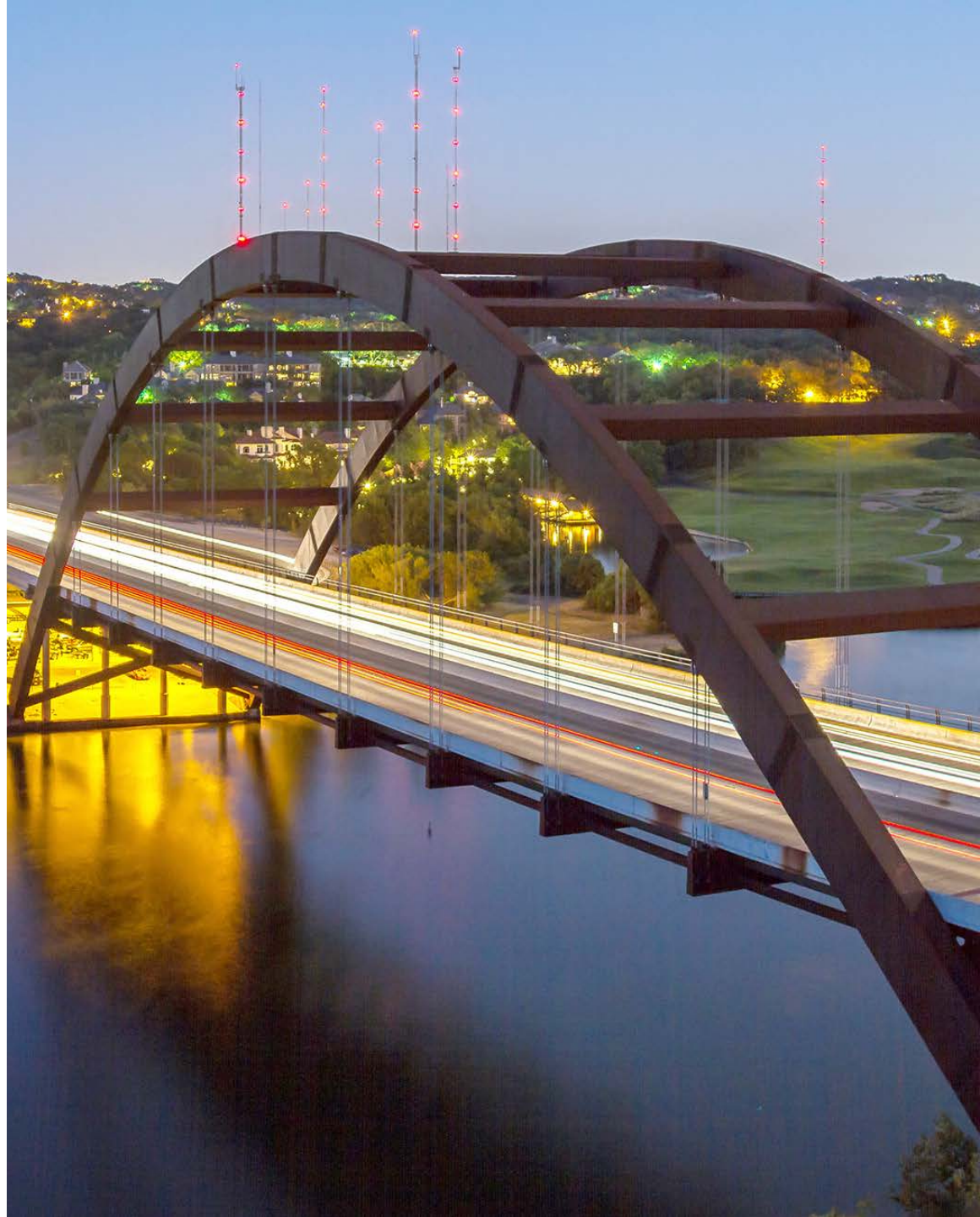




2016 Engineering & Construction Conference

June 15–17, 2016
The Westin Austin Downtown
Austin, Texas



Federal Government Contracting Hot Topics



8:30 a.m. - 10:00 a.m.



