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DCAA Recommendations Of Disallowance Of Costs—Tips On Contesting The Disallowance

By Jerome S. Gabig[*]

In its Fiscal Year (FY) 2020 Report to Congress, the Defense Contract Audit Agency states that it took $8.6 billion in audit exceptions. DCAA then boasts "net savings of $3.5 billion."[1] Hence, at the outset, DCAA concedes that almost 60% of its audit exception do not result in a refund to the government. The report further explains that "[n]et savings are calculated only for contracting actions taken by government contracting officials based on results of a formal DCAA audit."[2] Those who are knowledgeable of DCAA practices realize that there is a quantum gap between a "contractual action" by the government and an actual recovery by the government. Hence, DCAA's assertion of $3.5 billion in net savings is suspect.

Put in perspective, as shown in its annual reports to Congress, DCAA identifies itself as a profit center, yet DCAA's mission statement accentuates "delivering high quality audits and financial services to achieve fair and reasonable prices."[3] Arguably, the two are not compatible since the latter requires independent and objective audits consistent with the Generally Accepted Government Auditing Standards (GAGAS) rather than being a watchdog.[4] The National Defense Industry Association has testified to Congress:

> [W]e experience individual auditors lacking professional judgment trying to "find something" no matter how immaterial. This is likely driven by DCAA's focus on dollars questioned and [return on investment] at the highest levels.
>
> * * *
>
> Emphasis on "finding something" regardless of whether it is sustained or not, which often times can be the case because it is simply cheaper for industry to settle, is a major perverse incentive eroding the professionalism of the workforce.[5]

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The pressure on DCAA auditors to "find something" has caused a board of contracts appeal judge to quip: "We note parenthetically that this is one of the few occasions when we have seen a Defense Contract Audit Agency Audit report which did not question something."[6]

Going back to DCAA's return on investment (ROI) being tied to "contracting actions taken by government contracting officials" (rather than actual recoveries), in essence DCAA auditors are "passing the buck" to contracting officers. The passing of the buck forces the contracting officer, for unsustainable auditor findings, to oppose either DCAA or the contractor. In the past, contracting officers were inclined to take no action where the audit recommendations were unsustainable.[7] That practice began to backfire on contracting officers when DCAA officials accused contracting officers to Inspectors Generals of neglecting their duties to protect taxpayers' interest. The Inspectors General typically sided with DCAA.[8]

The practice of DCAA officials elevating unsustainable findings to Inspectors General can be traced to 2009 when DCAA revised its procedures.[9] Previously, DCAA's standard operating procedure was to elevate disagreement on what was the appropriate corrective action within the management chain of the agency for whom the audit was performed. Although DCAA's norm remains to work disagreements within the audited agency's channel, the 2009 change allows DCAA officials to report the "unsatisfactory condition" directly to an Inspector General. Stated bluntly, the DCAA auditors have the prerogative to change their role from advising the contracting officer to intimidating contracting officers who disagree with their advice.[10] Two respected practitioners have commented:

- "At best, DCAA seems to have missed the point about the auditor being merely advisory. At worst, the audit guidance appears designed to intimidate [contracting officers]."[11]

- "DCAA acknowledged that 'contracting officers have wide authority to make decisions regarding contract matters' and that 'DCAA auditors act as advisors to contracting officers.' Nevertheless, the subjective standard in the new DCAA procedure brings new pressure on Contracting Officers to acquiesce in DCAA's 'advice' to avoid a referral by DCAA to the [Inspector General]."[12]

Put in perspective, since criticism by an Inspector General can be harmful to a contracting officer's career, when faced with a DCAA recommendation of disallowance of cost that is patently unsustainable, contracting officers are pressured to issue final decisions that adopt DCAA's positions.[13]

It is also common for government contractors to acquiesce rather than dispute a disallowed cost. Generally, the reasons for not contesting an unsustainable disallowance of cost include (1) fear of annoying an important customer; (2) the time, expense, and distraction of pursuing a dispute is not worth the amount of the disallowance;[14] and (3) a false perception that the contracting officer's decision is entitled to considerable deference and, thus, is difficult to overcome.[15]

Another factor in a contractor's decision whether to contest a disallowance should be the probability of success. The probability of success depends on the merits of each disallowance. After making a thorough assessment of the facts, experienced counsel usually can advise on the probability of successfully contesting a

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disallowance. However, one thing is certain—DCAA's assertion of a 55.7% "sustained"[16] lacks credibility.[17]

In light of these dynamics behind many DCAA cost disallowances, this BRIEFING PAPER discusses the mechanics of disallowing a cost, provides tips on contesting a DCAA recommendation of disallowance of cost, and addresses penalties for unallowable costs. The PAPER concludes with some practical guidelines.

