

## Misallocation or False Claim? Let's Ask The Louis Berger Group!

Written by Nick Sanders

Friday, 12 November 2010 00:00

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In most commercial companies, cost accountants toil in relative obscurity. They use terms such as “indirect costs” and “S,G&A”—and their primary purpose seems to be to help management determine the true costs of production so as to support strategic decision-making. These cost accountants are not known for their charisma and, as a result, they work in the relative darkness of the “back office”—away from the spotlights of the executive offices. When management needs some information, they send an e-mail. Otherwise, cost accountants have only their Excel worksheets to keep them company.

However, the average work environment of government contract cost accountants makes the dim obscurity of their commercial kin seem like it's illuminated by the flashbulbs of Hollywood paparazzi. The governmental cost accounting folks speak in an obscure, poorly-understood dialect only vaguely related to “normal” GAAP accounting, using arcane terms such as “allocability,” “homogeneity,” “directly associated unallowable costs,” and “beneficial or causal relationship”. Sometimes they refer to their Nineteen Commandments, which they call “Cost Accounting Standards” (aka “CAS”). At those times they talk about “disclosed or established cost accounting practices” and something called “consistency”. And they refer to their Bible (the CASB Disclosure Statement) as if it holds the answer to every question management (or government auditors) might possibly ask of them. They are tolerated (barely) because they do some (not well understood) things that, at the end of the day, create “indirect cost rates” or “booking and/or billing rates” that are used to generate invoices and to collect payments from Government customers. If not for their vaguely perceived utility, they obviously wouldn't be invited to management decision-making meetings, ever.

But sometimes ... sometimes those hard-working, low-profile government contract cost accountants can have a huge impact on the bottom-line. Today's story is one of those times.

The [Louis Berger Group](#), Inc. is “an internationally recognized consulting firm that provides engineering, architecture, program and construction management, environmental planning and science, and economic development services.” LBG is “one of 10 firms that make up the [Berger Group Holdings](#)

.” Founded in 1953, the company now employs 5,000 and supports clients in diverse markets—including the Federal Government. In that latter capacity, LBG—

... supports more than 30 U.S. federal clients, including agencies within the Departments of State, Transportation, Defense, the Interior, Homeland Security, Energy, and Commerce, as well as the intelligence community. We are a prime contractor on dozens of federal indefinite

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quantity contracts (IQCs) and hold General Services Administration (GSA) schedules to provide management organizational and business improvement services (MOBIS), environmental advisory services, and professional engineering services (PES).

LBG's projects include several "reconstruction & recovery" efforts in Southwest Asia, including Afghanistan and Iraq. For example, LBG supported the U.S. Corps. of Engineers at Al Asad Air Base in Al-Anbar, Iraq, by "providing and maintaining 155 megawatts of emergency power to control facilities critical to military operations in Iraq." And the company has many similar projects for the US Government as well. Though details are sketchy because the company is privately owned, LBG reported that 2009 sales were \$694 million.

LBG also [reported](#) on November 5, 2010, that it had reached a "global settlement" with the U.S. Department of Justice "related to an investigation of its cost allocating methodologies in place until 2008 for overseas U.S. federal contracts, as well as the misconduct of former employees." As part of the settlement agreement, LBG will pay the U.S. Government \$65 million (although other reports, including that of the DOJ, state the payments will total \$69 million).

The company reported the following—

In 2006, prior to the company's knowledge of the U.S. government's investigation, LBG initiated its investigation into its accounting procedures. When the company identified issues with its allocations to the federal government for projects overseas, it began refunding the government in addition to implementing a companywide internal improvement program. In 2008, as a result of the investigation, LBG accelerated its reform program, to implement a series of improvements in policies, accounting procedures, internal controls, training and compliance oversight. In addition to hiring a new chief financial officer and controller, LBG has instituted a sweeping ethics and compliance training program for all of its employees, which will be monitored and updated by the company's expanded compliance department. Additionally, individuals who were involved with this matter have been separated from the company.

According to [this article](#), LBG was accused of filing false claims and overbilling its Government customers though manipulating its indirect cost allocations and thus inflating the resulting indirect cost rates used for government bidding and billing purposes. The article reported—

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The former chief financial officer of LBG, Salvatore Pepe, and an ex-controller, Precy Pellettieri, pleaded guilty today in federal court in Newark to conspiring to defraud the United States. They admitted inflating bills to the U.S. government for the firm's general overhead costs, including rent, legal bills and other expenses. Pepe also said he conspired with another company executive, whom he did not name.

Under the terms of their deal with prosecutors, Pellettieri, 54 ... and Pepe, 58 ... face between 30 and 37 months in prison.

N.J. company will pay \$69M to U.S. government for over-billing in Iraq, Afghanistan contracts

How did LBG get to the point where it agreed to pay Uncle Sam \$69 million? According to the article, a *qui tam* "whistleblower" was involved. The article reported—

Prosecutors began investigating the firm in 2006, when a former employee gave the government evidence against the company, according to McClatchy News Service. That employee, Harold Salomon, was a senior financial analyst and auditor for Louis Berger.

'Today I can affirm to those who told me the Louis Berger Group can get away with anything that they were wrong,' Salomon said. 'To those who said, 'If you cannot beat them, you have to join them,' I say they were wrong, too.'

To wrap-up, we want to visit the website of The Huffington Post, where David Isenberg had a few things to say about the scandal. Here's a link to his [editorial/rant](#) . Here are some selected bits from his piece—

Louis Berger's alleged overbilling, a practice that dates to at least the mid-1990s, swelled to tens of millions in lost tax dollars. In 2006, a former Louis Berger employee handed the government evidence against the company, two months before the U.S. Agency for International Development tapped Louis Berger to jointly oversee \$1.4 billion in reconstruction

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contracts in Afghanistan.

Court documents reveal that the Justice Department has been negotiating a deal that would "aid in preserving the company's continuing eligibility to participate" in federal contracting in Afghanistan and elsewhere.

According to McClatchy Louis Berger is accused of manipulating overhead cost data and overhead rate proposals submitted to the U.S. government and several states including Massachusetts, Nevada and Virginia.

In some instances the company is accused of shifting overhead costs from private clients to federal and state contracts, where they were less likely to be noticed. ...

While it is great the U.S. government has investigated and fined the Berger group it is important to note that this came about because of a whistleblower lawsuit under the False Claims Act and not because of the superb auditing capabilities of the feds.

That's a great way to end this story – let's all ask why DCAA didn't catch the improper cost allocations, and why it took a *qui tam* "relator" to start the wheels of justice rolling. It is because DCAA can't perform quality audits (as the GAO has alleged)? Or maybe because the agency lacks adequate resources (as its former Director testified)? Or perhaps the agency is so focused on battlefield audits in Southwest Asia it has de-prioritized audits in CONUS?

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Obviously, we don't have the answer(s). But we hope somebody with authority is trying to find them.

In the meantime, let's give a shout-out to the underappreciated, over-worked government contract cost accountant, who works long hours to allocate allowable costs, to calculate indirect cost rates, and to support government audits. Ignore his (or her) warnings at your own peril, at The Louis Berger Group learned, to its chagrin.