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Dive into Travel Costs – FAR 31.205-46

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Who Are These People?

- Partners in the Government Contracts & Global Trade Group at McCarter & English
- Significant experience handling “bet the company” matters for contractors (from multinational corporations to small businesses)
- Significant experience in Government contracts litigation, bid protests, claims, audits, prime/sub disputes, investigations and cybersecurity matters

Overview

- Introduction to Allowable Costs
- FAR 31.205-46, Travel Costs
- DCAA Contract Audit Manual
- Practical Considerations

Introduction to Allowable Costs

What Is An “Allowable Cost”?

- FAR Part 31 contains cost principles governing:
 - The pricing of contracts, subcontracts, and modifications to contracts and subcontracts whenever cost analysis is performed; and
 - The determination, negotiation, or allowance of costs when required by a contract clause
- FAR 31.201-2, Determining Allowability

FAR 31.201-2, Determining Allowability

- A cost is allowable only when the cost complies with all of the following requirements:
 - (1) Reasonableness.
 - (2) Allocability.
 - (3) Standards promulgated by the CAS Board, if applicable, otherwise, generally accepted accounting principles and practices appropriate to the circumstances.
 - (4) Terms of the contract.
 - (5) Any limitations set forth in FAR Subpart 31.2 (Contracts with Commercial Organizations)

FAR 31.201-2, Determining Allowability: Contractor Responsibilities and Consequences

- When contractor accounting practices are inconsistent with the cost principles, costs resulting from such inconsistent practices in excess of the amount that would have resulted from using practices consistent with FAR Subpart 31.2 are unallowable
- A contractor is responsible for accounting for costs appropriately and for maintaining records, including supporting documentation, adequate to demonstrate that costs claimed have been incurred, are allocable to the contract, and comply with applicable cost principles FAR Subpart 31.2 and agency supplements
- The contracting officer may disallow all or part of a claimed cost that is inadequately supported

FAR 31.201-3, Determining Reasonableness

(a) A cost is reasonable if, in its nature and amount, it does not exceed that which would be incurred by a prudent person in the conduct of competitive business. Reasonableness of specific costs must be examined with particular care in connection with firms or their separate divisions that may not be subject to effective competitive restraints. No presumption of reasonableness shall be attached to the incurrence of costs by a contractor. If an initial review of the facts results in a challenge of a specific cost by the contracting officer or the contracting officer's representative, the burden of proof shall be upon the contractor to establish that such cost is reasonable.

(b) What is reasonable depends upon a variety of considerations and circumstances, including-

- (1) Whether it is the type of cost generally recognized as ordinary and necessary for the conduct of the contractor's business or the contract performance;
- (2) Generally accepted sound business practices, arm's-length bargaining, and Federal and State laws and regulations;
- (3) The contractor's responsibilities to the Government, other customers, the owners of the business, employees, and the public at large; and
- (4) Any significant deviations from the contractor's established practices.

FAR 31.201-4, Determining Allocability

A cost is allocable if it is assignable or chargeable to one or more cost objectives on the basis of relative benefits received or other equitable relationship. Subject to the foregoing, a cost is allocable to a Government contract if it-

- (a) Is incurred specifically for the contract;
- (b) Benefits both the contract and other work, and can be distributed to them in reasonable proportion to the benefits received; or
- (c) Is necessary to the overall operation of the business, although a direct relationship to any particular cost objective cannot be shown

A Note About The Cost Accounting Standards

- If a contract is CAS-covered, contractors and subcontractors are required to comply with CAS and to disclose in writing and follow consistently their cost accounting practices
- Some overlap between cost principles and CAS
- Only those CAS or portions of standards specifically made applicable by the cost principles are mandatory unless the contract is CAS-covered (see FAR part 30)
- The applicability of the CAS rules and regulations is determined by the CAS clause, if any, in the contract and the requirements of the standards themselves

FAR 52.216-7, Allowable Cost and Payment

- (a)(1): The Government will make payments to the Contractor when requested as work progresses, but (except for small business concerns) not more often than once every 2 weeks, **in amounts determined to be allowable by the Contracting Officer in accordance with Federal Acquisition Regulation (FAR) subpart 31.2** in effect on the date of this contract and the terms of this contract. The Contractor may submit to an authorized representative of the Contracting Officer, in such form and reasonable detail as the representative may require, an invoice or voucher supported by a statement of the claimed allowable cost for performing this contract.
- (g): Audit. At any time or times before final payment, the Contracting Officer may have the Contractor's invoices or vouchers and statements of cost audited. Any payment may be-
 - (1) Reduced by amounts found by the Contracting Officer not to constitute allowable costs; or
 - (2) Adjusted for prior overpayments or underpayments.

