procedures are there for a reason. And the parting question to government contractors and their supervisors who approve timesheets, do you really know what

your employees are doing---not just this pay period, but over a period of time?

DCAA and Untimely Provisional Billing Rate Reviews

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

One all too frequent conundrum occurs when a contractor takes the initiative to notify DCAA of the contractor's proposed provisional billing rates (for a new fiscal year) for purposes of billing indirect costs on cost type contracts and DCAA is i) non-responsive or ii) responsive, but fails to timely review the proposed rates. In either case, the end result is the continued use of the previously established provisional billing rates (i.e. rates established by DCAA in 2016 continued to be used by the contractor in 2017). In the case of a new contractor without any previously established billing rates, there is no predictable end result other than to bill with the proposed rates and see what happens in terms of DCAA voucher review and approval or rejection for lack of DCAA established rates.

In its MRD (Memorandum for Regional Directors) 14-PPS-012(R), June 27, 2014, DCAA described its new procedures for establishing provisional billing rates. To its credit, DCAA is very literal in its application of FAR 42.704, noting that whoever is responsible for establishing final indirect cost rates (auditor or contracting officer) is also responsible for establishing provisional billing rates. In its FAQs, DCAA correctly states that nothing in FAR requires a contractor provisional billing rate proposal and in any case, FAR clearly states that it is the government responsibility for establishing provisional billing rates (unlike changes to existing billing rates which involve a mutual agreement between the government and the contractor).

Unfortunately for government contractors, nothing in the FAR prescribes or even implies a time-frame or due date for the government (i.e. DCAA) to establish provisional billing rates. The unintended consequence, the contractor has no control over the process and little or no contractual recourse if/when DCAA fails to timely establish provisional billing rates. For contractors with existing billing rates (i.e. the prior year), the only predictable solution is to continue to bill with those rates until...DCAA establishes current rates. Contractors who

notify DCAA of new rates and begin to bill using the new rates are risking “voucher rejections” unless the new rates happen to be exactly the same as the established rates---unlikely, in which case the DCAA solution is to reject the voucher(s).

Although the DCAA process for establishing provisional billing rates is considered a low risk review (it’s not even an audit under GAGAS), the problem is that DCAA auditors lack sufficient experience to be able to define risk and/or to differentiate steps taken in an audit versus a review. In recent cases, contractors have been inundated with sequential lists of questions with little or no nexus to the objective of establishing current year provisional (interim) billing rates. Although a contractor’s natural reaction is to challenge audit inquiries with no apparent nexus to a stated objective, it’s risky to challenge the questions because that may be perceived as lack of cooperation or “the contractor must be hiding something” (only to risk more questions). Although DCAA senior managers promote the idea of contractors asking for clarification and/or the connection to the audit objective, it’s all too apparent that message has not been consistently or effectively conveyed to field auditors.

Contractors (and contracting agencies) will continue to live with untimely audits as long as there is no contractual remedy. Even if/when Congress intervenes, it’s typically very narrowly focused (e.g. Section 893 of the 2016 NDAA which solely targeted DCAA’s untimely incurred cost audits). In the meantime, contractors live with time consuming and unpredictable government actions, in some cases leading to absurd results; specifically, the continued use of the “last” DCAA established provisional billing rates which i) date back to two years earlier and/or ii) are significantly higher than a contractor’s proposed billing rates for the current cycle.

Seems to support DCAA’s unofficial motto, “We have met the enemy and he just might be us”.

Miscellaneous Contract Issues

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

1. Bid Protest and Cancelled Solicitation. A GAO decision published June 9, 2017, just might set a record for the number of bid protests and the number of attorneys

involved. The File number B-414175.10 through -26 involved 17 companies and 35-40 attorneys protesting a DHS solicitation and flawed source selection, all leading to the lose-lose solution of cancelling the DHS solicitation. Briefly, the August 2016 solicitation was a small-business set-aside which anticipated the award of 8-12 IDIQ contracts. The source selection was based upon “best value” and of 111 offerors, 13 were selected (in November 2016) based upon technical challenges (exercises) performed by the offerors and viewed/rated by DHS TET (Technical Evaluation Team). There were numerous protests leading to the DHS Motion to Dismiss along with the GAO decision to dismiss the protests. Per the GAO, “we view the agency’s termination of the contract awards and cancellation of the underlying solicitation as rendering the protests academic. Accordingly, the protests are dismissed”. By implication, let’s start over and pretend it never happened...and who says that trying to become a government contractor isn’t a gratifying experience.

2. Express requirements of a contract might still be unfair. Although it took a contractor two bites at the apple (first an unfavorable ASBCA decision, followed by a partially successful appeal to the US Court of Appeals), Government actions might be consistent with contract terms, but still unfair to the contractor. In this case, a series of government actions and contract modifications imposing limitations on the number of days that a contractor could charge for its refrigerated vehicles used to transport and temporarily store perishables at remote sites in Iraq. Turns out that the government (in the context of the US Military) cannot constructively change the contract terms and conditions by using the contractor’s refrigerated vehicles for significantly more days than the 29 days contract limit. Although the ASBCA saw it differently, the US Court of Appeals recognized that the government cannot simultaneously impose a cap (i.e. 29 days) and engage in conduct which made it impossible for the contractor to perform within the cap”.

