



2018 Year-End Checklist

By Sheri Buchanan and Kayla Klutts

As Santa starts making his list and checking it twice, your HR department should do the same. Before 2018 comes to an end, have you considered the following?

- **Affirmative Action Plans (AAPs)** – Written Affirmative Action Plans (AAPs) are a requirement of every federal contractor and subcontractor who has 50 or more employees and meets certain federal contract dollar thresholds. Three AAPs are required: The Executive Order 11246 AAP (for minorities and women), the AAP covering Protected Veterans, and the AAP covering Individuals with Disabilities. These AAPs help federal contractors and subcontractors comply with federal requirements, including recruiting and placement goals, monitoring of personnel actions for indications of discrimination, including compensation (see “compensation analysis” below), and reporting and correction of areas that show adverse impact or need improvement. AAPs should be updated by November 1st of each year.
- **Compensation Analysis** – Contractors are required to ensure that there is no discrimination in their pay. This requires contractors to analyze their compensation policies and practices and conduct a compensation analysis to determine if discrimination may be occurring based on several protected factors. If there are disparities in pay between a group of employees, contractors must review personnel records to see if discrimination actually occurred. If so, corrective actions must be implemented. Contractors must be able to provide documentation of their annual analyses

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to the Office of Compliance Programs (OFCCP). To this end, OFCCP recently issued [Directive 2018-05 - Analysis of Contractor Compensation Practices During a Compliance Evaluation](#).

- **Wrap Plans** – The federal Employee Retirement Income Security Act (ERISA) mandates that employers/plan administrators of ERISA-covered plans provide a Summary Plan Description (SPD) to each participant and that plans be maintained in accordance with a Written Plan Document. A wrap plan is a document that “wraps around” all ERISA health and welfare benefits and includes required disclosures not typically found in other documents. The benefits available under the plan continue to be governed by the insurance policy, coverage certificate or plan booklet, while the wrap document supplements with the information necessary to comply with ERISA. Employers can consolidate all health and welfare plans under the same wrap document, so there’s no need to update or amend multiple documents in response to legislative changes, regulatory changes, or changes made by the employer with respect to benefits offered. In addition, a wrap plan simplifies the Form 5500 (and associated schedules A) instead of filing a separate Form 5500 for each health and welfare plan.
- **Exec Comp Reasonableness** – Contractors are required to comply with the applicable regulations regarding compensation, in accordance with the provisions of FAR 31.205-6. An executive compensation analysis can help your company make informed compensation planning decisions while ensuring that total compensation is reasonable.
- **Annual Notifications** – Open Enrollment is a great time to distribute the required notifications, including:
 - Medicare Part D Creditable Drug Coverage
 - HIPAA Special Enrollment Rights Notice
 - Women’s Health and Cancer Rights Act
 - Children’s Health Insurance Program Reauthorization Act
 - Summary Plan Descriptions (SPDs)
 - Summary of Benefits and Coverage
 - Notice of COBRA Rights

A Reporting and Disclosure Guide for Employee Benefit can be found [here](#).

2019 Calendar Reminders:

- **Provide employees with the appropriate pension plan documents.** These documents – including Summary Plan Descriptions (SPDs), Summary of Material Modifications (SMM), and Summary Annual Report (SAR) – must be provided to all employees by the required dates.
- **File payroll and tax forms.** The Federal Unemployment Tax Return IRS Form 940 for 2018 must be filed by January 31, 2019. W-2 and 1099 forms for 2018 must also be filed by January 31st.
- **Distribute/file 2018 Affordable Care Act documents.** Employer Provided Health Coverage, IRS Forms 1095-B and 1095-C are due to employees by January 31st. Employer Provided Health Coverage and IRS Forms 1094-B, 1095-B, 1094-C, and 1095-C are due to the IRS by February 28, 2018 if paper filing or March 31, 2019 if filing electronically.
- **OSHA 300 Logs** (Form 300 and 300A) should be posted February 1st – April 30th, 2019. Applicable labor relations reports, as required by the Landrum-Griffin Labor Management Reporting and Disclosure Act (LMRDA), are due annually.
- **File Form 5500, if applicable.** All pension benefit plans covered by ERISA must file a Form 5500 or Form 5500-SF for a plan year unless they are eligible for a filing exemption. Form 5500 must be filed by the last day of the 7th month following the end of the plan year (July 31st for calendar year plans). A one-time extension of 2 ½ months may be granted upon submission of extension request form.
- **File VETS-4212 Form, if applicable.** The Vietnam Era Veterans Readjustment Assistance Act (VEVRAA) requires all nonexempt federal contractors and subcontractors with a contract or subcontract in the amount of \$150,000 or more to provide an annual report of the number of employees in their workforces, by job category and hiring location, who are qualified covered veterans. VEVRAA also required federal contractors and subcontractors to report the number of new hires during the reporting period who are qualified covered veterans. Government contractors

