DCAA incurred cost audit procedures often require auditors to examine claimed costs that are outside a contract's period of performance. Many contracts specify a period of performance – i.e., a start date and a completion date. For example a firm, fixed-price (FFP) contract might specify that a contractor must provide a specific Level of Effort (LOE) for a certain duration. (See, for example, FAR 16.306(d)(2).) DCAA audit guidance (at 6-202.2, Feb. 2016) directs auditors to disallow claimed costs outside the specified contractual period of performance, stating: "The auditor shall not approve for reimbursement any costs incurred by the contractor subsequent to the expiration date stated in the contract, or in excess of contract limitations."

Thus, according to DCAA, costs incurred after the expiration of the contract's period of performance will be disallowed. But note the language carefully. It says "costs incurred by the contractor" not all costs. For example, costs incurred by a subcontractor before the expiration of the prime contract's period of performance, but not recorded by the prime contractor until after the expiration date are clearly allowable costs.

Disagreements with DCAA auditors often center on contract close-out activities, such as efforts to obtain plant clearance for property, security and intellectual property certifications, and costs associated with preparing final invoices. If those efforts are charged as direct costs, and fall outside the contractual period of performance, they run the risk of disallowance. As we have posted before, our recommendation is to consistently treat the costs of contract close-out activities as being indirect costs, thus avoiding that risk.

Some contracts are called "completion-type" because they obligate the contractor to deliver the specified product. While costs incurred in excess of estimated costs may not be reimbursed, the contract's period of performance may be waived. In other words, the contractor may deliver late, and any costs incurred in performance (even after the period of performance has expired) may be claimed as allowable costs, up to the contractually specified cost limit. (See DCAA CAM at 6-202.3.) With respect to completion type contracts, the DCAA CAM states: "… questioning costs based only on the fact that they were incurred after the performance period would be inappropriate."

But what about costs incurred before the official contract start date?

Such costs are called precontract costs. They are discussed at the cost principle found at FAR

31.205-32. That cost principle states—

Precontract costs means costs incurred before the effective date of the contract directly pursuant to the negotiation and in anticipation of the contract award when such incurrence is necessary to comply with the proposed contract delivery schedule. These costs are allowable to the extent that they would have been allowable if incurred after the date of the contract (see 31.109).

Based on the cost principle, if a contractor starts work early, it may claim those costs only if certain conditions are met. To be allowable, the precontract costs must:

1.

Be incurred "directly pursuant to" contract negotiations. We interpret that to mean that the contractor must disclose its early start to government negotiators, and they must not prohibit the early start.

2.

In anticipation of the contract award. We interpret that to mean that both parties must believe that the contractor will receive an award. A contractor cannot simply start work based on submitting a proposal; there must be a clear indication that the contractor will be the winning offeror and the government anticipates giving that contractor a contract.

3.

Must be necessary to comply with the proposed delivery schedule. The costs must be shown to be related to the proposed delivery schedule, such that, without being incurred, the proposed delivery schedule cannot be met.

4.

The must be allowable. In other words, a contractor cannot make an unallowable cost allowable by calling it a precontract costs.

Finally, there is a reference to FAR 31.109, meaning that the FAR drafters recommend an Advance Agreement be executed to clearly show the parties' intent to incur and reimburse precontract costs. Note that such an Advance Agreement is *not required*; it is simply recommended. Legitimate precontracts costs that meet the four tests noted above should not be disallowed by DCAA auditors because an Advance Agreement is lacking. (See DCAA CAM at 6-202.1.)

Given the scrutiny DCAA auditors often apply to contracts' periods of performance, contractors should take care to ensure that all claimed costs fall within specified contract dates. Where costs fall outside the contractual periods of performance, see if one of the exceptions we've listed here may apply. Another good practice is to modify the contract (or subcontract) as necessary to adjust the official period of performance to match the parties' expectations. In our experience, it's easier to process an administrative (no-cost) mod than it is to try to convince the auditors that a claimed cost that falls outside the official contract period of performance should not be disallowed.