SESSION GUIDE
SEASON 2023, EPISODE EIGHTEEN
FAR PARTS 30, 31, AND 32:
COSTS, ACCOUNTING, AND FINANCING

I. Introduction

In the previous chapter, we discussed bonds, insurance, and taxes. Those all factor into this chapter's topics: costs, accounting for costs, and payments. Like the last chapter's topics, these topics can seem a little bland at first glance. But no matter how you feel about them, they're still extremely important to know and understand, even if that understanding is only surface-level. (We have accountants and other experts for the really deep questions, after all!)

Our first stop will be in **Part 30** with the Cost Accounting Standards, which are affectionately known as "CAS". This Part sets out the requirements for administering the CAS and the actual CAS clauses that you can find in your contracts. The actual exemptions from CAS, determination of the type of CAS coverage, disclosure requirements and the actual Standards are contained elsewhere in the Code of Federal Regulations (CFR). Our second stop is **Part 31,** contract cost principles and procedures. This Part, as you can probably tell from the name, deals with the various principles that come into play when evaluating whether certain types of costs can properly be charged by a contractor under a contract with the U.S. Government. It breaks the principles and procedures down into several broad categories of application, and also outlines how to perform various cost analyses that ultimately determine cost allowability. Our third and final stop will be **Part 32** which deals with payment and different types of contract financing.

II. Cost Accounting Standards

The Cost Accounting Standards Board (CASB) is the organization responsible for promulgating CAS. We can find the Standards, as well as the other rules and regulations from the Cost Accounting Standards Board, in **48 C.F.R. chapter 99**. The CAS and other regulations promulgated by the CASB are expressly incorporated in full into FAR Part 30 by **30.101(b)**.

Broadly, CAS requires certain contractors and subcontractors (if the value of their "CAS-covered" contracts or subcontracts exceed a specific dollar threshold) to disclose their cost accounting practices to the Government in writing (in a "Disclosure Statement"), and to closely follow those written practices. **30.101(a)**. In fact, **Subpart 30.2** consists almost completely of references to the standards.

A. A Brief Note on CAS Coverage and Program Requirements

The bulk of **Part 30** is concerned with the actual administration of CAS. As we have noted, CAS is fully incorporated by reference into the FAR. Thus, most of the Subparts in **Part 30** consist of citations to the applicable portions of CAS. **Subpart 30.2**, specifically, contains targeted guidance regarding contract clauses and solicitation issues. Note that the head of an agency may sometimes waive CAS requirements, but only in a particular set of circumstances laid out in **30.201-5**. Any request for a CAS waiver must include evidence to back up the assertion that the waiver is proper. We can find a list of conditions in which waiver is proper in **30.201-5(b)**.

All CAS coverage is not created equal, though. CAS-covered contracts may be subject to full or modified coverage. **48 CFR 9903.201-2**. In the case of full coverage, all 19 of the Standards apply as do any future Standards promulgated by the CASB; in the case of modified coverage, only four Standards apply. We can find the types of CAS coverage, as well as the criteria for determining what sort of coverage applies, in **48 CFR 9903.201-2**. Somewhat simplistically, full CAS coverage is required for a "CAS-covered" contract awarded to a business unit with annual CAS-covered awards of at least $50 million, and modified coverage applies when those contracts have an annual value between $7.5 million and $50 million. "CAS-covered" contracts are, in general, those contracts where the Government uses the cost estimate as the primary basis for determining price; competitive fixed price and commercial items contracts are not subject to CAS requirements.

Question 1 – Identify the four Cost Accounting Standards that apply to a contract that is subject to "modified" CAS coverage?

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2. ____
3. ____
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B. CAS Administration

Subpart 30.6 is where we move into more familiar FAR language territory, beyond the citation-heavy portions we have already examined. It introduces to us a person known as the cognizant Federal agency official (CFAO). The CFAO is the person who is responsible for CAS administration for all contracts and subcontracts, even when the CO retains any other administrative functions. **30.601**. But what is CAS administration? Essentially, it is determining if a contractor is in compliance with applicable Standards, evaluating adequacy of a Disclosure Statement and administratively processing changes to a contractors cost accounting practice and determining the impact on CAS-covered contract prices. While the CO may have the technical/accounting ability to administer CAS, CAS administration covers all CAS-covered contracts which will generally cross many contracts and numerous COs as well. Additionally, not every CO has the necessary accounting background and capability, so it makes sense to have a CFAO, who definitely has the technical ability and resources, to administer CAS. Finally, tasking CFAOs with CAS administration should help to ensure that the Standards are administered uniformly.

