We **reported** two years ago that DCAA had taken a new tack with respect to evaluating the allowability of subcontractor costs. In his 2010 testimony before the Commission on Wartime Contracting, DCAA Director Fitzgerald stated that LOGCAP contractors had millions of dollars' worth of unsupported and unreasonable subcontractor costs—costs that he asserted were unallowable even though actually paid to subcontractors in response to actual invoices for services actually rendered and/or for goods actually provided.

Director Fitzgerald testified—

During our review of prime contractor billings and incurred cost audits, DCAA has identified situations where the prime contractor has not awarded its fixed-price subcontracts based on fair and reasonable prices leading to unreasonable or unallowable costs being paid by the Government. For example, DCAA has identified several cases where the prime contractor asserted the [reasonableness of a] subcontract price was based on adequate competition; however, our audit disclosed that adequate competition did not exist. Although the prime contractor is required to pay its fixed price subcontract amount, FAR 52.216-7 and the FAR 31.2 principles state the Government only makes payments of amounts determined to be allowable and reasonable. Therefore, where DCAA has determined that the subcontract price is not fair and reasonable DCAA has attempted to calculate a reasonable amount for reimbursement of the contractor's billings attributed to subcontractor costs. However, in those cases where the subcontract is sole source, it is often difficult to obtain cost data to ascertain the reasonable costs without access to the subcontractor's books and records. DCAA access to subcontractor books and records is generally limited and dependent on the flow down by prime contractor to the subcontractor of the appropriate FAR clauses, and in instances of fixed price subcontracts, virtually nonexistent.

As we told our readers—

It is one of the few unavoidable requirements placed on Government contractors that, prior to making a subcontract award, the prime must first make a written determination that the price it proposes to pay is fair and reasonable. (See FAR 15.404-3(b), which requires a prime contractor (or higher-tier subcontractor) to 'conduct appropriate cost or price analyses to establish the reasonableness of proposed subcontract prices.') So when Director Fitzgerald says the LOGCAP IV prime contractors are failing in their duty to perform the requisite analyses, that statement gets our attention. …

Proper management of subcontractors is absolutely crucial to assuring adequate program execution. Part of that task is to put subcontractors under contract—to identify sources, to evaluate bids, and to negotiate (and document) why the resulting subcontract prices are fair and reasonable. In fact, in November 2008, we told a small gathering at the local NCMA

Chapter that, “Acquisition professionals must own all pre-award activities … Don’t be afraid of cost analysis. Dig deep into supplier bids. Take whatever time is necessary to gain the proper understanding.’ So when DCAA tells the CWC that this is an area that needs to be addressed, we have to agree.

Yes, well. About that whole subcontractor pricing issue. We need to talk. And this is going to be a long talk encompassing several articles. So have a seat, if you will.

One LOGCAP contractor (Kellogg Brown & Root Services, or KBR) recently learned a very painful and expensive **lesson** about what happens when DCAA questions your subcontractor costs on price reasonableness grounds, and you cannot support price reasonableness. *It cost KBR about $30 million to learn the lesson.*

(You can learn the lesson for a much less than KBR’s paid, simply by reading the Judge’s decision, and this series of articles. Or you can skip both and simply ensure you can justify your subcontractors’ price reasonableness. But if you think that avoiding KBR’s expensive lesson for free is valued-added, then *please do not hesitate* to send a check for the value you received to Apogee Consulting, Inc.)

(We see you smirking, thinking you will read these articles and print-out the Judge’s decision, and never pull out your checkbook. Did you notice that Judge Miller’s decision was *more than 90 pages long*
? You really gonna read it?
All of it?
You sure you don’t want to send us a check?
Really?
Oh, well. Let’s get on with the recap, then.)

Under its LOGCAP cost-plus-award-fee Task Orders, KBR provided various support services to the US Army, including Dining Facility (DFAC) services at various locations in Kuwait and Iraq. KBR supported hundreds of thousands of troops at nearly fifty DFAC sites in Southwest Asia. It was a daunting task; one that not very many companies could have performed. One of the DFAC sites was Camp Anaconda, located just north of Baghdad.

One of KBR’s LOGCAP subcontractors was Tamimi. Tamimi supported KBR at various locations, including Camp Anaconda. Tamimi was one of five subcontractors selected by KBR

to receive a master subcontract agreement that established terms and conditions for the rapidly growing Army DFAC and support services requirements. So far, so good.

But problems began to arise. As the entities performed their support services together, Tamimi and KBR personnel grew closer and, eventually, Tamimi began to pay for KBR employees' travel expenses. Other gifts soon followed. At least one KBR employee bribed several Army contracting officer personnel to ensure that the work kept going to the team. These issues created downstream problems for KBR as it strove to show the government that prices paid to Tamimi were fair and reasonable. But hold on to that thought for a while. We have more story to tell.

End of Part 1