

Final Voucher Services

Written by Nick Sanders
Tuesday, 21 February 2017 08:48

Another week gone by, and the ASBCA website is still down with Error 403 problems. Thus, we still cannot write about the KBR decision, nor can we write about the newer A-T Solutions decision. So instead we'll discuss the latest MRD (audit guidance) from DCAA.

DCAA, as you already may know, publishes much fewer pieces of audit guidance than the agency used to publish. The number of MRDs published each year has fallen precipitously; much like the number of audit reports issued each year has fallen precipitously. Consequently, we are excited when we see a new MRD on the DCAA website, wondering what important new audit guidance it may contain.

So here we are at [MRD 17-PIC-001](#), dated 1/18/2017. It discusses "final voucher services." According to the MRD, the purpose of the audit guidance "is to emphasize the types of services audit teams may provide to the Cognizant Federal Agency Official (CFAO), generally the Administrative Contracting Officer (ACO), to assist in processing final vouchers for contract closeouts."

What are final voucher services?

According to the MRD, final voucher services may include:

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Providing the CFAO with specific requesting information, such as signed rate agreement letters for the fiscal years of the contract, prior years' Cumulative Allowable Cost Worksheets (CACWSs), etc.

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Non-audit services as requested, which are limited to compiling factual information and expressly exclude audit services.

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Final voucher audit services, which are an attestation examination or agreed-upon procedure to address identified CFAO concerns about the contractor's final voucher.

Readers may recall we've [opined](#) that the CACWS requirement of FAR 52.216-7 is an illustrative example of additional regulatory burden imposed on contractors. The CACWS is nothing more than an auditor working paper. The MRD guidance is quite clear that not only must a contractor prepare a CACWS (disguised as Schedule I of the DCAA ICE Model for proposals to establish final billing rates), but that a contractor has a duty to update the CACWS "within 60 days of rate settlement" as required by 52.216-7(d)(2)(v). (This would be a requirement of the 2011 version of the contract clause; the MRD is equally clear that contracts containing the earlier version of the clause are not subject to that requirement.)

Indeed that language does state: "The Contractor shall update the billings on all contracts to reflect the final settled rates and update the schedule of cumulative direct and indirect costs claimed and billed, as required in paragraph (d)(2)(iii)(I) of this section, within 60 days after settlement of final indirect cost rates."

One of the many problems with that statement is that the clause also states (at (d)(5)) that: "Within 120 days (or longer period if approved in writing by the Contracting Officer) after settlement of the final annual indirect cost rates for all years of a physically complete contract, the Contractor shall submit a completion invoice or voucher to reflect the settled amounts and rates."

So which is it? Does a contractor have 60 days to "update the billings on all contracts to reflect the final settled rates," or does it have "120 days ... after settlement" to submit a completion voucher? Certainly the 60 day rule would apply to final rates negotiated during performance while the 120 day rule would apply to final rates of the final year of performance but, in the final year of performance, *both* the 60 day rule and the 120 day rule would apply. So which is it?

This is one of the problems here. The other problem is that the clause requires update of the CACWS after the final billing rates have been negotiated. If you take the position that the (d)(2)(v) clause language only applies to final rates negotiated during performance, whereas the (d)(5) language applies to the final year of contract performance, that clearly means that the CACWS does not have to be updated to reflect the final billing rates for the final year of

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contract performance.

Let's do a hypothetical example.

Contractor A has one and only one cost-type contract containing the 2011 version of 52.216-7. The contract has a 4 year period of performance. In compliance with clause requirements, it updates its CACWS to reflect settlement of direct and indirect costs each year within 60 days of agreement. At the end of Year 4, it does not update its CACWS and submits a final voucher within 120 days of agreement. That would seem to us to be compliant with the exact requirements of the contract clause.

Let's do another hypothetical example:

Contractor B has many cost-type contracts; some of them contain the pre-2011 version of the 52-216-7 clause while others contain the 2011 version of the clause. As its proposal to establish final billing rates is audited and negotiated and settled, it updates its CACWS—but *only* for the contracts that contain the 2011 language. For the rest, updating the CACWS is not a contractual requirement. We believe that is a compliant posture.

Let's do another hypothetical example:

Contractor C has one cost-type contract ("Contract 1") containing the pre-2011 version of the clause, and one cost-type contract ("Contract 2") that contains the 2011 version of the clause. Both contracts are physically completed in the same year. The contractor's Disclosure Statement states that close-out activities will be charged to the contract for which they benefit. DCAA and DCMA ignore Apogee Consulting, Inc.'s sage wisdom (about the conflict between the (d)(2)(v) and the (d)(5) clause language) and require the contractor to update its CACWS as a condition of final voucher payment. The contractor does so but only for Contract 2. The effort involved in updating the CACWS is considered to be a contract close-out activity, and so the labor efforts are charged to Contract 2 as direct costs. Now Contractor C has direct costs outside the contract's period of performance, plus it has direct costs in a year not subject to the final rate agreement. Therefore, Contract 2 is not ready for a final voucher. First Contract 2 must be modified to extend the Period of Performance. If the costs involved in updating the

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CACWS are material in amount, the contractor may be due a price adjustment. Second, the final voucher must be withdrawn and must wait for another year to be audited, negotiated, and finalized. In that year the effort to update the CACWS will be repeated, creating the same problems as before. *Is this really what the parties intended?* Meanwhile, Contract 1 was done, the final voucher was submitted and paid, and the files can now be put away.

We have suggested that contractors not update the CACWS after billing rates are finalized. That suggestion flies in the face of the express requirements of FAR 52.216-7(d)(2)(v). We've (hopefully) explained why a literal reading of that clause language leads to several problems. Notwithstanding our position, we strongly suspect that DCAA and DCMA will refuse to pay a contractor's final voucher until and unless that pesky CACWS is updated by the contractor.

So what's the resolution?

Contractors need to ensure that final billing rates reflect a credit against provisional billing rates. Of course the same 52.216-7 clause requires that provisional billing rates be set as closely as possible to anticipated final billing rates, so as to avoid a "substantial" overpayment or underpayment. Substantial is one of those words, like "material" or "significant," that creates a certain amount of subjectivity and/or ambiguity. Our best advice here is to set provisional billing rates so that there is a very slight (certainly not "significant") overpayment situation. Thus, the contractor would owe the government a very small check at the time of final billing rate settlement. In this fashion, should the government refuse to process the contractor's final voucher (which would reflect a very small credit due the government), the contractor can shrug and say "so what?"

Oh, and that MRD we started with? It's just over 2 pages long. But it contains a 41 page-long PowerPoint attachment. In that attachment, DCAA makes it very clear that the updated CACWS is required even in the year of physical completion—ignoring the (d)(5) clause language.