The Mechanics Of Disallowing A Cost

Disallowance of cost is covered in Federal Acquisition Regulation (FAR) Subpart 42.8. The "Notice of Intent To Disallow Costs" contract clause at FAR 52.242-1 states: "The Contracting Officer may at any time issue to the Contractor a written notice of intent to disallow specified costs incurred or planned for incurrence under this contract that have been determined not to be allowable under the contract terms."[18] The clause further states:

> The Contractor may, after receiving a notice . . . submit a written response to the Contracting Officer, with justification for allowance of the costs. If the Contractor does respond within 60 days, the Contracting Officer shall, within 60 days of receiving the response, either make a written withdrawal of the notice or issue a written decision.[19]

DCAA's recommendation of disallowance of costs often arises when the contractor submits vouchers for reimbursement. For large cost-reimbursement DOD contracts, as well as some large contracts awarded by civilian agencies, the vouchers are reviewed by DCAA for provisional payments.[20] As part of this process, the Defense FAR Supplement (DFARS) makes the DCAA auditor the authorized representative of the contracting officer for "[i]ssuing DCAA Forms 1, Notice of Contract Costs Suspended and/or Disapproved, to deduct costs where allowability is questionable."[21] The DFARS further provides that the administrative contracting officer "[m]ay issue or direct the issuance of a DCAA Form 1 on any cost when there is reason to believe it should be suspended or disallowed."[22] The purpose of the DCAA Form 1, "Notice of Contract Costs Suspended and/or Disapproved," is to initiate contracting officer action in rendering a decision on any questioned costs about which a contractor disagrees with the DCAA.[23] In short, the DCAA auditor does not actually disallow a cost; instead, the DCAA Form 1 is used to bring to the attention of the contracting officer that DCAA and the contractor are in disagreement as to the allowability of a cost.[24]

Before disallowing a cost, the cognizant contracting officer is required by the FAR to "make every reasonable effort to reach a satisfactory settlement through discussions with the contractor."[25] If a disallowance is to be made, it must be issued during the performance of the contract.[26] Prior to making a determination to disallow a cost, the cognizant contracting officer should issue a notice of intent to disallow a cost.[27] "At a minimum," the notice of intent to disallow must—

> (1) Refer to the contract's Notice of Intent to Disallow Costs clause;
>
> (2) State the contractor's name and list the numbers of the affected contracts;
>
> (3) Describe the costs to be disallowed, including estimated dollar value by item and applicable time periods, and state the reasons for the intended disallowance;
>
> (4) Describe the potential impact on billing rates and forward pricing rate agreements;
>
> (5) State the notice's effective date and the date by which written response must be received;
>
> (6) List the recipients of copies of the notice; and
>
> (7) Request the contractor to acknowledge receipt of the notice.[28]

Tips On Contesting A DCAA Recommendation Of Disallowance Of Cost

Notionally, a disallowed cost should be a government claim.[29] However, if early in the process, a disallowance of cost might not yet constitute a claim as defined in the FAR.[30] A government claim has some atypical aspects, including:

- Although the contractor initiates the process by notifying the ASBCA of its decision to appeal, logically, the Government should file the complaint with the ASBCA and the contractor answers the complaint.[31]
- A defense to a government claim may require a separate final decision of the contracting officer.[32]
- A contractor is not required to certify a government claim.[33]

Put in perspective, resisting a disallowance of cost

often is just another form of contesting a government claim.[34] Below are some areas where contractors have had some success in contesting a disallowance of cost.

Burdens Of Proof

The benefit of having the opposing party bear the burden of proof is that it provides a "boost" because the judge should give the benefit of the doubt to the party that does not have the burden of proof.[35] As a norm, for government claims, it is the government that bears the burden of proof.[36] However, where the government claim involves a disallowance of cost, the burden of proof can be more complicated.