Since CFAOs administer CAS, they also make all CAS-related determinations and findings. These include whether a change in cost accounting practice or some variety of noncompliance has occurred, and, if such a change has occurred, how any resulting cost impacts are resolved. **30.601(a)**. Another aspect of CAS administration is materiality determination. A materiality determination is when a CFAO looks at the cost impact of a certain decision and establishes the size of that impact. **30.602(b) and (c)**. We can find the criteria for determining materiality in **48 CFR 9903.305**.

Question 2 – What are the criteria that a CFAO must use to determine whether amounts of costs are "material" or "immaterial"? [Hint: Check out **FAR 30.602(a)**]

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Sometimes the size of a contract award might require a contractor to change its cost accounting practices. Maybe the contractor has previously only worked on contracts that aren't CAS-covered, but now has submitted an offer for a CAS-covered contract. In that case, the contractor needs to make sure that all its cost accounting practices are aligned with CAS. It also needs to make a statement in its offer regarding the changes it must make to comply with CAS. **30.603-1(a) and (c)**. Unsurprisingly, the responsibility for helping the contractor through this process falls on the CFAO. **30.603-1(b)**. Additionally, if the Government's standards change (and therefore require the contractor to also change its accounting practices), the contractor may be entitled to an equitable adjustment. **30.603-1(d)**. It is important that contractor and CFAO consult **30.604** when contemplating any changes to the contractor's cost accounting practices.

Question 3 – What must a CFAO determine prior to making any contract price or cost adjustments arising from a unilateral change? [Hint: Check out **FAR 30.603-2**]

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Unfortunately, some contractors and subcontractors knowingly or unknowingly do not always comply with CAS. The CFAO can (and should!) work with contractors to help them comply, but compliance is ultimately the responsibility of the contractor. The CFAO only has so much actual control over the workings of a private company. (This is generally where auditors get involved.) We can find the procedures for processing CAS noncompliance in **30.605**. We can find information regarding the resolution of cost impacts from noncompliance and changes in **30.606**, and how CAS impacts subcontracts at **30.607**.

Question 4 – True or False? A CFAO is bound by a determination of CAS noncompliance made by the assigned auditor? Explain your answer.

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III. Contract Cost Principles and Procedures

First of all, this section is not the same as the previous section! CAS and cost principles are two different things. While they're closely linked at some parts, they come from different statutory sources and should not be conflated. CAS is, as we now know, an extremely specific set of Standards that only apply to certain contracts in certain situations. Contract cost principles apply widely to a multitude of situations. In most contracts, the CO can utilize price analysis to determine contract price without the need for cost analysis. In these circumstances, the CO should not perform cost analysis and can avoid the cost principles entirely. However, whenever she must determine or negotiate costs – such as for sole source fixed price work or cost reimbursement work, the contract cost principles will generally apply. See, e.g., **31.103(b) and 15.4**. As you can imagine, cost analysis is required on cost reimbursement contracts and sole source fixed price, non-commercial item contracts, which are not uncommon. So COs should be comfortable with contract cost principles. Contractors should be too, so they understand what COs are looking for and can thus keep their own costs (and mistakes) to a minimum.

The main question addressed in cost analysis is *allowability* -i.e., whether the specific costs the contractor has incurred (or proposes to incur) are "allowable" in cost-reimbursement types of contracts or contract actions. The FAR states that a cost is allowable only when the cost is:

1. Reasonable
2. Allocable
3. Compliant with CAS or Generally Accepted Accounting Practices ("GAAP") appropriate to the circumstances
4. In compliance with contract terms
5. Within the limitations set out in **FAR 31.2**.

The major portion of **Part 31** addresses cost allowability in contracts with commercial (i.e., for-profit) organizations. Note that other types of organizations may have their own cost accounting rules. **Subpart 31.3** covers contracts with educational institutions, **31.6** covers contracts with recognized Native tribal governments, and **31.7** covers contracts with nonprofit organizations. These subparts are very sparse, however; most of the details will be found in cited OMB circulars.

A. Allowability

According to **FAR Part 31**, a cost may be reimbursed only if the Government determines that it meets the 5 points listed above.

