



DCAA's FY2018 Staffing and Planning Guide (aka Program Plan)

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

We obtained DCAA's FY2018 Staff Allocation and Future Plan Guidance (17-OWD-008, dated August 25, 2017) through a FOIA (Freedom of Information) request (which took less than one week from date of request to receipt of the document). Internally, DCAA refers to this as its fiscal year program planning guide, a document which identifies the anticipated number of audit work-years as well as a prioritization of the types of audits. Some of the highlights from DCAA's FY2018 Program Plan:

- DCAA staff allocation is for 4,710 work-years compared to 4,398 projected for 2017. Of those work-years, a total of 1,207 are identified with the four "CADs" (Contract Audit Directorate) which have cognizance over seven large defense contractors. The remaining staff are assigned to branch offices within the three regions and DCAA's Field Detachment (branch offices include an undisclosed number of auditors who are assigned to specific contractors).
- DCAA's staff allocation includes an unspecified number of reimbursable audits (audits in full or in part for civilian agencies, such as NASA, US AID, DHHS and in that context DCAA refers to "shared audits" for both NASA and US AID. Shared audits implicate DCAA auditing a contractor indirect costs/rates and DOD contracts' direct costs while another audit agency or firm is responsible for auditing the civilian agency direct contract costs. It remains to be seen if this approach requires more or less contractor resources than if DCAA performed the entire audit (to be sure, these shared audits will require more resources than if another audit agency or firm performed the entire audit).
- Forward pricing (bid proposals and/or forward pricing rate proposals) remain DCAA's priority 1, as these have been for many years. Second are incurred cost audits (more accurately, audits or low risk desk reviews of contractor indirect cost rate proposals). In order to manage its backlog, DCAA will continue to use multi-year audits which should be more efficient than auditing each year as a stand-alone audit. Per recent comments by a DCAA Executive, a multi-(two) year audit should

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be accomplished with about 75% of the audit hours that would have been incurred to separately audit the two years (the DCAA resource efficiency would typically translate into a similar reduction of contractor resource).

- DCAA continues to specifically identify contractors for which DCAA plans to perform business system audits (Estimating, Accounting or Material Management and Accounting/MMAS). Audits of Accounting Systems (DFARS 252.242-7006) continue to be the largest of the three business systems audits at 7,000 hours. Estimating Systems (DFARS 252.215-7002) are planned at 2,750 hours each while MMAS (DFARS 252.242-7004) audits are planned at 3,500 hours each. MMAS audit hours are a mystery, noting that the system compliance criteria include an explicit requirement for the respective contractor to demonstrate compliance with the MMAS criteria. Apparently, it takes DCAA the equivalent of almost two work-years to validate the contractor's compliance demonstration.
- Post-award audits' (for compliance with TINA) planned for FY2018 include 15 identified with specific contractors and contracts/task orders. These continue to be planned at 1,200 hours each and additional audits of other contract awards might be added based upon (undefined) risk. In the context of specifically selecting contracts based upon risk, any selected contractor/contract should recognize that DCAA does not randomly sample contracts for post-award audits. This seems to be supported by semi-annual DOD-IG reports which provide statistics that confirm that a relatively high percentage of post-award audits result in a DCAA recommended price reduction for alleged defective pricing. None of this gives us any information concerning how many allegations of defective pricing are ultimately upheld by a contracting officer.
- Post-payment voucher audits (testing of paid vouchers) are planned for non-major contractors for which DCAA has not completed a similar assignment in the past three years with planned testing of 25% over the 2018-2021 time-period. Per DCAA policy, these audits should be with respect to a contractor invoice (public voucher) which had been the subject of a pre-payment review (at least in theory) that narrowed the universe of vouchers which might become the subject of a post-payment audit. The risk to all contractors, a DCAA audit report citing the contractor for non-compliance with one or more of the eighteen criteria in DFARS 252.242-7006

(ignoring that fact that the vast majority of contractors do not have a contract with that DFARS clause).

In summary, DCAA's FY2018 Program Plan is reminiscent of the line from the Herman Hermits' song Henry the VIII, "second verse, same as the first". Few changes in priorities or audit strategies which is coincidentally similar to the very small number of MRDs (Memorandums for Regional Directors) issued in FY2017. What might be changing, DCAA's focus on improving the sustainability of DCAA audit recommendations (i.e. cost questioned on incurred costs). Per DOD-IG semi-annual reports, these sustention rates have been below 25% for most of the past six semi-annual reporting periods suggesting that the audit assertions are not well founded or that ACOs aren't doing a good job of defending those audit results when resolving audit issues. We have our opinion, but will leave it to the readers to decide for themselves.