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Executive Compensation

Background on compensation cap rule changes

- FAR Proposed Rule dated June 26, 2013 (*FAR Case 2012-025: 78 Federal Register 38539*) proposed to retroactively apply the compensation cap to all employees for DoD, NASA, and Coast Guard contracts awarded before December 31, 2011 for compensation costs incurred after January 1, 2012
- FAR Interim Rule dated June 26, 2013 (*FAR Case 2012-017: 78 Federal Register 38535*) expanded the applicability of the compensation cap to all employees for DoD, NASA, and Coast Guard contracts awarded on or after January 1, 2012
- FAR Interim Rule effective June 24, 2014 (*FAR Case 2014-012: 79 Federal Register 35865*) revised FAR 31.205-6(p) to set annual allowable compensation cap at \$487,000 for contracts awarded on or after June 24, 2014

Executive Compensation

Continued

Delays in OMB publication of statutory cap

- Fiscal year 2011: \$763,029
 - Effective January 1, 2011 published April 23, 2012
- Fiscal year 2012: \$952,308
 - Effective January 1, 2012 published December 4, 2013
- Fiscal year 2013: \$980,796
 - Effective January 1, 2013 published March 15, 2016
- Fiscal year 2014: \$1,144,888
 - Effective January 1, 2014 published March 15, 2016

Impact on contractor fixed price and T&M recovery

Executive Compensation

Continued

DCMA and DCAA guidance memos on blended compensation caps

- October 24, 2014 Shay Assad Memo on the Use of Blended Rates to Implement Multiple Compensation Caps
- January 29, 2016 DCMA memo, Guidance on the Use of Blended Rates to Implement Multiple Compensation Caps
- February 19, 2016 DCAA Audit Guidance Memo
 - Set June 30, 2016 deadline for advance agreements

Determination of contract universe for Incurred Cost Submissions vs. Forward Pricing Rate Proposals?

Excerpt from Guidance

Excerpt from Guidance

Incurring Costs

Step 1: Identify the dollar amounts incurred for the year for contracts and subcontracts awarded prior to June 24, 2014 and from contracts and subcontracts awarded on or after June 24, 2014. This constitutes 100 percent of contract dollars for final overhead cost calculations. Determine the percentage of the total dollar amounts attributable to contracts awarded prior to June 24, 2014, and the percentage of the total dollar amounts for contracts awarded on and after June 24, 2014.

Year	(Contract before 6/24/14)	(Contract on or after 6/24/14)	% old	% new	old cap (\$K)	new cap (\$K)	Blended Cap (\$K)
2014	\$900,000	\$100,000	90%	10%	\$952	\$487	\$906

Excerpt from Guidance

Incurring Costs

Forward Pricing Rates

Step 1: Identify the dollar amounts proposed to be priced for each year included in the proposal for contracts and subcontracts awarded prior to June 24, 2014 and from contracts and subcontracts awarded on or after June 24, 2014. This constitutes 100 percent of contract dollars to be priced using the blended rate.

Year	Backlog - Already Priced Not Affected by Forward Pricing Rates	New Pricing (e.g. Modification)		New Pricing		old cap (\$K)	new cap (\$K)	Blended Cap (\$K)
		(Contract before 6/24/14)	(Contract on or after 6/24/14)	% old	% new			
2015	\$750,000	\$10,000	\$190,000	5%	95%	\$952	\$487	\$510.25
2016	\$500,000	\$10,000	\$490,000	2%	98%	\$952	\$487	\$496.30
2017	\$300,000	\$10,000	\$740,000	1%	99%	\$952	\$487	\$493.20
2018	\$150,000	\$10,000	\$840,000	1%	99%	\$952	\$487	\$492.47
2019	\$ -	\$10,000	\$990,000	1%	99%	\$952	\$487	\$491.65

Restructuring

Restructuring

External Restructurings are happening more frequently in the industry than in the recent past

DCAA Audit Guidance Memo on Auditing Contractor Restructuring Cost and Savings Proposals from August 28, 1996

Restructuring

Continued

DFARS 203.205-70, External restructuring costs

- Contractors who incur \$2.5 million or more in restructuring costs are subject to additional audit requirements on projected restructuring costs and projected restructuring savings
- Costs are allowable if the audited projected savings, on a present value basis, for DoD resulting from the restructuring will exceed either:
 - The costs allowed by a factor of at least two to one; or
 - The costs allowed, and the business combination will result in the preservation of a critical capability that might otherwise be lost to DoD.

