

Bad Information

Written by Nick Sanders
Wednesday, 28 February 2018 00:00

Usually the DCAA [website](#) is a good place to go for information regarding government contract accounting matters. It's chock-full of helpful information, from the Contract Audit Manual to the Selected Areas of Cost Guidebook. It has a list of DCAA audit programs and a list of recently promulgated audit guidance (called MRDs for "Memoranda for Regional Directors").

DCAA's website has many checklists to assist contractors in understanding what auditors expect to see. For example, it has a Pre-Award Accounting System Adequacy Checklist and a Contract Pricing Proposal Adequacy Checklist, and it has an "Incurred Cost Submission" Adequacy Checklist and a Cost Impact Adequacy Tool.

DCAA's available guidance includes the Information for Contractors pamphlet and the FAR Cost Principles Guide. In addition, there are links to "targeted information" presentations intended to "assist with audit issues that relate to small businesses."

In sum, the DCAA website is a valuable resource and, if you are seeking to learn more about government contract cost accounting and/or compliance requirements, it's a good place to start.

But beware.

Not all the information found on DCAA's website is accurate. Nor is the audit agency's interpretation of regulation always aligned with court decisions on those regulations. Some of the information you might want to see isn't there; and some of the information you would expect to find is curiously unavailable. So take what you find there with a grain of salt, so to speak, and make sure you check DCAA's interpretations against other resources.

We can be more specific with respect to our warning, if you'd like.

First and foremost, be advised that DCAA's guidance and checklists and interpretations lack regulatory effect. What that means is that DCAA's point of view doesn't carry the weight of the statutory and/or regulatory language itself. If it comes to litigation, most Judges are going to look

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to the language first, rather than to DCAA's interpretation of that language.

Think of it this way: if the government was always right, we'd never need to prepare taxes every year. We'd just tell the IRS how much money we had made, and then they would tell us how much we owed in taxes. But it doesn't work that way, does it? Instead, we have tax programs and tax preparers and accountants and bookkeepers, who help us navigate the complex tax rules so that we can (legitimately) minimize our taxes. Same thing here. We don't ask DCAA to calculate our indirect rates for the same reason we don't ask the IRS to calculate our taxes for us.

The next thing to discuss is the missing information. DCAA's list of MRDs has curious gaps in it. MRDs are posted late (if at all) and then they disappear when incorporated into the Contract Audit Manual. There is no published record of MRD disposition; you can't tell when an MRD was incorporated and you can't tell where it was incorporated. For example, there was some audit guidance published in the second half of 2017 (or in the first half of government fiscal year 2018, if you will) that discussed DCAA's view of how subcontractor cost and/or price analyses was to be provided in a prime contractor's proposal. The MRD disappeared after about 30 days. Where did it go? Was it incorporated into the CAM? If so, where? We don't know and DCAA won't tell us.

Looking at the CAM itself, we noted that Chapter 5 "is currently being rewritten." That's not particularly helpful if you are researching how DCAA would audit "policies, procedures, and internal controls relative to accounting and management systems"—i.e., the six DFARS contractor business systems.

Similarly, the Selected Areas of Cost Guidebook is missing critical information. There are 75 Chapters, each devoted to a separate area of cost, but several Chapters are "under construction" and have no content. For example, Chapter 10 (Compensation for Personal Services) is missing. This is a critical topic that has formed the basis for several high-profile disputes (the majority of which were lost by the government, based on a flawed DCAA audit approach). If you wanted to understand DCAA's current position on the allowability of compensation costs, you'd be out of luck. Ditto Chapter 22 (Economic Planning Costs) and Chapter 27 (Fines, Penalties and Mischarging Costs). Point made, we trust.

It's apparent that things aren't much better at the section of DCAA's website entitled "Audit Process Overview—Information for Contractors." If you are a contractor seeking information,

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then you are going to have some problems. First, DCAA Manual 7641.90 (“Information for Contractors”) is woefully out of date. The version available on the website is dated June 26, 2012. Now, you could argue that things haven’t changed much since then, in terms of the general acquisition and audit flow—and you’d be right. But some things have changed in the intervening five years. There have been changes to how DCAA is organized, such that the information in Enclosure 1 is just wrong. There have been changes to the application of the Truth in Negotiation Act (TINA), such that information in Enclosure 2 is out of date and potentially misleading. Since 2012, statutes and regulations have changed. Legal decisions and opinions have been issued. So while it’s true that the overall process has remained about the same, it’s equally true that the document needs to be updated. Contractors—especially small business contractors—that rely solely on the information found in DCAA Manual 7641.90 may be misled. That would be unfortunate. Indeed, it would be an interesting defense in a bid protest or other dispute: the contractor relied on DCAA’s written guidance, to its detriment.

Now we’re not looking a gift horse in the mouth here. It’s a GOOD THING that DCAA has resources available for contractors, and the audit agency should be commended for doing so. What we are saying is, since the audit agency has made the decision to provide resources and information, it’s incumbent on the agency to maintain the resources and keep the information current.

Finally, there is some bad information on the website that you need to be wary of. The one thing that caught our eye was found in the listing of “targeted information to assist with audit issues that relate to small business.” In that listing was a link to a DCAA presentation entitled “Monitoring Subcontracts.” Like almost everything on the website, it has good information. But it also has an egregious error that needs to be corrected, or else ignored. On Slide 17 (“Common Prime or Higher Tier Subcontract Deficiencies”) the third bullet is: “Failure to obtain an adequate incurred cost submission from subcontractor.” In other words, DCAA is stating in writing that a prime contractor or higher tier subcontract is required to obtain an adequate incurred cost proposal from its subcontractor(s). Yeah, no. *Wrong, wrong, wrong.* That particular agency position was laughed out of court and we wrote about it

[here](#)

Another, perhaps less egregious, example is found in the DCAA slide show entitled “Elements of An Adequate Proposal.” On Slide 3, bullet 2 states “The contractor bears the burden of proof in establishing reasonableness of proposed costs.” Well, *not exactly*. The contractor bears the burden of proof *if challenged by a contracting officer*.

See FAR 31.201-3(a), which states in part: “No presumption of reasonableness shall be attached to the incurrence of costs by a contractor. If an initial review of the facts results in a

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challenge of a specific cost by the contracting officer or the contracting officer's representative, the burden of proof shall be upon the contractor to establish that such cost is reasonable." That's a slightly different emphasis, isn't it? DCAA's interpretation implies that the reasonableness of every proposed cost must be provided, when in fact that is not the case.

Okay, enough of this stuff. We think we've supported our initial assertion that, when using information and/or resources found on the DCAA website, one should be wary. The less sophisticated the contractor, the more second opinions and other interpretive resources should be sought. Many of the resources and much of the information is helpful, but there are sufficient gaps, out of date information—and even bad information—that this warning is justified.