Travel Costs

Documenting Travel Costs

- Documentation to support actual costs incurred shall be in accordance with the contractor's established practices
- Costs shall be allowable only if the following information is documented
 - (i) Date and place (city, town, or other similar designation) of the expenses;
 - (ii) Purpose of the trip; and
 - (iii) Name of person on trip and that person's title or relationship to the contractor

FAR 31.205-46 – Travel Costs: Lodging, Meals, and Incidental Expenses

(a) Costs for transportation, lodging, meals, and incidental expenses.

(1) Costs incurred by contractor personnel on official company business **are allowable**, subject to the limitations contained in this subsection.

Costs for transportation may be based on mileage rates, actual costs incurred, or on a combination thereof, **provided the method used results in a reasonable charge**. Costs for lodging, meals, and incidental expenses may be based on per diem, actual expenses, or a combination thereof, **provided the method used results in a reasonable charge**.

FAR 31.205-46 – Travel Costs: Lodging, Meals, and Incidental Expenses (cont'd)

- Costs incurred for lodging, meals, and incidental expenses shall be considered to be reasonable and allowable only to the extent that they do not exceed on a daily basis the maximum per diem rates in effect at the time of travel as set forth in the:
 - Federal Travel Regulations, for travel in the contiguous United States
 - Joint Travel Regulation, for travel in Alaska, Hawaii, and outlying areas of the United States
 - Standardized Regulations (Government Civilians, Foreign Areas), Section 925, "Maximum Travel Per Diem Allowances for Foreign Areas,"

FAR 31.205-46, Travel Costs: Airfare

- (b) 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. However, in order for airfare costs in excess of the above airfare to be allowable, the applicable condition(s) set forth above must be documented and justified.

FAR 31.205-46, Travel Costs: Travel by Contractor-Owned, -Leased, or -Chartered Aircraft

- Includes the cost of lease, charter, operation (including personnel), maintenance, depreciation, insurance, and other related costs
- Limited to the allowable airfare described in paragraph (b) of FAR 31.205-46 for the flight destination unless travel by such aircraft is specifically required by contract specification, term, or condition, or a higher amount is approved by the contracting officer.
 - A higher amount may be agreed to when one or more of the circumstances for justifying higher than allowable airfare, or when an advance agreement has been executed
- Travel must be fully documented and justified
 - Contractor must maintain and make available manifest/logs for all flights on such company aircraft. As a minimum, the manifest/log shall indicate
 - (i) Date, time, and points of departure; (ii) Destination, date, and time of arrival; (iii) Name of each passenger and relationship to the contractor; (iv) Authorization for trip; and (v) Purpose of trip

FAR 31.205-46, Travel Costs: Travel by Contractor-Owned or –Leased Automobiles

- Includes the costs of lease, operation (including personnel), maintenance, depreciation, insurance, etc.
- Allowable, if reasonable, to the extent that the automobiles are used for company business
 - Any portion of the cost of company-furnished automobiles that relates to personal use by employees (including transportation to and from work) is compensation for personal services and is unallowable as stated in 31.205-6(m)(2)

Key Takeaways

- Documentation to support actual costs is critical
- Government per diem rates are the “ceiling” for lodging, meals, and incidental expenses
- Premium airfare generally not allowable
 - “Lowest priced airfare available to the contractor”
- Travel by contractor-owned, -leased, or –chartered aircraft is allowable (subject to the restrictions in the cost principle), but must be fully document and justified
- Cost of contractor-owned or –leased automobiles is allowable (if reasonable), if used for company business – cost for personal use by employee is unallowable

DCAA Contract Audit Manual

Role of DCAA

- DCAA provides audit and financial advisory services DOD and other federal entities
- Financial oversight of government contracts “to ensure DOD gets the best value for every dollar spent on defense contracting”
- Primary function is to conduct contract audits and related financial advisory services
 - Contract audits are independent, professional reviews of financial representations made by defense contractors to determine whether contract costs are allowable, allocable, and reasonable

DCAA Audits of Travel Costs

- Selected Areas of Cost Guidebook, [Chapter 72 Travel Costs](#)
- Will include “appropriate examination of the contractor's travel policies and procedures as well as the selective review of individual trips made by contractor personnel”
- Will require “a determination that the contractor's travel authorization procedures provide for documented justification and approval of the official necessity of each trip, its duration, and the number of travelers involved”