Noting that the issue has now been remanded back to the ASBCA, it remains to be seen if the contractor will fully recover amounts for days in excess of 29 (for each occurrence). Even with that, one universal lesson, although the 29-day cap had a provision for the contracting officer to “consider” contractor claims for days in excess of the cap, all that meant (contractually) was that the contracting officer had to accept and to consider those claims. Nothing precluded the contracting officer from rejecting each and every request for a higher cap---

the cap was the cap and any upward adjustment was absolutely at the discretion of the contracting officer.

Editor's comment. This contract dispute is one of many involving different contractors performing logistics and other support for US military, civilians, and coalition forces in Iraq and Afghanistan (i.e. combat zones). Although contractors and/or their employees and managers have caused or contributed to contract compliance issues, in many cases, the contractors did what was necessary (beyond the terms of the contract) to support the troops and civilians. However, if/when an issue falls under the contract disputes act, the government will predictably default to the contract and ignore "the rest of the story" and at least the ASBCA tends to do the same.

3. Section 809 Panel Interim Report. Section 809 of the 2017 NDAA has a goal of Streamlining and Codifying Acquisition Regulations. The Advisory Panel, is chaired by Deidre A. Lee and it includes a number of General Officers and Flag Officers (active or retired) and a number of other recognizable names---sort of a "who's who" of past or present senior acquisition officials, government and industry. The May 2017 Interim Report introduces its main theme, "Think Bold", noting that "tinkering and incremental approaches have not provided the necessary results" (a reference to the past 50 years which involved more than 100 reports, studies, and analyses of how DOD acquires goods and services). Because it is an initial, interim report, there is no point in predicting the ultimate outcome in terms of exactly who, how and when the government will think bold or far more importantly, implement bold thinking...unless of course, it's in the context of Presidential tweets (bold thinking in a very unique context). At any rate, for anyone interested in reading the Section 809 interim report: <https://section809panel.org/>

Training Opportunities

2017 Redstone Government Consulting Sponsored Seminar Schedule

July 26, 2017 – Compensation for Government Contractors – Part 1

FREE WEBINAR – [Register Here](#)

August 16, 2017 – Compensation for Government Contractors – Part 2

FREE WEBINAR – [Register Here](#)

2017 Federal Publications Sponsored Seminar Schedule

June 13-14, 2017 – Accounting Compliance for Government Contractors

Arlington, VA

July 17-18, 2017 – Government Contract Audits: Dealing with Auditors and Mitigating Audit Risk

Hilton Head, SC

July 18-20, 2017 – The Masters Institute in Government Contract Costs

Hilton Head, SC

August 21-22, 2017 – Life Cycle of an Indirect Rate Cost Proposal

Arlington, VA

August 22-24, 2017 – The Masters Institute in Government Contract Costs

Arlington, VA

August 24-25, 2017 – Government Contract Audits: Dealing with Auditors and Mitigating Audit Risk

Arlington, VA

October 23-24, 2017 – Accounting Compliance for Government Contractors

Sterling, VA

December 6-7, 2017 – Accounting Compliance for Government Contractors

DC Metro Area

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

Blog Articles to our Website

Key Performance Indicators (KPIs) for Small Business Government Contractors

Posted by Beverly Murphy on Fri, Jun 30, 2017 – [Read More](#)

Contract Disputes on Cost Type Government Contracts

Posted by Charlie Hamm on Tue, Jun 27, 2017 – [Read More](#)

House Bill to Address DCAA Auditor Hiring, Qualifications, and Private Sector Experience

Posted by Bob Eldridge on Tue, Jun 20, 2017 – [Read More](#)

If you Outsource your Tax Return, Why Not Outsource your Incurred Cost Proposal?

Posted by Courtney Edmonson on Fri, Jun 16, 2017 – [Read More](#)

How to Optimize your Government Contract Closeout Experience

Posted by Kimberly Basden on Thu, Jun 1, 2017 – [Read More](#)

Time to Tune Up Your Purchasing System

Posted by Cyndi Dunn on Wed, May 24, 2017 – [Read More](#)

Program/Project Control – Does my Company Need this Function?

Posted by Beverly Murphy on Fr, May 19, 2017 – [Read More](#)

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Whitepapers Posted to our Website

What Are The Prime Contractor's Risks Related to Subcontracts

A Whitepaper by Asa Gilliland – [Read More](#)

The Audit World's Biggest Myths

A Whitepaper by Wayne Murdock – [Read More](#)

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A Whitepaper by Wayne Murdock - [Read More](#)

DCAA Rejection of Incurred Cost Proposals

A Whitepaper by Michael Steen – [Read More](#)

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<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 July 27, 2017 at Radiance Technologies. The topic this quarter is "Understanding the new Revenue Recognition Standards" and the speaker is Mark Abernathy with Warren Averett. 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](#)



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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