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## Systemic Issues with Contract Closeout: Are We There Yet (with Respect to Solutions)?

The Federal Register dated May 22, 2007, published the DPAP (Defense Procurement and Acquisition Policy) response to public comments concerning systemic issues with contract closeout.

In reviewing the public comments, DPAP planned to take actions to enhance the contract closeout process, notably to open a DFARS case on contract closeout to establish a comprehensive PGI section to address contract closeout and to assess whether regulatory clarification/revision is needed to address eight subtopics including i) Cumulative Allowable Cost Worksheets and ii) Final indirect cost rate proposals. Hence, as of May 2007 the solution was to open a DFARS case. Assuming there is collective interest in the timely resolution of perceived systemic issues with contract close-outs, it's beyond disappointing given that the history of this action dates back to the Team's (2005)

engagement with respondents to the 2002 Federal Register request for public comments on...how to improve the contract closeout process.

Noting that the DFARS case is to consider eight subtopics (that might require clarification/revision), essentially every conceivable contract close-out activity is "on the table" for consideration.

In summary, five years after seeking public comment, it appears that there is now a plan to assess the relevant regulations. Although it could be argued that the regulators have slightly narrowed the scope of their continuing assessment, it is safe to say that we aren't there yet.

## Cumulative Allowable Cost Worksheets: A Contractual Requirement (or Not)?

As noted above, DPAP makes specific reference to cumulative allowable cost worksheets (CACWS) as something to be assessed in the continuing saga of improving the contract closeout process. Within its discussion, DPAP states, "DPAP believes that the contract closeout process is significantly reduced if contractors submit a Cumulative Allowable Cost Worksheet (CACWS) after the indirect cost rates are finalized....Therefore, the DFARS case on contract closeout will include a review to determine if, and to what extent, the CACWS should be required and/or encouraged in the regulations. This review will also include an assessment of how the CACWS is or should be structured to best meet contract closeout needs without imposing significant administrative burden on the contractor or the Government".

It is perhaps coincidental, but equally noteworthy that in October 2007, DCAA issued an audit alert (07-PPD-033(R)) on the Adequacy of Contractor's Final

Indirect Cost Rate Proposals. Within that audit alert (and in fact before the audit alert) DCAA has encouraged its auditors to use the DCAA Model Incurred Cost Proposal as the singular acceptable format for an adequate incurred cost proposal notwithstanding that DCAA's audit guidance correctly states that the Model "generally" constitutes an adequate final indirect rate proposal.

In point of fact, we are aware of a number of contractors whose Fiscal Year 2006 incurred cost proposal was deemed inadequate because it lacked one or two of the Schedules (Model Incurred Cost Proposal), typically the CACWS among the schedules not prepared and submitted with the proposal.

It is of more than passing interest that DPAP has very clearly stated its belief that the contract closeout process will be significantly reduced if the contractor submits a CACWS after the indirect cost rates are finalized (but even this "belief" is subject to further review and assessment).

Not only has DCAA rejected ICPs as inadequate based upon very strict application of the Model Incurred Cost Proposal, it has also threatened contractors with 20% decrement factors to be applied to interim billings as a direct consequence of the "inadequate ICP".

As many astute authors have noted over the years, DCAA can and does implement audit policy (binding upon its auditors and no one else); however, DCAA has no authority to issue procurement policy.

Acknowledging that DPAP is now considering all of this as a DFARS case and DCAA is currently referencing FAR, one could assert that there isn't any conflict. However, that assertion would be disingenuous at best considering that DPAP and DCAA are both under the organizational umbrella of the Department of Defense and DPAP very clearly stated its intentions to assess the CACWS to

determine if, and to what extent, the CACWS should be required and/or encouraged in the regulations. Why bother if it's already covered in the FAR? In terms of reconciling the DPAP statements with DCAA's audit alert, a failure to communicate or a failure by a government audit agency to operate within its charter which does not include the issuance of procurement regulations?

One should not misinterpret this as a suggestion to discontinue with CACWS or any other schedule within the Model Incurred Cost Proposal if a company is currently preparing these and the preparation is not an administrative burden. However, it should be recognized that preparing these to DCAA's literal requirements/expectations is a voluntary action, not otherwise contractually required.

## Ms. Mary Beth Jackson Has Joined Our Government Contracts Consulting Group



Beason & Nalley, Inc. is pleased to announce that Ms. Mary Beth Jackson has joined our government contracts consulting group as a Managing Consultant.

Ms. Jackson has over nineteen (19) years of internal and external audit experience including (10) years with DCAA as a Senior Auditor.

Prior to joining Beason & Nalley, Ms. Jackson worked for a Fortune 500 company as Director of Information Technology Compliance and Controls. During her tenure as Director of IT Compliance and Controls, she held oversight responsibility for the IT Controls framework supporting the company's General and Application IT Controls for the company's compliance and regulatory requirements including Sarbanes Oxley.

Mary Beth also held the position as the company's Government Compliance Internal Auditor for the company's Defense and Aerospace Division.

During Mary Beth's tenure with DCAA, she was involved in conducting a variety of compliance audits, to include cost

proposals, material management accounting systems, billing systems, compensation systems, purchasing systems, Cost Accounting Standards, and defective pricing.

## New FAR Rule on Expanding Use of Performance-Based Payments (PBPs)

A new FAR rule, effective January 25, 2008, has been issued with the purpose of expanding and improving use of PBPs for financing government contracts.

Under the new rule, contracting offices may now implement PBP payment provisions when all of the following three conditions are met:

- Contractor and contracting office can agree on PBP payment terms
- Contract, order or line item is of a fixed price nature
- Interim financing provisions, such as progress payments features, are not included within the contract

The new rule also makes it clear that PBP payments are not permitted for cost reimbursable type contracts, and other contracting arrangements where progress payments are provided for on a percentage of completion calculation base.

Revised verbiage to the FAR also clarifies that financing payments under PBPs are exempt from the prompt payment interest penalty provisions in FAR 32.9.

## Training Opportunities

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Scott Butler and Mike Steen

Go to [www.fedpubseminars.com](http://www.fedpubseminars.com) and click on the Government Contracts tab or call Beason & Nalley at 256.533.1720.

## Specialized Training

Beason & Nalley 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. Sandra Baker at [sbaker@beasonnalley.com](mailto:sbaker@beasonnalley.com), or at 256.533.1720.

Beason & Nalley, Inc. provides accounting, business, financial and consulting services with a focus on serving government contractors. Beason & Nalley goes well beyond the bounds of what one would normally consider to be "typical" services. We provide services such as government contract services, outsourced accounting, audit, tax and Deltek GCS Premier™ and Deltek Costpoint® consulting and more. Our goal is to provide the business owner with options for their financially related administrative needs. Our service list is comprehensive. Contact us:

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