must submit a VETS-4212 report no later than September 30th of each year.

Redstone Government Consulting's experienced HR team is available to assist your company in meeting any of the requirements listed above. For more information, please contact Sheri Buchanan, HR Manager, at 256-704-9893 or sbuchanan@redstonegci.com

IGs (Inspector Generals) Continuing Impact on Government Contract Compliance

By Michael Steen, CPA, Senior Advisor

The Inspector General Act of 1978 was enacted in part to create independent and objective units to conduct and supervise audits and investigations of programs and operations of a number of "establishments" listed within the act (which was most recently amended on June 25, 2018). The activities and reports of the various Inspector Generals (IGs) are available (in some cases with redactions) on publicly accessible websites, an example for the DoD-IG is: <http://www.dodig.mil/reports.html/>. The published reports include the results evaluations initiated by the IG as well as evaluations of hotline Complaints; additionally, the DoD-IG issues notices of planned evaluations (with a start date, but no reference to a completion date...which seems to be a pattern in government internal or external oversight.) Recently the DoD-IG has issued the following reports, and each has some potential impact on future actions by DoD contracting officers, thus of passing interest to DoD and other contractors.

DoD Oversight of Logistics Civil Augmentation Program in Afghanistan Invoice Review and Payment

The DoD-IG evaluated the sufficiency of invoice reviews and concluded that the Army paid 128 vouchers (2015-2017) valued at \$2.4 billion, with little or no examination of the supporting documentation. Additionally, that at least \$536 million of the \$2.4 billion were supported by questionable documentation (employee labor, travel and bonuses). The basic issue, that contractor invoices (vouchers) did not contain sufficient documentation (self-contained transaction level details) and that invoices were reviewed and approved for payment based upon cursory reviews by DCAA. The IG noted

that DCAA does post-payment reviews of selected vouchers, but that only involves one voucher per quarter.

Although DCAA timely reacted to the DoD-IG concerns, performed transaction level testing and determined that the underlying contractor records did not support the allowability of virtually all costs invoiced, the DoD-IG did not change its report to recognize that there is ultimately an incurred cost audit which does test for allowability using detailed (transaction level) accounting records. Unfortunately, to placate the DoD-IG, the Army agreed to "coordinate with DCAA to ensure transparent supporting documentation is provided with each submitted voucher."

Seriously, "transparent" supporting documentation? Apparently, using (or mis-using) the phrase of the day (transparent), is all it took to convince the DoD-IG to accept the corrective action and move onto its next evaluation, most likely yielding "transparent" benefits to the taxpayer. Unfortunately for contractors, this may not be "transparent", instead involving Government expectations that invoices include summary-level costs accompanied by files containing transaction level details...even if the auditors won't actually audit these while doing their cursory pre-payment review.

Evaluation of Hotline Complaint Regarding DCMA Actions on Audit Findings Reported by DCAA

At issue, the Contracting Officer (CO) actions (or inactions) to disposition a 2013 DCAA audit of a DoD contractor's incurred cost proposals for 2005-2008 (DCAA questioned indirect costs of \$1.1 million and direct costs of \$9 million, but DCAA also issued a disclaimer stating that DCAA could not render an overall opinion on the allowability of the contractor's claimed direct and indirect costs.) The CO did not sustain any of the indirect costs questioned and had done nothing with the direct costs questioned. The DoD-IG concluded that the CO "may" have allowed the reimbursement of \$1.1 million in indirect costs and that the CO was remiss in doing nothing to address the direct costs at issue. The CO stated that he/she was concerned with the six-year statute of limitations (FAR 33.206, discussed in this newsletter) and could not sustain the audit because of the disclaimer of opinion and because the contractor would not negotiate with the Government.