Under 48 CFR 9903.201-8, the cost impact process does not apply to compliant cost accounting practice changes directly associated with external restructuring activities that are subject to and meet the requirements of 10 U.S.C. 2325.

DCAA Disclaimer of Opinion

DCAA Disclaimer of Opinion

Continued

Used when DCAA is unable to complete planned procedures and when they have not been able to obtain sufficient audit evidence through alternate procedures

Impact on ACO and contractor settlements when disclaimed opinions include questioned costs

IR&D Proposed Rule

IR&D Proposed Rule

Proposed DFARS rule: *DFARS Case 2016-D002: Enhancing the Effectiveness of Independent Research and Development*, 81 Federal Register 7721, February 16, 2016

- To improve the effectiveness of independent research and development (IR&D) investments by the defense industrial base that are reimbursed as allowable costs in accordance with Federal Acquisition Regulation 31.205-18(c)
- The rule proposes to revise DFARS 231.205-18 to require that proposed new IR&D efforts be communicated to appropriate DoD personnel prior to the initiation of these investments, and that results from these investments should also be shared with appropriate DoD personnel

Commercial Item Determination

Commercial Item Determination

FAR Part 2 definition: “Any item, other than real property, that is of a type customarily used by the general public or by non-governmental entities for purposes other than governmental purposes, and-- (i) Has been sold, leased, or licensed to the general public; or, (ii) Has been offered for sale, lease, or license to the general public”

Trend of increasing government challenges to narrow the scope of commercial item applicability

- Better Buying Power 3.0, released in April 2015, highlights the need to remove barriers to utilize commercial technology, but also emphasizes utilizing cost data and attempts to restrict the definition of commercial items to eliminate items and services merely offered for sale, lease, or license
- DCMA has set up “Core Cadre” in St. Petersburg, FL to provide training, analysis and other assistance to Government procurement officials and provide recommendations to PCOs for Commercial Item Determinations

Questioned Cost Hot Areas

Questioned Cost Hot Areas

Airfare

- Lowest available airfare
 - FAR 31.205-46: “Airfare costs in excess of the lowest priced airfare available to the contractor during normal business hours are unallowable except when such accommodations require circuitous routing, require travel during unreasonable hours, excessively prolong travel, result in increased cost that would offset transportation savings, are not reasonably adequate for the physical or medical needs of the traveler, or are not reasonably available to meet mission requirements.”
- Fly America Act
 - Requirement to use United States air carrier service for all air travel and cargo transportation services funded by the US Government.

Questioned Cost Hot Areas

Continued

Professional and consultant services

- To be allowable, FAR 31.205-33 requires such costs to be supported by:
 - Details of the agreement (e.g., SOW)
 - Invoices submitted by consultants with sufficient detail; and
 - Consultants' work products and related documents.
- DCAA Audit Guidance Alert on Professional and Service Costs and Purchased Labor dated December 19, 2013 (no longer on DCAA website)
 - Expands on FAR 31.205-33 and provides examples of sufficient audit evidence

Questioned Cost Hot Areas

Continued

Compensation

- Compensation above statutory threshold as defined by FAR 31.205-6(p)
- Reasonableness of compensation and calculation of reasonableness
 - ASBCA cases: *J.F. Taylor, Inc. and Metron, Inc.* decisions

The lay of the land

LPTAs – A reverse in the trend

BBP 1 – 3

The effect lingers -

Direct costs

Indirect costs

Q&A