Contractor Compensation Costs: Regulatory Changes and Audit Challenges

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

Compensation and related employment practices and policies are subject to a myriad of federal, state and local regulation and oversight; herein, a discussion of just a few of those.

Minimum hourly rate increase. With its roots back to an Executive Order 13658 issued by Barack Obama, the minimum hourly rate for employees of certain government contracts increased to \$10.35/hour effective January 1, 2018. The increase of \$.15/hour over the 2017 rate is based upon BLS (Bureau of Labor Statistics) data for annual wage increases for urban wage earners and clerical workers. Of passing interest, there is also a maximum allowable amount of compensation (FAR 31.205-6(p)), set at \$487,000 effective on contracts executed on or after June 24, 2014 and that "cap" is also subject to annual inflationary increases using a similar BLS statistic. Noting that the statutory cap has not increased (from \$487,000), apparently no one in the Government has the time to compute that increase, leads us to believe that it must be a really, really complicated adjustment formula.

OFCCP Settlement on Hiring Equity Issue. OFCCP (Office of Federal Contract Compliance Programs) recently published a Conciliation Agreement with LabCorp. In that agreement, there was no admission by LabCorp of any violation of any regulation or law and the settlement amounts suggest that LabCorp was simply agreeing to avoid further legal costs. Of particular note, the OFCCP finding goes back to the period January-December 2012 and OFCCP's statistical analysis which showed that there was a hiring shortfall of two females. OFCCP conveniently redacted the actual statistical data and also makes no reference to the fact that LabCorp provided very compelling documentation supporting its unbiased hiring process. In other words, even though LabCorp documented and justified on a case by case basis its unbiased hiring decisions, OFCCP wasn't going to simply go away. Why? The answer is rather simple, in the interest of self-preservation, OFCCP must perpetuate the belief that government contractors are biased in matters involving hiring, pay and promotions and conciliation agreements serve that purpose. OFCCP's analysis is entirely based upon statistics and statistical probabilities with little or no interest in analyzing the facts and circumstances relevant to a contractor's specific actions for hiring, pay or promotions. If the statistics "say it is so, then it must be". A reminder of the lines from a Kurt Vonnegut book (Harrison Bergeron):

"In a future year everyone was finally equal. They weren't only equal before God and the law. They were equal every which way. Nobody was smarter than anybody else, nobody was better looking, stronger or quicker than anyone else. All of this equality was due to the 211th, 212th, and 2123th amendments and the unceasing vigilance of the United States Handicapper General".

Undoubtedly there are still hiring, pay and promotion actions which don't fully comply with E.O 11246, Section 503 VEVRAA and other labor laws, but OFCCP seemingly devotes its resources to conciliation agreements which ultimately prove nothing and yield almost nothing for the alleged victims.

Incentive Compensation: Allowable or Unallowable.

DCAA routinely references selected subsections of FAR 31.205-6(f) in challenging the allowability of contractor incentive compensation. In more than one recent (client) experience, there are two issues, the lack of a formal bonus

plan and the lack of documentation supporting the basis for the award. To its credit, DCAA auditors seem to be more accurately reading the requirements of FAR 31.205-(6)(f)(1)(i) through their willingness to accept an established practice (permissible per FAR which does not even mention a "formal plan"). However, those same auditors are then challenging bonus payments because the "basis for the award is not supported". FAR does not elaborate on this phrase; however, DCAA auditors do elaborate (or embellish) FAR by insisting that bonuses must be based on measurable goals/objectives and the documented results. Translated, goals which equate to formulas which then yield mathematical payouts and any deviation would render the basis for the award as unsupported.

As we've discussed in previous webinars, blogs and newsletters, "basis for the award" does not necessarily translate into pre-established and inflexible mathematical formulas, particularly when virtually all incentive compensation plans include a statement that the payout is ultimately at the discretion of the employer (contractor). As a taxpayer (and an ex-DCAA auditor/manager/executive) of greater concern is DCAA's proclivity to misinterpret the FAR to the point of rewriting it to support a DCAA assertion (to question costs). If an auditor must edit or re-write the FAR to achieve the desired results (cost questioned), there just might be an issue in sustainability (as demonstrated in numerous ASBCA decisions).

Converting Unallowable Legal Costs to Allowable Legal Costs

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

FAR 31.205-47 defines allowable and unallowable legal costs including those which relate to bid protests and those related to prosecuting a CDA (Contract Disputes Act) claim against the Government. However, there might be other regulations or laws which open the door to some recovery of what otherwise defaults to unallowable legal costs.