DCAA Examination of Contractor Travel Procedures

- Procedures should provide for “advance planning” of travel to assure that:
 - Wherever feasible and economically practical, required visits to locations in the same geographical area are combined into a single trip,
 - Maximum use is made of the lowest customary standard, coach, or equivalent airfare accommodations available during normal business hours, and
 - Coordination between organizational elements is effected to minimize the number of trips to the same location. Individual trips should be reviewed to determine if:
 - (1) the contractor is complying with its travel policies and procedures,
 - (2) the trip is for an allowable purpose, and
 - (3) the incurred travel costs are documented and allowable in accordance with FAR 31.205-46
- In addition, the auditor will review the contractor's accounting procedures to determine whether or not they provide adequate controls for segregating unallowable travel costs

Per Diem Rates

- NOTE: FAR 31.205-46 does NOT incorporate the Government travel regulations in their entirety.
- Only applicable in these specific areas:
 - Definitions of lodging, meals, and incidental expenses
 - Maximum per diem rates
 - Special or unusual situations
- If a contractor's policy is to reimburse its employees a fixed amount (per diem) for subsistence within the prescribed maximum daily per diem rates, there is a presumption that the costs are reasonable and allowable and detailed receipts or other documentation are not required to support claims by employees
 - However, if reimbursing for actual costs incurred, must identify and exclude unallowable costs (i.e., alcoholic beverages and entertainment)
- Use of maximum rates on partial days unreasonable (but do not need to be reduced IAW FTR/JTR procedures)

Airfare Costs

- 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
- Must be documented and justified

Premium Airfare

- DCAA Selected Areas of Cost 72-1.5 Allowability of Airfare Costs:
 - A "business class" accommodation that is offered at a price slightly lower than the first-class fare does not meet the FAR criteria for reasonableness and allowability
 - However, use of special discount, excursion, or night rates, as a matter of common practice, should not be required when use of such fares is impractical for business travel purposes, results in circuitous routing, or causes travel accommodations not reasonably adequate for the physical needs of the traveler
 - Whenever the contractor is able to obtain special fares (Ultra Savers, Ultimate Super Savers, etc.) in lieu of full economy fares, the resulting cost savings should be reflected in any billing, claim, or proposal submitted by the contractor

Airfare Costs – Fly America Act

- Fly America Act
 - FAR 47.4, Air Transportation by U.S.-Flag Carriers
 - Requires that U.S. Government-financed international air travel be provided by a U.S.-flag carrier, if available
 - Applies to all international air travel by Federal employees and their dependents, consultants, contractors, grantees, and others, including their personal effects, when paid for by U.S. Government funds
 - Contractors are required to use U.S.-flag carriers when they are available, even though a foreign carrier may offer lower fares for the same flight or flight segment
 - Contractors that frequently travel abroad should have processes and procedures in place to ensure compliance with the Fly America Act
 - If a U.S.-flag carrier is not used for international air travel funded by the U.S. Government, FAR 47.403-3(a) provides that Agencies shall disallow the costs associated with the air transportation on the foreign air carrier unless adequate justification is attached to the voucher

Contractor-Owned, -Leased, -Chartered Aircraft

- Generally, travel costs via private aircraft in excess of the standard commercial airfare are unallowable
- As a prerequisite to allowability, the contractor must maintain and make available to the Government full documentation in support of the costs including the manifest/log for all flights
- Travel costs via private aircraft in excess of the standard commercial airfare are allowable in two situations:
 - When travel by such aircraft is specifically required by contract specification, term, or condition; or
 - When a higher amount is approved by the contracting officer.
- All or part of excess costs incurred for operating private aircraft may be approved by the contracting officer:
 - When one or more of the conditions described in FAR 31.205-46(b) are present that would justify costs in excess of the lowest standard commercial airfare; or
 - When an advance agreement has been executed.

Practical Considerations

Best Practices

- Adopt policies and procedures that comply with the requirements in the cost principle/DCAA Guidance – and apply them consistently!
- Train (and re-train) employees on travel cost policies
- Ensure documentation is appropriately maintained
- Spot check travel expenses submitted for reimbursement
- Consider whether advance agreements are appropriate
- Don't forget about related cost principles (i.e., alcohol, entertainment, morale, etc.)

Questions?

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