

Advanced Forum on

GOVERNMENT CONTRACT COST & PRICING

Compliance Insights and Strategies to Prepare for Rigorous DCAA Audits and Heightened Enforcement Risks

April 27 & 28, 2010 | Marriott Key Bridge, Arlington, VA

Benchmark your cost and pricing strategy with:

Lockheed Martin

United Technologies

ManTech International

Parker Hannifin

Oracle

Northrop Grumman

Honeywell

DynCorp International

Alion Science and Technology

Take away practical insights on how to:

- Determine the **allowability of legal fees, IR & D, termination and M & A costs**
- Respond to **auditors' requests for data and employee interviews**, and their audit findings
- Comply with **mandatory disclosure** rules regarding cost and pricing issues
- Implement an **"adequate" internal control system** that meets **DCAA** expectations
- Apply complex **TINA** requirements and minimize the risk of **defective pricing liability**
- Evaluate your potential legal exposure: **False claims, suspension, debarment** and more
- Ensure price **"reasonableness"** and manage pre- and post-award government scrutiny
- Tackle critical pricing issues in **GSA Multiple Schedule Award** contracts
- Overcome complex allocability challenges under the **Cost Accounting Standards**

Gain first-hand government insights:

Michael Golden

Managing Associate General Counsel
for Procurement Law

U.S. Government Accountability Office

David A. Drabkin

Deputy Associate Administrator
& Senior Procurement Executive

U.S. General Services Administration

Defense Contract Audit Agency

Defense Contract Management Agency

**DCAA and DCMA invited at the time of print*

Conference Co-Chairs:

David J. Roll, CPA

ManTech International Corporation

Former Chief, Technical Audit Services Division

Defense Contract Audit Agency

Terry L. Albertson

Crowell & Moring LLP

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**Surviving DCAA Audits: How to Prepare, Manage, and
Ensure that Data is Current, Complete and Accurate**

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THERE HAS NEVER BEEN A MORE CRUCIAL TIME TO ATTEND THIS CONFERENCE!

With increased government oversight, rigorous DCAA audits, **mandatory disclosure** rules, troubling cases on **disallowed costs** and the resurgence of TINA enforcement concerns, the stakes have never been higher for U.S. Government contractors. Coupled with the Obama administration's tightened defense and other spending, **your organization cannot afford critical cost and pricing missteps.**

U.S. Government agencies are increasing their scrutiny of **cost and pricing data** at the **pre-and post-award phases**. DCAA has also taken an increasingly rigorous approach to assessing compliance, including the adequacy of contractors' **internal control systems**. Given recent changes, it is critical to revisit your strategy for **preparing, managing and surviving DCAA audits – before it's too late.**

With the heightened risks of staggering liability under the *False Claims Act*, and the **growing threats of suspension, debarment** and more, you cannot afford to miss American Conference Institute's **Advanced Forum on "Government Contract Cost & Pricing"**. Unlike other training events, this advanced forum – developed through research with U.S. Government contractors – will feature an impressive faculty of **government officials, leading contractors and private practice experts**, who will address the most critical cost and pricing issues that can make or break your business. You will gain the latest updates and practical insights on how to **stay out of trouble** – and refine your **cost and pricing strategy**.

Practical sessions will include:

- Managing DCAA auditors' requests for data and employee interviews, and responding to their audit findings
- Determining the allowability of legal fees, IR & D, termination and M & A costs
- Assessing your potential exposure under the *False Claims Act*, and the threats of suspension, debarment and more
- Deciding when to disclose cost and pricing issues under the FAR Mandatory Disclosure rules, and how DCAA is assessing contractor ethics programs
- Meeting DCAA expectations for an "adequate" internal control system and what to do if your program is deemed "inadequate"
- Complying with complex TINA requirements to prevent defective pricing liability
- Pricing "reasonableness", and managing pre- and post-award government scrutiny
- Minimizing the risks of price reduction and defective pricing claims arising out of GSA Multiple Schedule Award Contracts
- Staying up to speed on the latest Cost Accounting Standards (CAS) cases

In addition, learn the ins and outs of DCAA audits by attending our practical, interactive post-conference workshop, "**Surviving DCAA Audits: How to Prepare, Manage and Ensure that Data is Current, Complete and Accurate**".

Spaces for this event will fill up quickly. Register now by calling 1-888-884-2480, by faxing your registration form to 1-877-927-1563, or by registering online at www.americanconference.com/Governmentpricing.