Although this hotline complaint and evaluation is related to the actions of one CO, one should expect a broader impact

including DCMA attention to DCAA audits which disclaim an overall opinion and resolving direct cost issues. Coincidentally, the DoD-IG has an ongoing evaluation of DCMA actions to disposition DCAA audits which disclaim an opinion and has already issued a report taking issue with CO's who only address/disposition indirect costs. For what it's worth, very few CO's have the authority to establish final indirect cost rates and final allowable direct costs (the direct costs are the responsibility of a contract-specific CO); thus, the probable outcome should mean that the CO responsible for indirect costs/rates will encourage the contract-specific CO to address direct cost issues (else the contractor fiscal year(s) incurred cost are to be reported as unresolved, an issues given that DoD instruction 7640.2 requires audits to be dispositioned within six months of the audit report date...a requirement which is rarely achieved.

Hotline Allegation Regarding DCMA Contracting Officer Actions on a Subcontractor's Termination Proposal

In brief, the hotline alleged that a DCMA Contracting Officer (CO) failed to sustain any of the DCAA audit reported cost questioned (\$825,910). In this case, the CO explained that he/she had no training in terms of dealing with a DCAA audit report; hence, he/she simply approved the contractor's termination settlement proposal as submitted.

Contractors may be lining up to have this CO assigned to them, but that won't happen because the CO no longer has a warrant (pending additional training). With respect to the amounts at issue, we will never know if DCAA's costs questioned were valid (sustainable) because the DoD-IG does not evaluate the validity of DCAA's audit conclusions (by implications, accepts them at face-value unless a CO clearly documents reasons for rejecting the audit assertions).

The fact that there are still hotline complaints related to CO actions of DCAA audits is a reminder that as an Agency, DCAA does not refer CO decisions; however, DCAA auditors can and will make a hotline complaint. Which also explains why many risk-adverse CO's tend toward accepting DCAA audit results unless the contractor can help the CO in terms of providing a regulatory basis for discounting DCAA assertions.

Untimely Government Contract Oversight and the Six-Year Statute of Limitations

By Michael Steen, CPA, Senior Advisor

FAR 33.206 imposes a six-year limitation on either a contractor or a government claim. This article discusses government claims (to recover over-payments to contractors), in many cases involving untimely audits and other government inactions where there might be the application of the six-year statute of limitations.

Briefly and paraphrased, the six-year period starts with the accrual of the claim, defined as the date when all events that fix the alleged liability and permit assertion of the claim were known or should have been known. From the accrual date, the Government CO (Contracting Officer) has six years to issue a written decision.

Interpretations of this issue have been anything but static, beginning with 2013 published decisions that accepted the date of a contractor indirect cost rate proposal (ICPs) as the accrual date, thus causing short-term panic within DCMA and DCAA with regard to unaudited contractor ICPs which were more than six years' old. More recently, the Government has been successful in asserting that merely having a contractor ICP was not sufficient for the Government to know that it had a claim against the contractor (DCAA auditors provided affidavits stating that the DCAA needed the underlying accounting record in order to determine if there were unallowable costs which had been claimed, billed and paid). Initially, these cases (ASBCA or CBCA decisions) focused on indirect costs; however, recent decisions have addressed direct costs in application to FAR 33.206.

In a CBCA (Civilian Board of Contract Appeals) Case 5846, a contractor was successful in its motion for summary judgment with respect to invoices paid more than six years before the June 13, 2017 CO final decision. At issue the price per gallon (propane or fuel oil) invoiced versus the price per gallon in the contract (GSA MAS contract going back to 2002). The CBCA agreed that the accrual date began with each invoice because the invoice price per gallon was obviously different than the contract price per gallon. The point, the Government needed nothing else to determine the amount of the alleged overbilling and overpayment. The CBCA stated that later GSA audits