What does "allowable" actually mean? Allowable here merely refers to whether the Government will reimburse a contractor for certain costs incurred in performance of a cost-based contract. Contractors can incur unallowable costs all day long, but the Government isn't going to reimburse the contractor for any of those costs.

Since the Government won't reimburse contractors for unallowable costs, contractors should be sure to identify and exclude such costs from any billing, claim, or proposal to the Government. **31.201-6** walks us through the processes contractors should use to accomplish this goal, as well as what the

Government can do if it is billed for an unallowable cost. The consequences of trying to bill unallowable costs can be serious – not only will they not be paid (duh!), but they could result in criminal sanctions for false certifications if the contractor includes "expressly unallowable" costs in its incurred cost submissions.

Some costs seem like they toe the line between allowable and unallowable. Thus, we have **31.205**, which details forty-six categories of costs and breaks down whether aspects are allowable or not. For example, **31.205-1** goes through all the different types of advertising costs, and tells us which are allowable and which aren't.

> *Question 5* – Identify a single type of cost that may be "allowable" and "unallowable" depending on the circumstances in which the cost is incurred.
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Unsurprisingly, the longest and most detailed portion of this subsection deals with employee compensation, including pensions, form of payment, bonuses, and so on. All these issues are grouped under compensation for personal services in **31.205-6**.

B. Reasonableness

As we know, for a cost to be allowable, it also has to be reasonable. If you've worked anywhere in the vicinity of lawyers, you know that "reasonable" can be a bit of a loaded term. Here, the FAR tells us that reasonable costs are costs that don't exceed what would be incurred by a "prudent person in the conduct of competitive business." **31.201-3(a)**. That essentially boils down to "if it's not a cost you'd incur on your own, then you shouldn't incur it for the Government either." **31.201-3(b)** also has some other considerations to help COs and contractors determine whether certain costs are reasonable.

> *Question 6* – What are the four specific factors that a CO should consider when making a "reasonableness" determination? [Hint: Check out **31.201-3(b)**]
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C. Allocability

Unless you are attending an NCMA World Congress, "allocability" is probably not a word we hear too often in regular conversation. This is probably because in normal life, most people aren't particularly concerned about allocating costs to specific contracts. The closest most people come to allocating costs is probably household budgeting. However, in government contracting, the allocation of specific costs to specific contracts is very important. Not surprisingly, the Government really doesn't want to pay for costs that aren't associated with the performance of the Government's contract!

Believe it or not, one cost *can* be allocated to multiple contracts. **31.201-4**. For example, maybe a computer purchased for performance of one contract can also be used to perform another contract. In that case, the cost of that computer could be allocated proportionately to both contracts. Indirect costs can also be allocated to specific contracts. We'll talk more about that in the next section.

Exercise 1 – Indicate whether or not each of the following costs is "allocable" to a specific Government contract. Explain your answers. [Hint: Check out **FAR 31.201-6**]

Maintenance of copy machines located at the contractor's corporate parent's headquarters:

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Software purchased to meet performance objectives of a specific Government contract:

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Crane rental fees for a crane to be placed at a Government construction site:

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A company-wide travel management service:

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D. Direct vs. Indirect Costs

To take our discussion of cost allocation a step further, we jump into direct and indirect costs. Direct costs are exactly what they sound like: costs that are incurred specifically for performing the Government contract (or a specific task order). Examples might be the salaries of employees who work only on one contract, or equipment purchased to be used only for one contract. To no one's surprise, direct costs must be charged directly to the contract. **31.202(a)**. Direct costs are usually pretty straight forward, since contractors either charge the cost to the Government or they don't. Once you decide that a cost is a direct cost, whenever you incur that cost for another contract or project, you must also treat that cost as direct when incurred in similar circumstances.

Indirect costs are where things get a little sticky. If a contract is covered by CAS, then we look to CAS to help us with indirect costs. **31.203(a)**. Otherwise, we stay in **31.203**. We can only determine indirect costs after we've determined direct costs, because, as we know, the direct costs have to be charged to a specific contract. Indirect costs are those that benefit more than one contract (often called overhead), or are necessary to the overall operation of the business (often called "general and administrative" (G&A)) They are typically distributed among covered contracts in reasonable proportion to the benefits received by those contracts. **31.201-4**. As you might expect, this means that indirect costs can get pretty nebulous, and allocating them to specific contracts can be a challenge. **31.203(c)** tells us that contractors "shall accumulate indirect costs by logical groupings with due consideration of the reason for incurring such costs." This is an overly lawyer-y way of saying that indirect costs should be grouped together into categories that make sense to any normal person. For example, you probably wouldn't put your electrical bill in the same category as your cat food bill (even if you use an electric cat feeder). The two aren't related enough to warrant inclusion in the same category. The same logic applies when creating indirect cost categories.