The FAR establishes that the "burden of proof shall be upon the contractor to establish that such cost is reasonable."[37] Contractors should not be intimidated by having the burden of proof that a cost is reasonable. "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."[38] The FAR acknowledges there are "a variety of considerations and circumstances" that could cause a cost to reasonable.[39] Four specifically identified considerations in the FAR 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.[40]

Just because a cost is challenged by the government does not mean there is merit to the challenge. In *Phoenix Data Solutions LLC, F/K/A Aetna Government Health Plans* (AGHP),[41] the Defense Health Agency (DHA) challenged the reasonableness of the contractor's 2008 general and administrative (G&A) cost rates with a mere empty assertion that the rates were "too high." The ASBCA decided the issue in favor of AGHP by holding: "AGHP presented credible testimony regarding the calculation of its G&A rate, and explained that that G&A rate was high as a percentage because the pool of costs was applied to a small base. Thus, we allow AGHP its claimed G&A expenses of $4,542,366."[42]

The ASBCA's decision in *Kellogg Brown & Root Services, Inc*. provides useful insight into how the board decides reasonableness.[43] The contractor, KBRS, was awarded a cost-plus award fee contract in 2001 to "provide the Army with an additional means to adequately support the current and programmed force by performing selected services in wartime and other operations" in Iraq. Special Provision H-16 stated that the government would provide force protection to contractor employees commensurate with that given to Service/Agency civilian employees in the area of operations.

The Army breached the contract by not providing the requisite security:

> KBRS met with [Major General (MG)] Speakes and reported that the personnel and equipment casualties from attacks on its convoys and those of its subcontractors from mid-May to date were 7 killed, 7 wounded, 4 missing and 10 trucks missing. MG Speakes noted, among other things that: "Tomorrow the government will provide convoy protection for 46% of the convoys waiting to travel north. This level of support must increase, but presently the government is short convoy escort vehicles and shooters (shotgun riders)."[44]

Hence, KBRS subcontracted for security to private security companies (PSCs). The ASBCA held: "[W]e conclude that, in the security conditions prevailing in Iraq in 2003-2006, the use of PSCs by KBRS and its subcontractors was reasonable as that term is defined in FAR 31.201-3(a)."[45]

In its brief, the Army argued that KBRS' remedy was to stop performance rather than hire PSCs. The ASBCA rebuked the Army's disingenuousness by stating:

> Fortunately for the troops that depended on KBRS and its subcontractors for their life-support and other logistical support services, KBRS and its subcontractors did not adopt the attitude now suggested by the government as their only remedy for the government's failures to provide force protection. As Mr. Murray, the [troop dining facilities] subcontractor manager expressed it: "if you don't have a delivery coming in every third day, you're in trouble. You can't feed soldiers. That was unacceptable to us, as a caterer, and to our client KBR. We could not fail."[46]

In summary, there is no reason for contractors to be

intimidated by their burden of proof for reasonableness. Straightforward testimony by an astute business owner often is sufficient to meet the burden.[47]

In 2017, the ASBCA issued a decision that provides a good lesson to contractors about not giving in too quickly when DCAA recommends disallowing a cost. The underlying controversy in *A-T Solutions, Inc*.[48] involved an Army contract to provide professional services and materials to train on improvised explosive devices. The training was to take place both within the United States and overseas. The cost-plus-fixed-fee contract was awarded for a base year and up to four option years. Under the contract, ATS provided the training materials and equipment as commercial items and was paid for them at its catalog prices. ATS' proposal stated that it was a provider of commercial training and that its training materials were priced using its product catalog.

In July 2011, DCAA issued a report questioning ATS' charging for training material based on commercial prices rather than at actual costs as set forth in FAR 31.205-26, "Material costs." The contracting officer deferred to DCAA. The Army suspended a percentage of reimbursement of payment on the contract. ATS appealed to the ASBCA. The board decided in favor of ATS by holding: "[W]e find that the government has not met its burden to show that the transfers of commercial ATS training materials between ATS divisions were not the sort of transfers contemplated by FAR 31.205-26(e)."[49] Put in context, ATS prevailed by holding DCAA to its burden of proof—something DCAA could not meet.

Where there is no dispute over the reasonableness or the amount of costs incurred, nor over the allocability of amounts charged to a contract, and the Government seeks to disallow costs solely upon not being "unallowable," the Government bears the burden of proving that the costs are of the type made specifically unallowable by regulation or contract provision.[50] An example of the ASBCA holding that the Government did not meet its burden of proof occurred in *SRI International*.[51] In that decision, SRI International (SRI) was awarded a research and development contract by the Defense Advanced Research Project Agency (DARPA). SRI had assumed a line of credit (LOC) with a bank to assure performance on the covenants and restrictions on the requisite bonds.