(CAVs), which initiated the Government claim, were “not pivotal in deciding these claims because the MAS contract terms and the invoices established the claim accrual. In other words, it doesn’t take an audit to determine that invoiced prices were higher than contract prices. It should also be noted that this same over-pricing issue continued into later years; however, the contractor did not attempt to assert that the six-year statute of limitation applied to subsequent invoices. As stated in the CBCA decision, the accrual (Government claim) is established when the work is performed, billed and paid, which is invoice-specific. Thus, invoices paid before June 13, 2011 (June 13, 2017 minus six-years) are outside the statute of limitations whereas those paid after June 13, 2011 are within the statute of limitations (it does not matter that the Government should have known not to pay the invoiced amount on any of the invoices). It should be noted that this case involves some other issues, notably delivery orders issued by a particular Government customer which had higher per gallon prices than those in the GSA MAS contract. Yet to be resolved, what trumps, the GSA MAS contract or the specific task orders issued by the Government customer.

In ASBCA No 61638, the contractor lost on its motion for summary judgment that the Government’s claim was untimely, thus barred by FAR 33.206(b). At issue, vouchers submitted in 2005 and 2006, which were all paid by December 15, 2006. These costs associated with these vouchers were included in the contractor indirect cost rate proposal (ICP) submitted on February 28, 2008. DCAA conducted an entrance conference on July 7, 2009 but performed little or no auditing until notifying the contractor (April 3, 2012) that the ICP was inadequate for audit. In June 2012, the contractor provided additional information (to address the ICP adequacy), but in September 2013 the contractor failed to respond to DCAA’s request for additional documentation. On December 30, 2013, DCAA issued its audit report which questioned more than \$54 million in costs and this was followed by a September 11, 2017 Contracting Officer final decision demanding repayment of \$8,607,879. In many cases, the issue was the lack of documentation supporting third party invoices, proof of payment, or a signed purchase order.

In its motion for summary judgment, the contractor used three alternative “accrual dates”, the latest being the July 17, 2009 DCAA entrance conference date (all three alternative dates were before the critical date of September 11, 2011, six-years before the CO final decision). In denying the contractor motion

for summary judgment, the ASBCA noted that the contractor failed to prove the Government knew or should have known of the alleged overpayments with the original ICPs or the DCAA entrance conference date. Similar to other decisions which pivoted on DCAA affidavits that unallowable costs could only be determined with more detailed cost accounting records (not available in the contractor ICP, but only obtained during the audit). The fact that the contractor had embedded some additional details within the ICP was of no significance when the documentation at issue was clearly not available (and in fact not provided when DCAA requested it in September 2013).

Accounting System Adequacy: Pre-award, Post-award or Does It Really Matter?

By Michael Steen, CPA, Senior Advisor

Recent events (client experiences) have focused on the adequacy of a contractor accounting system, which is most frequently linked to FAR 16.301-3, a cost reimbursement contract may only be used when (a)(3): “The contractor’s accounting system is adequate for determining cost applicable to the contract or order”. Hence, the need for a pre-award accounting (adequacy) audit and the application of the Standard Form (SF) 1408, available at: <https://www.gsa.gov/forms-library/pre-award-survey-prospective-contractor-accounting-system>.

Historically, DCAA has been the predominant federal government contract audit agency; thus, DCAA’s audit program and audit checklist (pre-award accounting system) had almost universal applicability. For purposes of a pre-award accounting system audit, DCAA’s audit program is 11 pages, but only three of those pertain to documenting the pre-award survey and very significantly, the DCAA auditor can complete this without any transaction testing. In comparison to other DCAA audits, the scope and duration of a pre-award is analogous to a drive-through (fast-food) versus a formal five course meal. Moving in the direction of the five-course meal, DCAA’s post-award accounting system audit is far more comprehensive, and it will involve significant transaction testing (translated: requests for documentation for multiples of transactions such as labor entries, direct material charges, direct travel, etc.). To the extent a contractor is audited by

DCAA, the DCAA auditor(s) are required to inform the auditee of the nature of the audit (pre-award or post-award) as well as to provide preliminary (draft) audit results for contractor comments (rebuttals).