Contractors work on their own to establish these categories, and thereby create a base for all indirect costs. Once cost categories and accounting systems are established, the contractor cannot remove individual elements from them. For example, suppose contract administration costs are allocated indirectly in an overhead pool, and a particular cost-based contract requires disproportionate contract administration resources. The contractor can't decide to treat those contract administration costs on that contract (but not on other contracts) as direct charges, just because it would allow greater reimbursement on the cost contract. Of course, the contractor may decide to change the entire allocation system if there is a significant change to the business as a whole that necessitates some revision to that indirect cost base. **31.203(d) and (e)**. For example, if the contractor transitions to electric cat feeders, the contractor might want to combine both types of costs into a single category.

Question 7 – What is "cost of money" and how does it relate to **FAR Part 31**?

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IV. Contract Financing

If you've ever bought a car or a house (or paid for college!), you probably know a thing or two about loan financing from the borrower side. In this chapter, we get to look at loans from both sides. **Part 32** details all the ways in which the Government can finance contracts, including providing advance payments and loans to contractors. A contract financing clause will not necessarily appear in every Government contract. Cost-based contracts, for example, generally allow monthly invoicing for costs incurred, and don't require financing. Fixed price contracts, on the other hand, generally involve payment only after delivery and acceptance; in the case of long-lead-time deliveries (e.g., battleships), a contractor may incur substantial costs before being entitled to payment for delivery. Contract financing is *not* the same thing that occurs when the Government pays the contractor based on an invoice, since those actions (and others like them) are payment for goods or services already collected or completed. **32.001**. Contract financing is *only* for situations in which the Government will pay for goods or services (generally long-lead-time) the contractor hasn't completed yet.

A contract financing clause can be added after the contractor has begun performing the contract. In that case, the contractor may be required to offer some consideration to the Government. **32.005(b)**. If the contract financing clause is in the contract from the beginning, though, it is reflected in the contract price and no further consideration is necessary. **32.005(a)**.

A. Non-Commercial Item Purchase Financing

The biggest portion of non-commercial item purchase financing in **Subpart 32.1** is concerned with progress payments. Progress payments are when the Government pays a contractor on the basis of costs incurred by the contractor as the work on the contract progresses, *even though the work has not yet been completed*. **32.102(b)**. Progress payments fall under contract financing because, while the Government is paying for costs that have already been incurred, it is not paying for delivery of any goods or services.

Generally, advance payments, progress payments, and other forms of contract financing are liquidated from the final amount due to the contractor. **32.105(a)**. In other words, the Government isn't giving the contractor extra money beyond whatever amount is in the contract; the Government is simply giving a portion of that total amount before the contractor completes performance. **32.102(a)**. Roughly the same rules for advance payments and progress payments apply in construction contracting. We can find specific rules for those situations in **32.103**. We can also find a more in-depth discussion of advance payments for non-commercial items in **Subpart 32.4**; likewise, we can find a more in-depth discussion of progress payments based on costs in **Subpart 32.5**.

Question 8 – What four types of payments does **32.102(b)** expressly note as *not* falling under contract financing methods?

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So when is financing appropriate for non-commercial item purchases? **32.104(a)** tells us that such financing is generally appropriate when it is necessary to ensure prompt and efficient performance. Additionally, **32.113** gives us a list of situations in which contract financing is customary. COs should be careful to administer financing to help, not hinder, the acquisition process, and should also be careful to avoid any unnecessary risk of loss of Government money. When small businesses are involved, COs have further considerations regarding the promotion of the small businesses' best interests. **32.104(d)(2)**. In certain situations, contract financing may also be used to make advance payments to subcontractors and to assist in contract terminations. However, both those situations are quite specific. We find the rules surrounding them in **32.110** and **32.109**, respectively. Further restrictions apply when nonpayment of subcontractors is at issue. **32.112**.