In *SRI International*, the government contended that the LOC costs were unallowable under FAR 31.205-20, "Interest and other financial costs," as costs of financing long-term capital. The ASBCA held that the government has failed to carry its burden in proving that SRI's LOC costs were of the type made specifically unallowable by regulation or contract provision.[52] Accordingly, SRI was able to recover its LOC costs. As shown in *SRI International*, the government's burden of showing that a cost is unallowable under a regulation can benefit contractors that chose to resist the disallowance of a cost.

Failure By The Agency To Follow Procedures

As previously discussed, the burden is on the contractor to establish that a cost is reasonable. However, the precise language in the FAR merits a close look:

> 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.[53]

Often government personnel are quick to focus upon "the burden of proof shall be upon the contractor to establish that such cost is reasonable" without giving adequate attention to the preceding language in the applicable sentence—"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...."

In *Parsons Evergreene, LLC*,[54] a contractor cleverly used the FAR language of "an initial review of the facts" to avoid being held to the burden of proof of cost reasonableness. The ASBCA observed that FAR 31.201-3(a) "requires two actions by the government: (1) it must perform an 'initial review of the facts,' and (2) that review results in a 'challenge' to 'specific costs.' "[55] Because the Air Force had not complied with (1) and (2) above, the ASBCA declined to impose the burden of proof for cost reasonableness on the contractor.[56]

Another decision where the contractor benefited by an agency not following mandatory procedures can be found in *CB&I Areva Mox Services, LLC v. United States*.[57] The U.S. Court of Federal Claims held that a contractor was entitled to the claimed payment because the agency failed to properly notify the contractor of a proposed disallowance. The Department of Energy (DOE) had awarded a contract to design, construct, and operate a fuel fabrication facility. While reviewing invoices for this

cost-reimbursement contract, DOE questioned salary increases for two employees. Unable to reconcile the matter with the contractor, DOE withheld 2% of the labor costs without giving notice to contractor. The court held that the disallowance procedure prescribed in FAR 42.801 and Department of Energy Acquisition Regulation (DEAR) 942.803 was mandatory.[58]

Quantum

Contractors are often unable to recover when challenging a contracting officer's final decision because the contractor fails to substantiate the amount that contractor is entitled to recover (*i.e.,* "quantum").[59] The ASBCA requires that proof of quantum must be sufficiently certain so that a determination as to the amount for which the government is liable is more than mere speculation.[60] Where there has been a DCAA audit, there is a likelihood that proof of quantum can be made easier. Typically, DCAA audits verify that costs having been incurred. Hence, the DCAA audit report may be used by a contractor to establish quantum by offering the audit report as a business record.[61]

In *Hydrothermal Energy Corp. v. United States*,[62] the contractor used the DCAA audit report to help prove its case. The Government contested quantum; nevertheless, the contractor prevailed in proving quantum by using the audit to support its case. The decision states: "In any event, the court has reviewed the evidence upon which the government auditor relied to reach his July 5, 1990, conclusions, plus the additional evidence presented at trial, and the court agrees with the auditor that billed direct costs of $328,361 were properly classified as allowable."[63]

Even if the DCAA audit does not substantiate quantum, a contractor is not harmed. A contractor can take advantage of the *de novo* review performed by a board or court to get a fresh assessment of the disallowance.[64] The ASBCA's decision in *C.H. Hyperbarics, Inc*.[65] involved a contract for design and installation of hyperbaric piping and instrumentation for the Army Special Forces Training Facility, Key West, Florida. The contractor, CHHI, failed to segregate its labor hours for added work. Consequently, the DCAA auditor "was unable to verify in CHHI's accounting records that the labor costs claimed were incurred."[66]

The ASBCA explained that a claimant need not prove its damages with absolute certainty or mathematical exactitude. According to the ASBCA, it is sufficient if the contractor furnishes the board with a reasonable basis for computation, even though the result is only approximate.[67] Despite the DCAA report not substantiating quantum, the contractor was still able to prevail. As explained by the board: "In our view CHHI's estimates have reasonable basis in fact and constitute sufficient evidence for us to make a fair and reasonable approximation of the damages."[68]

The Doctrine Of Retroactive Disallowance

A discussion of disallowance of costs would not be thorough unless it also addressed the doctrine of retroactive disallowance. *Technology Systems, Inc.*[69] is the landmark decision on retroactive disallowance. The decision is unusual in that the ASBCA decided it with a five-judge panel. In short, the decision holds that the government is entitled to retroactively make an allowable cost an unallowable cost unless there has been government misconduct.