Bid Protest Costs. Although unallowable per FAR 31.205-47(f)(8), a successful bid protestor might be entitled to some recovery of its legal costs. Case in point, a recent GAO

decision which sustained a bid protest based upon the fact that the government agency had found one of 25 prices to be unreasonable (see our August Newsletter). In its recommendation, the GAO recommended that the protestor be reimbursed its legal costs to file and to pursue its successful bid protest. Note that the GAO is only recommending reimbursement and that the bid protestor must timely file and support its bid protest costs. Further note, that this does not include any bid and proposal costs and that per statute, attorney fees are limited to \$150 per hour (subject to higher hourly rates for small businesses and/or in cases where the protestor substantiates higher rates citing cost of living data).

Contract Disputes Act FAR 31.205-47(f)(1) makes unallowable the prosecution of claims or appeals against the Federal Government; hence, at the point of filing a CDA, a government contractor needs to be separately recording unallowable costs (including external fees or internal labor). However, the EAJA (Equal Access to Justice Act) may permit a qualified contractor to recover its legal costs if that contractor can satisfy the five eligibility requirements (prevailing party, small business as defined in the Act, apply within 30 days and allege that the position of the agency was not substantially justified). In CBCA 5779-C (5179), dated August 10, 2017, Paradis Pillow, Inc. was awarded \$9343.75 in legal fees in which case the Government Agency (GSA) was directed to pay these costs. Of passing interest, Paradise Pillow, Inc., sought \$9,500 (rounding up) and the CBCA only allowed the exact amount supported by the attorney time sheets and the hourly rate (74.75 hours times \$125/hour). Not that it matters or applies, but had this \$9,500 claim been subject to a DCAA audit, the contractor would still be dealing with DCAA rejection letters due to the unreconciled difference of \$156.25.

Time & Material Contracts and Recovering Allocable G&A

We recently assisted a government contractor in terms of revising its estimating policies to adjust its cost estimates to add non-billable G&A into its fully burdened labor rates on its T&M contract pricing. This may sound like a non-compliant practice of “manipulating” data to circumvent actual cost accounting, but it is permissible for government solicitations and contracts which explicitly state that the fully burdened “T” rates must include all costs associated with contract performance to include wages, overhead, general and administrative expenses and profit. To the extent that the same contract has a provision for non-labor expenses under

the “M” component, those expenses are most likely cost reimbursable, but without any “mark-up” for otherwise allocable indirect or G&A expenses. When bidding a contract which has this limitation on the recoverable “M” costs, a contractor must estimate the “M” costs, compute the allocable G&A, then add this allocable G&A to the “T” cost build-up (or forego recovering G&A allocable to the “M” costs). This may seem counter intuitive and at odds with consistency in cost estimating and cost accounting; however, this is the interpretation derived from one or more published decisions (which went against contractor attempts to recover G&A allocable to “M” costs because of the specific wording which defined the fully-burdened labor rates). For one example of this, refer to CBCA 3678, issued in September 2014.

Training Opportunities

2017 Redstone Government Consulting Sponsored Seminar Schedule

COMING SOON

2017 Federal Publications Sponsored Seminar Schedule

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

Employee Stock Ownership Plans, Cost Allowability and DCAA Audit Risks (Part II)

Posted by Bob Eldridge on Fri, Sep 15, 2017 – [Read More](#)

Employee Stock Ownership Plans, Cost Allowability and DCAA Audit Risks (Part I)

Posted by Cyndi Dunn on Wed, Sep 13, 2017 – [Read More](#)

Seminar, Government Employees and Gratuities

Posted by Michael Steen on Tue, Aug 29, 2017 – [Read More](#)

Training Costs on Government Contracts

Posted by Cheryl Anderson on Tue, Aug 15, 2017 – [Read More](#)

Possible Recoveries from a Wage Determination Increase/Decrease

Posted by Charles Hamm, Esq. on Wed, Aug 9, 2017 – [Read More](#)

What to Expect from a DCAA Floor Check

Posted by Kimberly Basden on Thu, Aug 3, 2017 – [Read More](#)

For More Blog Articles: <http://info.redstonegci.com/blog>

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](#)

Government Contracting and Uncompensated Overtime

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

DCAA Rejection of Incurred Cost Proposals

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

For More Whitepapers:

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

CFO Roundtable

Redstone Government Consulting, Inc., Radiance Technologies, Inc., and Warren Averett are sponsoring a CFO/Controller roundtable for Government Contractors.

All Government contractor CFO's or Controllers are invited to participate. The meetings are held quarterly and will include lunch and networking from 11:30am – 1:00pm. The next meeting is 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 updates [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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