The FAR makes it quite clear that COs shouldn't refuse to deal with a contractor simply because the contractor may require contract financing. As long as the contractor is responsible, contract financing needs do not create a handicap for a contract award. **32.107(a)**. To this end—and to help with contract financing in general—all contracting offices should have contract financing personnel available to evaluate credit and financial problems. These personnel can help COs figure out what type of contract financing to use, when it is appropriate, and whether the offeror or contractor is financially capable of performing the contract in the first place. **32.108**.

B. Commercial Item Purchase Financing

Commercial item purchase financing is quite different from non-commercial item purchase financing, and not just in name. **32.202-1(a)** indicates that contract financing should generally not be used for commercial item purchases, unless it is an industry practice to do so. To determine whether contract financing is appropriate for the Government, the CO should follow the authorization guidelines in **32.202-1(b)**. COs should also consider whether contract financing is a customary industry practice in their initial market research. **32.202-3**.

Another difference between commercial and non-commercial item purchase financing is the presence of a security. **32.1** only mentions securities in passing, and only in relation to loan guarantees (which, incidentally, are made by Federal Reserve banks). However, **32.2** devotes the entirety of **32.202-4** to securities for commercial item purchase financing. The types of securities should be familiar to you from the last chapter's discussion.

Either the CO or the offeror may propose commercial contract financing. However, the procedures change significantly based on who proposes the financing. If the CO proposes financing, the financing terms are included in the solicitation, and financing does not alter the evaluation of offers the CO receives. **32.204**. If the offeror proposes financing, then its proposed financing does alter the evaluation of offers. **32.205(c)**. Offerors may only propose their own financing terms if the solicitation includes the clause at **52.232-31**, which invites offerors to propose their own financing terms. **32.305(b)**.

Whenever a commercial item contract requires financing, the contract *must* include the paragraph entitled "Payment" from the clause at **52.212-4**, and the CO must construct a solicitation provision and contract clause containing the terms of the financing. We've already noted some of the procedures surrounding construction of such clauses in the above paragraph. However, **32.206** contains further requirements for these clauses, as well as specific guidelines for different situations.

> *Question 9* – Who is generally responsible for reviewing and approving contract financing requests in a commercial item purchase? What specific information must the approval contain? [Hint: check out FAR **32.207**]
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C. Loans and Debts

EDITORIAL NOTE: **Subpart 32.3** is completely non-operative. **32.302** states that Federal Reserve Banks are authorized to act as fiscal agents. This was originally under Regulation V. However, Regulation V was repealed in 1996. **61 FR 52875**. The expressed reason for the repeal is that loan guarantees were originally established for situations where money (that could be used for progress payments) had not yet been appropriated, but changes in the law made this authority unnecessary. Someday the FAR Council may catch up and repeal this section, but hey, it's only been 25 years.

Suppose a contractor is in debt to the Government as a result of a loan, price adjustment, or other circumstance in **32.601**. What then? Well, the contractor will have to pay the Government back. The Government is not generally in the habit of giving out loans to contractors for free. The CO should use the procedures at **32.603** to determine how much money the contractor owes the Government. Note that this is not a general debt determination; it is only a determination regarding contractor debt under a specific contract.

COs are responsible for identifying debts and demanding payment of those debts. **32.602(a)**. The payment office is responsible for actually collecting the debt, as well as other administrative functions. **32.602(b)**. To obtain payment from the contractor, the CO will issue a demand for payment. The demand for payment contains a lot of specific information, listed in **32.604(b)**. The CO should issue the demand immediately upon determining that the contractor owes the Government an actual debt, and has also determined the amount of that debt. **32.604(a)**. Usually, contractors will just pay their debt. It's a good business practice. But if the CO and contractor can't come to an agreement, then the CO must issue a non-negotiable final decision about the debt, which essentially forces the contractor to pay the debt. We can look to **32.605** for more information about final decisions.

Sometimes contractors won't liquidate their debt promptly. If a contractor has not liquidated its debt within 30 days of the date due, then the payment office initiates withholding of various charges—much like a private debt collector. **32.606**. But the Government is not heartless when it comes to debt collection. Agencies are permitted to approve installment payments and even collection deferments, though we should note that COs cannot perform this function. Only the designated agency office for these functions can perform these functions. **32.607(a)**. The rest of **32.607** details the various policies and procedures surrounding installment payments and deferment of collection. We can also look to **Subpart 32.8** for information on assignment of claims.