Technology Systems, Inc. (TSI) is a small business whose expertise is research and development of software systems relating to ship navigation. TSI had experienced DCAA audits from 1998 to 2006 without any significant difficulties. In the fall of 2008, DCAA's Ms. Waller was assigned to perform an audit of TSI. According to the decision:

> Shortly after the audit began, TSI's relationship with Ms. Waller ran into difficulties. At the hearing, Mr. Fletcher testified that Ms. Waller "lost her temper" during a meeting held on Friday, 17 October 2008. Mr. Benton, who was not present at the meeting, complained about it in a 20 October 2008 email to ACO Murray. Mr. Fletcher testified that he called ACO Murray complaining about Ms. Waller and that, in response, ACO Murray stated that TSI would not get an objective audit from Ms. Waller....[70]

Ms. Waller was allowed to complete her audit. Her draft audit questioned $360,000 in direct and indirect costs that had previously never been questioned by DCAA. As the statute of limitations was about to toll, DCAA appointed another auditor who did not question as many costs. An email explained "he was not taking as much of a 'hard line' on certain labor costs as Ms. Waller had."[71] TSI claimed since DCAA had not questioned the

categories of cost in the past, the government was engaged in retroactive disallowance.

The ASBCA held: "Retroactive disallowance is a theory for challenging audits whose heyday has come and gone."[72] The decision makes clear that the ASBCA will not apply the doctrine of retroactive disallowance unless the contractor can establish affirmative misconduct by the government. TSI also argued that DCAA was bound by a rule of contract interpretation as to the course of dealing between the parties. The ASBCA rejected this argument: "DCAA's failure to question certain costs in prior audits, without more, does not 'establish a common basis of understanding.' "[73]

Statute Of Limitations

Contractors have been successful in resisting disallowance of costs based on the government's actions being time barred.[74] For government contracts, the statute of limitations requires that contract claims, whether that of the contractor or the government, be "submitted within 6 years after the accrual of the claim."[75] A textbook case of a disallowance of cost being time barred by the statute of limitations can be found in the ASBCA's decision in *Laguna Construction Co.*[76]

In this case, the underlying contract had been awarded by the Air Force for worldwide environmental remediation and construction services under which the contractor received task orders to perform various items of construction work in Iraq. In 2005, the contractor, LCC, submitted vouchers for progress payments to the government on behalf of its subcontractors. In 2006, DCAA provided the ACO with an audit report that found the contractor's subcontract management system did not comply with FAR 52.216-7, "Allowable Cost and Payment." In 2009, the ACO sent a letter to LCC identifying "on-going and significant LCC subcontract management system deficiencies" that were detailed in the DCAA audit report.[77]

In 2011, more than five years after the 2005–2006 audit reports, DCAA issued to LCC a "NOTICE OF CONTRACT COSTS SUSPENDED AND/OR DISAPPROVED" that disallowed $2,089,799 under this contract.[78] In letter to LCC dated December 17, 2012, the ACO issued a final decision providing disposition of the costs disapproved in the DCAA Form 1.[79] In denying the government claim based on the statute of limitations, the ASBCA observed:

> The DCAA was fully aware of appellant's failure to document the reasonableness of subcontract awards under this contract that were not based upon competition by late 2005, and it documented its findings by audit reports dated 6 December 2005 and 9 February 2006, which latter report was issued to the ACO. That the DCAA did not single out these subcontracts by name in the audit reports is irrelevant. DCAA reviewed 32 subcontracts under the contract totaling $147,701,411 which presumably was a significantly large sample upon which to support its findings.
>
> The government was also aware of its "injury" here, i.e., the subcontract prices awarded by appellant and paid by the government, as early as 2005. The ACO did not file this claim until 17 December 2012.[80]

In summary, as shown in *Laguna,* an attempt by the government to recoup money paid to a contractor is barred by the statute of limitations if the contracting officer has not issued a final decision within six years after the accrual of the claim. Another noteworthy ASBCA decision is *Sparton DeLeon Springs, LLC*.[81] That decision makes clear that the statute of limitations trumps a mandatory FAR clause[82] that gave the government the right to audit and make adjustments for prior overpayments at any time before final payment. The underlying contracts involved research and development related to sonobuoys as well as services to repair submarine acoustics awarded to Sparton's predecessor company, SEFI. The contracts incorporated by reference FAR 52.216-7, "Allowable Cost and Payment (MAR 2000)." On October 26, 2015, the contracting officer issued a final decision demanding repayment of $577,415. The final decision stated:

