Washington River Protection Solutions LLC (WRPS) was awarded a Tank Operations Contract (TOC) by the Department of Energy for performance at the Hanford Site. You know about the Hanford Site, right? We've written about the Site before—we've written a surprising number of articles about compliance issues there, involving many different contractors.

WRPS is "an Amentum-led" company. Which means (we think) that WRPS is managed by Amentum, even though many other companies may be involved in performance of TOC work. Amentum is the name of a company that used to be called AECOM. During its history, AECOM acquired URS, which had acquired EG&G, Westinghouse Government Services, Lear Siegler, Washington Group International (formerly known as Morrison Kundsen), and Apptis. AECOM also acquired DynCorp International and Pacific Architects and Engineers (PAE) at various points in time. So, basically, Amentum is a massive conglomerate with multiple subsidiaries and business that have very long government contracting pedigrees.

In other words, WRPS knows the ins and outs of government contracting. Thus, when DOE demanded it repay costs found to be unallowable, WRPS hired itself some attorneys and **appealed** the decision to the Civilian Board of Contract Appeals (CBCA).

WRPS started performing the TOC in 2008. During its performance, WRPS used a practice of augmenting staff by hiring "contracted labor resources (CLRs)." "CLRs are individuals hired through staff augmentation subcontractors to perform a specific scope of work or to fill in for missing personnel on a temporary basis under the direct supervision of a WRPS employee."

From the Board's findings of fact:

WRPS competes different labor categories among staff augmentation contractors and enters into blanket master agreements (BMAs) that contain labor categories and rates. Once BMAs are established, CLRs can be hired quickly, and WRPS does not incur the training or separation costs that it would for a full-time employee, costs estimated to be between $28,000 and $38,000. CLRs also allow WRPS to accomplish tasks when budget funds are available and to downsize quickly without additional cost when budget funds are not available. It also allowed WRPS to obtain the services of contractors who would not take a full-time position. WRPS hired 1224 CLRs in the first ten years of the contract, as compared to the average 4300 full-time

WRPS employees. Very few of these CLRs worked full-time during any given year, and few worked more than five years as a CLR. WRPS spent nine percent of its staffing dollars paying for CLRs.

(Internal citations omitted, as will be the case in all block quotes used.)

In February, 2020—nearly eight years after WRPS had started contract performance—the DOE issued a Notice of Intent to Disallow Costs to the company. DOE intended to disallow more than $6 Million for a variety of reasons. To our way of thinking, DOE threw a bunch of spaghetti at a wall to see which issue would stick. The disallowance was based on an audit report prepared by the DOE Richland Finance Office.

As the Board wrote—

In the audit, DOE Finance examined the compensation records for forty-one individuals hired as CLRs by WRPS that it had 'judgmentally selected, seeking CLRs that had worked for WRPS for three or more years consecutively. DOE Finance identified numerous concerns with the employment and compensation for thirteen of these individuals, including concerns that WRPS did not have effective controls to ensure that CLRs met minimum qualifications and that several CLRs were paid rates higher than the rates agreed to on the subcontract through which they were hired. DOE Finance was also concerned that none of the forty-one CLRs had been subject to a 'make versus buy' analysis to determine whether it was less expensive to hire a new WRPS employee rather than filling the requirement with a CLR. DOE Finance did not provide a dollar figure that matched the $6 million amount in the notice of disallowance; instead, DOE Finance recommended a settlement range between $5.75 million and $8 million.

In August 2020, WRPS provided a response to both the audit report and an explanation of the reasonableness of the dollars expended for the thirteen individuals that were the focus of the DOE audit.

Okay. Let's stop right there. Notice the lack of specificity of the purported audit findings. Notice the lack of a sum certain. What kind of audit recommends a "settlement range" rather than express a sum certain finding? Answer: no audit we ever heard of. At least no audit that complies with GAGAS.

On December 10, 2020, DOE issued a contracting officer's decision in which DOE disallowed $6,025,069 because the costs were unreasonable.

Unreasonable.

Okay. But notice that WRPS had, in its view, already supported the reasonableness of the disputed costs. And notice that the Contracting Officer's Final Decision was a specific sum certain, rather than a range.

How did anybody get from a "settlement range" to $6,025,069? The Board answered that question as follows:

DOE calculated this amount by identifying specific costs to be disallowed for thirteen individuals for four different reasons. For five individuals, DOE identified a 'high' and 'low' amount that were disallowed and averaged the figures. The sum of the amounts calculated for the thirteen individuals was $3,012,534. DOE multiplied this figure by two to derive the final amount disallowed. DOE applied this so-called '2x' factor because DOE, in its review, found other instances of the same issues identified for the thirteen individuals, and the factor would account for what DOE believed was 'excessive pass-through' of subcontracting costs related to CLRs.

Do we even have to articulate how we feel about that so-called "methodology"?

Averages. A 2x "factor" to address an issue not even found in the COFD. *Are you kidding us?* This is audit malpractice, as clear as the sun in the sky or the radioactive waste in the ground at Hanford. Auditors who participated in this debacle, and their supervisors who approved it, should be—at the very minimum—educated in how to conduct audits and reach conclusions based on evidence.

Sigh.

According to the Board—

DOE brought challenges to specific costs that can be grouped into four categories:

1. The hourly rates paid to seven individuals exceeded the hourly rates that they would have received purportedly as WRPS full-time equivalents (FTE).

2. The hourly rates paid to three individuals exceeded the rates set forth in the BMAs competed among the staff augmentation subcontractors.

3. Seven individuals purportedly did not meet the qualification requirements set forth in the BMA for their positions.

4. The hourly rate paid to two individuals was increased ‘overnight’ with purportedly no reason for the increase.

The Board discussed each of the four issues within its decision. For the most part, the Board dismissed the DOE’s non-specific concerns and, instead, accepted WRPS’s analysis as sufficient evidence to support a finding that the CLR costs were, indeed, reasonable. For example, the Board wrote—

We find no merit in DOE’s challenge based upon what the individuals would have been paid if hired as full-time WRPS employees. The problems with DOE’s analysis on this point are myriad—the analysis fails to account for the hours these individuals worked, is based upon an analysis of 2018 rates, but applied across all years of the contract, and fails to account for the years of experience that many of these individuals possessed.

You can and should read the analyses within the decision; the link is provided above.

With respect to the “2x factor” the Board wrote:

The specific amounts that DOE challenged for the thirteen individuals totaled $3 million. Because DOE had identified other individuals with qualifications or other issues, DOE doubled the amount sought to capture them. DOE sought to be conservative in applying this 2x factor. As the DOE auditor explained, it was not proper to extrapolate because DOE had selected the original forty-one individuals to be audited based upon tenure rather than sampling the entire pool. DOE sought to capture other issues, like excessive pass-through, *which the DOE auditor acknowledged had not been quantified.*

(Emphasis added.)

The foregoing describes gamesmanship, not auditing.

The Board did not castigate DOE for its approach. Instead, the Board wrote:

While we appreciate that DOE was attempting to approximate the costs of other problems it identified with its application of the ‘2x factor,’ this approach does not comport with the FAR requirement that the contracting officer identify a ‘specific cost’ that was challenged on reasonableness. FAR 31.201-3.

At the end of the day, the $6 Million sought by DOE was not upheld. Instead, WRPS was required to pay $80,275 (plus interest).

Why sanctions weren’t sought—and imposed—on the DOE for its methodology, a methodology that smacks of a lack of good faith and fair dealing, remains a mystery to this blog author.