Question 10 – When can the Government charge interest on a contractor's debt? Describe a situation where the Government cannot charge interest on a contract's debt despite it being unpaid for 30 days. [Hint: check out **FAR 32.608-1**]

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D. Payment Methods and Processes

As we all know, an agency can't enter into a contract if it doesn't have the money appropriated for that contract—doing so would violate the Anti-Deficiency Act, a criminal statute. However, having the money for a contract does not necessarily mean that the contract must be fully funded immediately. Contracts may be fully funded or incrementally funded. **32.703-1**. Contracts can also be conditioned upon availability of funds. **32.703-2**.

Cost-reimbursement contracts cannot be blank checks—again because of the Anti-Deficiency Act. So they will contain Limitation of Cost or Limitation of Funds clauses, which require the contractor to notify the CO *in writing* when the contractor is approaching the contract cost ceiling – typically, when the contractor's estimate to complete indicates that it is within 60 days of reaching 75 percent of the cost ceiling. That gives the CO the time to consider whether or not to raise the ceiling. **32.704(a)**. Depending on the circumstance, the CO may be able to issue a change order to avoid hitting the limitation. **32.704(b)**. COs can increase the funding for the contract, or take other actions to work around the limitation, though these actions usually require approval from above the CO. **32.704(a)**.

Question 11 –Is a Government employee permitted to encourage a contractor to continue performance under a contract that has exceeded its funding limit? Explain your answer. [Hint: Check out **FAR 32.704**]

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Most of what we've talked about so far puts the onus on contractors. But the Government has to pay contractors, so what about rules that apply to Government payments? **Subpart 32.9** contains copious rules governing prompt payment of contract invoices, following the requirements of the Prompt Payment Act. It is up to agency heads to establish policies and procedures implementing this Subpart, since the Subpart itself does not set up a specific system of payment. **32.903(a)**. Instead, it primarily outlines the goals for agency payment systems. It does contain a few specifics, such as how to determine due dates for payment on invoices in **32.904**, and the essentials of payment documentation and process in **32.905**.

Subpart 32.9 only deals with invoice payments. We know that there are other types of payments, though, since we talked about them a lot in this chapter! **Subpart 32.10** outlines the policies and procedures for actually making performance-based payments. These are similar to progress payments, except they are paid on the basis of contract milestones reached rather than costs incurred. **32.1001(b)** notes again that performance-based payments are a part of contract financing, and are not payments for goods received or services rendered. Thus, the interest-penalty provisions that would apply if the Government is late in paying an invoice do not apply if the Government is late in making a performance-based payment. **32.1001(d)**.

But how do funds get delivered to contractors? Do we still use carrier pigeons? Fortunately, no. The Government is relatively modern in this area, and **31 U.S.C. 3332** requires it to use electronic funds transfer (EFT) for all contract payments and financing—insofar as that is practical and legal, anyway. **32.1101**. As you've probably come to expect, there is a laundry list of situations in which EFT is not available, which we find in **32.1103**. The rest of **Subpart 32.11** deals with the nitty-gritty of EFT, and what contract clauses should be used to support EFT.

> *Question 12* – What contract clause must be inserted in a contract to allow payment of the contract using a Governmentwide commercial purchase card? Why? [Hint: check out **32.1108(b)**]
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Discussion Questions

1. What are the two conditions under which the agency head may grant a CAS waiver? Who must the agency notify after issuing such a waiver? [Hint: check out **FAR 30.201-5(b)**]

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2. Your company makes commercially available spinning widgets that are included as components in fish shaped unmanned maritime vehicles (UMV) previously sold by multiple prime contractors to the cities of Los Angeles, Miami, NYC and the UK Government. You have just been awarded your first contract with the US government in the amount of for $100 million for the design, development, and production of "miniature red painted fish" shaped UMVs that will include the commercially available widgets previously included in products sold to other government customers. None of your prior contracts has ever required your company to comply with CAS. May the contracting officer grant you a CAS waiver on the basis established in **FAR 30.201-5(b)(1)**? Explain your answer.