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 - Government Contracts
 - Government Accounting
 - Federal Government Procurement
 - Government Compliance/Relations
 - Acquisition Policy
 - Industrial Compliance
- ✓ Corporate Legal Professionals
 - VPs, Legal Affairs/Operations
 - Government Contracts Counsel
 - Litigation and Compliance Counsel
- ✓ Attorneys and Consultants specializing in:
 - Government Contracting Compliance and Litigation
 - Cost Accounting and Cost Allowability
 - False Claims Act and Procurement Fraud
 - GSA contracts
 - Suspension and Debarment
 - Bid Protests

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8:30 **Opening Remarks from Conference Co-Chairs**

David J. Roll, CPA
Vice President-Industry Compliance
ManTech International Corporation
Former Chief, Technical Audit Services Division
Defense Contract Audit Agency (DCAA)

Terry L. Albertson
Partner
Crowell & Moring LLP

8:45 **Agency Updates on Increased Cost & Pricing Oversight and Enforcement**

Michael Golden
Managing Associate General Counsel for Procurement Law
U.S. Government Accountability Office

Defense Contract Audit Agency (Invited)

Defense Contract Management Agency (Invited)

9:30 **Determining the Allowability of Legal Fees, IR & D, Termination and M & A Costs**

James C. Mifsud
Associate General Counsel - Litigation and Compliance
Lockheed Martin Corporation

Terry L. Albertson
Crowell & Moring LLP

- Impact of Recent Board of Contract Appeals, Court of Federal Claims and Appeals Court decisions on disallowed costs
- Defining allowability of legal settlement costs, and fees from employment discrimination and environmental litigation
- What qualifies as “IR & D” and when these costs can be (even in part) passed onto government
- What types of costs are more susceptible to challenge by auditors, and when an agreement on allowability can or cannot be reached
- M& A costs: How auditors are interpreting FAR Part 31
- Determining allowable timeframes for “planning and executing a reorganization of business, including M & A”, and segregating expenses during unallowable time periods
- Termination costs: Constructing an effective termination settlement proposal, and DCAA’s level of review of proposed settlements

10:30 **Networking Coffee Break**

10:45 **How to Interpret and Apply Complex TINA Requirements**

Edward S. Owens
Director, Contracts, Pricing & Export Control
Parker Hannifin Corporation
Parker Aerospace - Hydraulics Systems Division

Tom Abbott
McKenna Long & Aldridge LLP

- How the resurgence in *Truth in Negotiations Act* (TINA) enforcement and defective pricing audits is affecting the way business is conducted
- How DCAA is applying TINA to contractors and subcontractors, and what triggers a defective pricing audit
- Possible penalties under TINA: Recent trends and what to expect going forward
- What is a “fact” that must be disclosed vs. a “judgement” under TINA
- What constitutes an “acknowledgement”
- When the failure to disclose pricing factors can result in defective pricing
- How much cost or pricing data is required during a defective pricing audit
- How DCAA reviews profit information during a defective pricing audit
- Key defenses to TINA, including the reliance and offset defenses

12:00 **Networking Luncheon**

1:15 **Complying with Mandatory Disclosure Rules: Deciding When and What to Disclose**

Douglas E. Perry
Vice President, Global Compliance
Honeywell International Inc.

John H. Russell
Senior Counsel II
Northrop Grumman Corporation

James J. McCullough
Fried, Frank, Harris, Shriver & Jacobson LLP

- Extent to which DCAA is requesting information on compliance that is broader than FAR mandatory disclosure requirements
- Identifying a “significant overpayment”
- Determining when “credible evidence” of a violation of federal criminal law or *False Claims Act* exists, and how far back you need to go to meet your disclosure obligations
- How to collect and review potentially disclosable items
- What triggers mandatory disclosures of subcontractor violations, and how to report violations
- When a cost issue becomes a significant overpayment vs. a false claim
- When insignificant overpayments, mischarging and defective pricing need to be disclosed
- Conducting internal investigations in cases of suspected/ actual substantial overpayments: Best practices

2:30 **Determining Price Reasonableness, and Managing Pre- and Post-Award Government Scrutiny**

Karen E. English
Vice President for Administration
Director of Pricing
Alion Science and Technology Corp.

Thomas P. Barletta
Stephoe & Johnson LLP

- Pricing “reasonableness”: How recent FAR changes impact fair and reasonable contract pricing
- When cost or pricing data is required by government to determine “reasonableness”
- Government’s application of FAR Part 15.4 for fair and reasonable pricing
- When the Department of Defense will request data post-award
- Extent to which you need to provide data related to your profit margin
- Lessons learned from recent bid protests with regard to cost and price realism analyses
- Aftermath of Acquisition Advisory Panel recommendation on commercial items acquisition practices

3:30 **Networking Coffee Break**

3:45 **The Price of Violations: False Claims, Suspension, Debarment and More**

Paul Robert

Associate General Counsel
Director, Contracts & Compliance
United Technologies Corporation

Mark D. Colley

Arnold & Porter LLP

- Effect of recent *False Claims Act* amendments on contractor and subcontractor liability risks
- How relaxed requirements for proving false claims have been applied: Impact of recent *qui tam* and false claims cases dealing with cost and pricing issues
- How government increasingly applies suspension and debarment for false claims, and incomplete and inaccurate data
- Penalty trends for mischarging
- When cases can go criminal
- The scope of IRS and SEC enforcement risks

4:45 **Minimizing Cost Accounting Standards Pitfalls: The Latest Word on Critical CAS Issues**

Stephen D. Knight

Smith Pachter McWhorter PLC

- To what extent cost allocations must now demonstrate something more than “nexus”: The potential mischief of *Teknowledge Corporation v. United States* and the new FAR on Excessive Pass-Through Charges
- *ATK Thiokol v. United States*: Direct v. indirect
- *Gates v. Raytheon Company*: CAS non-compliance and interest calculations on “increased costs”
- *DirecTV v. United States*: Where does the Credits clause fit in?
- Update on Cost Accounting Standards Board activities, amended standards and interpretations