> After reviewing the final voucher submission, I noticed certain costs that were not included in SEFI's Incurred Cost proposals for CFY 2006 or CFY 2007. These additional costs were supposedly payments made to your former Jackson, Michigan facility that closed in 2006. I contacted your company for information that would establish that these additional costs are allowable. To date, despite repeated requests, your company has not provided information that establishes these additional costs were actually incurred or paid by SEFI. You have provided only a spreadsheet showing that the Government paid SEFI. There is no proof whatever that SEFI was billed for work, or more importantly, that SEFI paid these costs in connection with any Government contract.[83]

In denying the government's claim as time barred, the ASBCA commented: "there is no genuine dispute that

the government knew or should have known of the Jackson costs as early as 10 January 2007, by when it paid those costs pursuant to the interim vouchers."[84]

Expressly Unallowable Costs—Upping the Ante

The origins of penalties for unallowable costs is the Defense Procurement Improvement Act of 1985.[85] The FAR implemented the Act by authorizing the following penalties:

> (1) If the indirect cost is expressly unallowable under a cost principle in the FAR, or an executive agency supplement to the FAR, that defines the allowability of specific selected costs, the penalty is equal to—
>
> (i) The amount of the disallowed costs allocated to contracts that are subject to this section for which an indirect cost proposal has been submitted; plus
>
> (ii) Interest on the paid portion, if any, of the disallowance.
>
> (2) If the indirect cost was determined to be unallowable for that contractor before proposal submission, the penalty is *two times the amount* in paragraph (a)(1)(i) of this section.[86]

Hence, for an expressly unallowable cost, the "ante" doubles for the amount of the disallowance.[87]

In 2013, a respected authority on allowable costs observed:

> As many defense contractors have found, Defense Contract Audit Agency auditors have over the past few years become increasingly aggressive in recommending penalties for costs questioned as unallowable. At the same time, Defense Contract Management Agency administrative contracting officers have started more frequently assessing, and become less willing to waive, penalties.[88]

The trend of DCAA being aggressive in recommending penalties for unallowable costs has continued. The government bears the burden of proving that costs are expressly unallowable and that a penalty assessment was warranted.[89]

The FAR provides a definition of expressly unallowable: "Expressly unallowable cost means a particular item or type of cost which, under the express provisions of an applicable law, regulation, or contract, is specifically named and stated to be unallowable."[90] The definition was litigated before the U.S. Court of Appeals for the Federal Circuit in *Raytheon Co. v. Secretary of Defense*.[91] The Federal Circuit held that the salaries of employees who participate in lobbying costs were expressly unallowable under FAR 31.205-22 and therefore subject to penalties under FAR 42.709-1(a)(1).[92] According to the decision:

> Raytheon contends that an item of cost must be "mentioned or identified by name" to be expressly unallowable, and that the generic language of "costs associated with [lobbying activities]" in [FAR 31.205-22] is insufficient. We see no basis for such an interpretation.[93]

In short, based on *Raytheon*, contractors cannot protect themselves by arguing for a narrow definition of "expressly unallowable."

The FAR also has a provision for waiving the penalty when (1) the contractor withdraws its indirect cost proposal prior to the Government initiating an audit; (2) the amount of the unallowable cost is $10,000 or less; or (3) the contractor has an effective internal control system for accounting for unallowable costs and the submittal was inadvertent.[94] Anecdotally, waivers are rarely granted. An appeal of a contracting officer's decision not to grant a waiver has a low probability of success because the standard of review is limited to arbitrary, capricious, or an abuse of discretion.[95]

To summarize, if the disallowance of cost involves an expressly unallowable cost, the "ante" on the disallowance costs doubles. Thus, if the disallowance is unsustainable, there is even more reason to contest the disallowance. Yet another reason to contest an expressly unallowable cost is that the matter might be brought to the attention of the agency's suspension and debarment official.[96] In *Kirkpatrick v. White*,[97] a contractor that was developing software for an anti-satellite weapons program was charging lobbying expenses to a cost-reimbursement contract. The contractor asserted the lobbying was within contract's scope of work. The contractor's argument was not successful. The Army's suspension and debarment official suspended the contractor for improperly charging lobbying costs. Although the suspension was set aside in *Kirkpatrick v. White,* since suspension can be a death sentence to a government contractor, contesting a disallowance that is labeled as expressly unallowable deserves serious consideration.