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3. What must a CFAO do upon determining that a contractor's accounting practice is not CAS compliant? [Hint: Check out **FAR 30.605(b)**]

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4. Identify what type of CAS coverage should be assigned to each contract identified below. [see Resources]

   a) A $50 million sealed-bid contract for a new Government building

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   b) A $71-million cost reimbursement subcontract awarded under a $500 million time and materials (T&M) commercial item prime contract

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   c) $45 million fixed priced contract awarded to a non-small business who has not won any CAS covered contracts in the past five years.

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   d) A $5 million contract awarded to a contractor who has been awarded $55 million worth of "modified" CAS covered contracts in its preceding cost accounting period.

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5. Under what circumstances are legal fees allowable? Explain your answer. [Hint: Check out **FAR 31.204-47**]

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6. You are the Program Manager for a project being performed by your company under a cost reimbursement contract. While you intend to ultimately rely upon your company's accounting experts, you are still expected to maintain some level of cognizance over the costs your company is incurring in performing the project and ensuring they are predominately allowable. Review the list of recently incurred cost items below. Identify whether the costs below are allowable or unallowable under your contract and explain your reasoning. [Hint: look at **31.205**]
   1. *Pre-contract costs*
   2. *Gifts provided by the Contractor to its employees*
   3. *Research and development costs*
   4. *Cost of an "idle facility"*
   5. *Help-wanted advertising*

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7. A contracting officer is choosing contract financing. Her options are private financing without a Government guarantee, loan guarantees, or advance payments. Which type of financing is preferrable? (Include in your answer the section of the FAR that supports your answer)

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8. **FAR Question**: What are the three bases that a contracting officer can use to establish milestone payments under a “performance-based contract”? [Hint: Check out **FAR 32.10**]

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Answer Key

Answer 1 –

1. CAS 401 (Consistency in Estimating, Accumulating, and Reporting Costs)
2. CAS 402 (Consistency in Allocating Costs Incurred for the Same Purpose)
3. CAS 405 (Accounting for Unallowable Costs)
4. CAS 406 (Cost Accounting Period)

Answer 2 – (1) The absolute dollar amount involved. (2) The amount of contract cost compared with the amount under consideration. (3) The relationship between a cost item and a cost objective. (4) The impact of Government funding. (5) The cumulative impact of individually immaterial items.

Answer 3 – The CFAO must determine that the contemplated price or cost adjustments will protect the Government from the payment of the estimated increased costs, in the aggregate and the net effect of the contemplated adjustments will not result in the recovery of more than the increased costs to the Government, in the aggregate.

Answer 4 – False. Per FAR 30.605(b)(1)(i), the CFAO is allowed to disagree with the auditor's report of alleged noncompliance, but must provide notification within 15 days of receiving this report.

Answer 5 – Alcohol, it is unallowable unless it is a bottle of wine broken on the bow of a ship to christen it.

Answer 6 – The four factors are (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.

Exercise 1 –

Allocable; benefit both a U.S. Government contract or other contractor work and can be distributed in reasonable proportion to the benefits received

Allocable; needed to be incurred for a specific U.S. Government contract

Allocable; needed to be incurred for a specific U.S. Government contract

Allocable; are necessary to the overall operation of the business, although a direct relationship to any particular cost objective cannot be shown

Answer 7 – Cost of money is an imputed cost that is not a form of interest on borrowings; is an "incurred cost" for cost-reimbursement purposes under applicable cost-reimbursement contracts and for progress payment purposes under fixed-price contracts; and refers to (1) Facilities capital cost of money (48 CFR9904.414); and (2) Cost of money as an element of the cost of capital assets under construction (48 CFR9904.417). Cost of money relates to **FAR Part 31** by having requirements that make it allowable or unallowable.

Answer 8 – The four types of payments that do not fall within **FAR 32.1** "contracting financing methods" are (1) payments based on the percentage or stage of completion accomplished; (2) payments for partial deliveries accepted by the Government; (3) partial payments for a contract termination proposal; and (4) performance-based payments.

Answer 9 – The contracting officer responsible for administration of the contract shall be responsible for review and approval of contract financing requests. Each approval shall specify the amount to be paid, necessary contractual information, and the account(s) to be charged for the payment.

Answer 10 – Unless specified otherwise in the clause at **52.232-17**, Interest, interest charges shall apply to any contract debt unpaid for 30 days from the issuance of a demand. The Government cannot charge interest on a contract's debt despite it being unpaid for 30 days, for example, if the contract is a kind excluded under **FAR 32.611** (e.g., a contract with a foreign government or instrumentality) or the contract or debt have been exempted from interest charges under agency procedures.