In the context of government contract audits, history is changing, in particular, DCAA is now one of many government contract auditing agencies or organizations, some of which are auditors assigned to an agency inspector general's office whereas others are independent public accountants (qualified to perform audits under Government Auditing Standards). As the landscape changes, so does predictability including the migration away from DCAA audit policies which deal with the adequacy of contractor accounting systems. Recent events (code for recent experiences of clients) has made this all too obvious, that other auditors (non-DCAA) will pick and choose what (if anything) they borrow from DCAA's play-book. An example of this was the civilian agency auditor who stated that he/she was performing a pre-award review (to assist the contracting officer in documenting FAR 16.301-3(a)(3)), but the audit steps were eerily similar to those within DCAA's more comprehensive post-award audit. The most notable difference, the civilian agency auditor relied almost exclusively on transaction testing, including transactions which were generated before the contractor made significant system enhancements. Although the contractor (previously exposed to DCAA's pre-award surveys) was surprised by the current auditor's approach, the contractor also assumed that "prior system accounting data" would not dictate the outcome once the contractor demonstrated its system enhancements.

Unfortunately, a contractor (auditee) can never assume that the government auditor or the contracting officer will ignore "problematic" accounting data even if that data was generated by subsystems which had been recently enhanced (or replaced). In this case, the contracting officer declared the accounting system to be inadequate and informed the contractor that system enhancements would need to be in place for three-four months before the auditor would revisit and evaluate the corrective actions (because audit reliance is based almost exclusively on system operation and outputs versus system design. In other words, the contracting officer had determined the current accounting system inadequate for cost-type contracts and that determination would remain for at least three-months.

Although the contractor maybe able to pursue some other remedies, there are some universal lessons toward avoiding a similar situation:

- Communicate with the auditor before, during and after the audit in order to understand the audit scope and any preliminary findings/conclusions (don't assume anything including the use of a limited scope DCAA pre-award survey). Even without any auditor direct communications, pay attention to areas where the auditor has asked for information or data which was followed by a series of follow-up questions. Often, the continuation and the nature of the questions implicates a developing issue.
- If an auditor starts auditing prior period(s) accounting transactions, make certain that he/she knows that certain systems or sub-systems have changed. In this case, the old time-keeping system had been replaced by one designed specifically for government contractors (including much tighter controls). Although the auditor completely failed to follow government auditing standards (through inquiry about system changes), one cannot assume that the contracting officer will discount the audit results. In this case, the CO asserted that the contractor should have informed the auditor of the system changes and not that the auditor should have asked.
- Issues such as materiality (or immateriality) are worth debating, but recognize that in the end, the adequacy of an accounting (or any business) system is determined by the government, whose concepts of materiality will almost always be lower than those of the contractor. Materiality is highly subjective, and it is all too easy for the auditor and the contracting officer to deem it material merely because they define materiality without any objective standard of measurement.

Training Opportunities

2018 Redstone Government Consulting Sponsored Seminar Schedule

Go to the [Redstone CGI Training Calendar](#).

2018 Federal Publications Sponsored Seminar Schedule

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

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.

Redstone Edge Conference

We have an exciting slate of speakers, panels and networking sessions planned for the day where you will earn NASBA CPE. We are happy to help with accommodations for other CPE types.

Limited seating is available for this event, so we hope you will register soon! In the coming months, we will be adding highlights of the day's sessions and will continually update this page as we develop topics and identify speakers. Currently, we have commitment for SES-level participation from several Government agencies, as well as noted industry experts and some special sessions presented by our Redstone GCI Team. Since the focus of the Redstone Edge is on emerging industry concerns the sessions will largely be driven by the changing 2018. [Register now!](#)



Blog Articles to our Website

OFCCP Issues New Guidance to Address Pay Discrimination

Posted by Kayla Klutts on Fri, Sep 7, 2018
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Fiscal Year 2019 GSA Per Diem Rates Released

Posted by Daniel Meek on Tue, Aug 28, 2018
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Important Information for the VETS-4212 Filing Season

Posted by Sheri Buchanan on Wed, Aug 22, 2018
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Organization Conflicts of Interest Decision Challenges

Posted by Kelli Beene on Fri, Jul 13, 2018
[Read More](#)

Government Contract Post-Award Debriefings 101

Posted by Kelli Beene on Mon, Jul 2, 2018
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CPSR Guidebook and Threshold Changes: What Should Contractors Expect from DCMA?

Posted by Cyndi Dunn on Tue, Jun 19, 2018
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What Are the Prime Contractor's Risks Related to Subcontracts

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

DCAA Rejection of Incurred Cost Proposals

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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.



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