5:30 **Conference Adjourns**

8:45 **Co-Chairs’ Opening Remarks**

9:00 **Responding to Auditors’ Requests for Data and Employee Interviews, and Their Audit Findings**

David J. Roll, CPA

Vice President-Industry Compliance
ManTech International Corporation
Former Chief, Technical Audit Services Division
Defense Contract Audit Agency (DCAA)

Gregory Smith

Cooley Godward Kronish LLP

- Responding to DCAA requests for employee interviews
- Dealing with requests for data that is overseas or in storage
- Handling data requests regarding subcontractors: What information needs to be made available with respect to valuation, selection and documentary processes
- When DCAA will issue a “Denial of Access to Records due to Contractor Delays” letter and how to respond
- Negotiating what information is provided to DCAA
- Safeguarding attorney-client privilege, and when a waiver of attorney-client privilege might be necessary
- Minimizing the risk of adverse findings: Communicating with auditors regarding the interpretation of cost-allowability clauses
- How to respond to audit findings
- When DCAA is willing to change audit findings
- When DCAA might release audit findings to the press and /or other government agencies, and when findings can be made public via the *Freedom of Information Act*

10:15 **Networking Coffee Break**

10:30 **Implementing an “Adequate” Internal Control System: Meeting DCAA Expectations and What to Do if Your Program is Deemed “Inadequate”**

Chad Connell

Director, Government Compliance
DynCorp International

Peter A. McDonald, C.P.A., Esq.

Director, Navigant Consulting, Inc.

- What constitutes an “adequate” control system
- How the deletion of the adequate/inadequate “in part” standard is affecting audit outcomes and government contracting
- Criteria used by DCAA for assessing internal control systems, including pricing, IT, compensation, and payroll systems
- What to do in the event of an “inadequacy” finding: Is there room for negotiation?
- Who has responsibility for making decisions about systems?
- How past findings of partial inadequacies will be treated

11:30 **Current Pricing Issues in GSA Multiple Schedule Award Contracts**

David A. Drabkin

Deputy Associate Administrator
& Senior Procurement Executive
U.S. General Services Administration

Michael W. Clancy
Vice President & Associate General Counsel
Oracle USA, Inc.

John A. Howell
Sullivan & Worcester LLP

- Deletion of price reduction clause: Status of recommendations from the MAS Advisory Panel
- Type of pricing data being required by GSA negotiators
- How GSA is approaching time-and-materials (T & M) contracts: What charges from sub-contractors can be passed through to government and the types of permissible mark-ups
- How the Department of Defense is using the GSA schedule
- Justifying government vs. non-government pricing
- Reducing defective pricing risks
- Current bid protest issues being brought to GAO and the courts regarding the GSA program
- Managing GSA defective and price reduction audits
- How defective pricing and price reduction claims can escalate into allegations of fraud under the civil and criminal *False Claims Act*

12:45 Conference Concludes

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American Conference Institute (ACI) will apply for Continuing Professional Education credits for all conference attendees who request credit. There are no pre-requisites and advance preparation is not required to attend this conference.

Course objective: Update on the Government Contract Cost and Pricing and procedures to prevent inappropriate payments. Recommended CPE Credit: 12.5 hours and 4.0 hours for workshop.

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Interactive Post-Conference Workshop Wednesday, April 28, 2010 2:00 p.m. – 5:30 p.m.

Surviving DCAA Audits: How to Prepare, Manage, and Ensure that Data is Current, Complete and Accurate

Nicole J. Owren- Wiest
Wiley Rein LLP

The rules of the game have changed. With DCAA's more vigorous approach to audits, it is critical to get up to speed on what to expect during an audit, and how to prepare.

In this interactive, practical workshop, the expert workshop leaders will provide you with worthwhile insights on what can trigger a DCAA audit, the ins and outs of the DCAA audit process, audit preparation, and cost or pricing data requirements. You will have an invaluable opportunity to learn from the first-hand experiences of the workshop leaders, and take away practical tools that will help your organization to successfully handle DCAA audits.

Ample time will be left for Q & A, so come prepared with your questions!

- What can trigger a DCAA audit
- Preparing your organization for a potential audit, including audits of contractor ethics programs and compliance with FAR 52.203-13
- How your preparation should change in light of recent changes to DCAA's audit focus
- Specific DCAA audit objectives and methods, techniques, and tools used to conduct the audit
- Maintaining and storing data: Centralizing and storing worldwide data in anticipation of an audit
- How DCAA investigates possible labor mischarging, travel, direct and indirect costs issues
- Defining "cost or pricing data": Recent case law
- Ensuring that your data is "current, complete and accurate"
- When cost or pricing data is not required: What DCAA expects when requesting data "other than cost or pricing data"
- When the use of external legal counsel is necessary
- How outside and in-house counsel can work together to manage audit costs and other key items
- Which remedies are being imposed by DCAA for non-compliance
- Managing and resolving audit disputes



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