Answer 11 – No. Per the Anti-Deficiency Act, Government personnel are not permitted to encourage a contractor to continue performance under a contract that exceeded its funding limit.

Answer 12 – Written contracts to be paid by purchase card should include the clause at **FAR 52.232-36**, Payment by Third Party, as prescribed by **FAR 32.1110(d)**.

Discussion Questions Answer Key

1. A CAS waiver may be granted if (1) the contract or subcontract value is less than $15,000,000, and the head of the agency determines, in writing, that the segment of the contractor or subcontractor that will perform the contract or subcontract is primarily engaged in the sale of commercial items and has no contracts or subcontracts that are subject to CAS and (2) the head of the agency determines that exceptional circumstances exist whereby a waiver of CAS is necessary to meet the needs of the agency. Each agency must report any waivers granted under paragraph (a) of this subsection to the CAS Board, on a fiscal year basis, not later than 90 days after the close of the Government's fiscal year.

2. Only the head of the agency and NOT the contracting officer has the sole authority to grant a CAS waiver.

3. Within 15 days of receiving a report of alleged noncompliance from the auditor, the CFAO shall notify the auditor that the CFAO disagrees with the alleged noncompliance or issue a notice of potential noncompliance to the contractor and provide a copy to the auditor. The notice of potential noncompliance shall notify the contractor in writing of the exact nature of the noncompliance; and allow the contractor 60 days or other mutually agreeable date to agree or submit reasons why the contractor considers the existing practices to be in compliance; and submit rationale to support any written statement that the cost impact of the noncompliance is immaterial.

4. (a) “Exempt” as the prime contract is exempt under the “sealed bid contract” exception to CAS. See CASB 9903.
   (b) “Exempt” as the prime contract is exempt under the commercial item exception to CAS. See CASB 9903.201-1(b)(6).
   (c) "Modified CAS" as the contract award is less than $50M and the contractor has not won any other CAS covered contacts in the past accounting period.
   (d) "Full CAS" coverage.

5. Legal fees are allowable when they amount to consulting, or for FCA defense where the contractor is not at fault.

6. (1) "Allowable", (2) "Unallowable", (3) "Allowable", (4) "May be Allowable", (5) "May be Allowable"

7. Private financing without Government guarantee is preferrable, per FAR 32.106(a).

8. The three bases are (i) objective, quantifiable methods, (ii) accomplishment of defined events and (iii) other quantifiable measures of results.

APPENDIX

All of the following materials are linked and can be found via the Links Document or online.

CASB DS-1

Cost Accounting Standards Board disclosure statement required by public law 100-679. This sample form includes general information, direct costs, direct vs. indirect costs, indirect costs, depreciation and capitalization practices, other costs and credits, deferred compensation and insurance cost, and home office expenses.

DAU Indirect Cost Management Guide: Part 1 & Part 2

Indirect-cost management guide by the Department of Defense titled Navigating the Sea of Overhead. This guide is intended to expand the efforts of the Department to strengthen monitoring of indirect costs and guide defense contractors. The guide provides acquisition management personnel with an insight into the process by which defense contractors manage and government personnel monitor indirect costs.

DOL Indirect Cost Rate Determination Guide

A guide for Indirect Cost Determination by the Department of Labor, relying on Cost Principles and the FAR for civilian agency contracting. The guide was prepared by the Office of Cost Determination to assist non-profit and commercial organizations in understanding the requirements for the determination of indirect costs in cost reimbursable grants, contracts, and other agreements awarded by the DOL.

CAS Coverage Flowchart

Cost Accounting Standard Coverage and Disclosure Statement Determination chart. This flow chart serves as a guide to determining if the cost is covered under CAS and what disclosures may or may not be required.

FUN WITH THE FAR
Episode 18
FAR Parts 30, 31, & 32
<u>Summary Outline</u>

I. Introduction

II. <u>FAR PART 30</u>

A. General Observations

B. Cost Accounting Standards

C. Exemptions

III. <u>FAR PART 31</u>

A. General Observations

B. Cost Principles by Contract Type

C. Cost Allowability

IV. <u>FAR Part 32</u>

A. General Observations

B. Non-Commercial Item Purchase Financing

C. Commercial Item Purchase Financing

D. Debts and Funding

V. Closing Remarks