In conclusion, the practice of many government contractors to acquiesce to a DCAA recommendation of dis-

allowance of costs may be "leaving money on the table." There is little or no expense to request that the contracting officer issue a final decision. There is no filing fee at the ASBCA, which allows the contractor a "*de novo*" review of the final decision. Rarely do DCAA or contracting officers consider their burden of proof when pursuing disallowance of costs. However, once the dispute enters the litigation phase, if the disallowance is unsustainable, government attorneys are generally more reasonable about settlement on terms favorable to the contractor. If the contractor must "go the distance" to litigate the matter and if the contractor meets the criteria of the Equal Access to Justice Act, then the contractor might be able to recover its litigation expenses for resisting the unsustainable disallowance.[98]

Guidelines

These *Guidelines* are intended to assist you in understanding how to contest DCAA cost disallowances. They are not, however, a substitute for professional representation in any specific situation.

1. Do not assume that a disallowance of cost that was initiated by DCAA is sustainable. DCAA justifies itself to Congress based on a ROI. This dynamic places pressure on auditors to "find something." Statistically, there is a significant disparity between the amount that DCAA recommends be disallowed and the amount the government usually recovers as a result of the recommended disallowance.

2. A disallowance of cost can be appealed to a board of contract appeal without any filing fee. The board uses a *de novo* standard of review, which means the case will be decided without any deference giving to the contracting officer's final decision. Boards have "small claims (expedited)" procedures where the amount in dispute is $50,000 or less.[99]

3. If the contractor properly builds the administrative record early in the dispute, a trial-like hearing may not be necessary, thus avoiding a considerable expense to resolve the dispute.[100] In building an administrative record, contractors should begin early by extensively rebutting DCAA's proposed findings when the contractor is provided with preliminary audit findings.[101] It is prudent to include affidavits in the rebuttal since they become part of the administrative record.[102] Similarly, under FAR 33.204, it is the government's policy to try to resolve all contractual controversies by mutual agreement at the contracting officer level. During this pre-final decision stage of the dispute, be persuasive as possible. Take the perspective that the correspondence with the contracting officer is likely to be reviewed by an administrative judge.

4. If the case is complicated, consider using a damage expert.[103]

5. It is true that the contractor has the burden of proof that its costs are reasonable. This burden, however, often is not difficult to meet. Conversely, if the disallowance of cost is based on a FAR provision or a contractual provision, it is the government that has the burden of providing that the disallowed cost falls within the FAR or a contractual provision.

6. Contractors have had success in challenging disallowance of costs where the government has not provided the notice required by the FAR or where the six-year statute of limitations serves as a time bar.[104] Do not overlook potential defenses such as lack of proper notice or the statute of limitations.

7. Failure to properly prove quantum (*e.g.*, how much a contractor is entitled to recover) is a common cause of failure for contractors during litigation. Frequently, a DCAA audit acknowledges that a contractor has incurred specific costs. Hence, a DCAA audit report has potential to assist a contractor in establishing quantum where the report acknowledges that claimed costs have been incurred.

8. Just because DCAA overlooked questioning a cost in the past is not a valid basis to contest DCAA questioning similar costs in future audits (unless government misconduct is the cause of the changed position).

ENDNOTES:

[1]Defense Contract Audit Agency, Report to Congress on FY 2020 Activities 5 (Mar. 31, 2021) [hereinafter DCAA FY 2020 Report], available at https://www.dcaa.mil/.

[2]DCAA FY 2020 Report at 5. One should not overlook that the "lion's share" of DCAA's "questioned costs" are attributed to forward pricing audits. DCAA FY 2020 Report at 7. Alleged savings to the government from forward pricing audits are often illusory since the pro-

posed effort is frequently amended during negotiations thus causing costs to morph.

[3]About DCAA, https://www.dcaa.mil/Media/Biographies/.

[4]The U.S. Comptroller General publishes Government Auditing Standards. As explained by the Comptroller General "These standards, commonly referred to as generally accepted government auditing standards (GAGAS), provide the foundation for government auditors to lead by example in the areas of independence, transparency, accountability, and quality through the audit process." U.S. Gov't Accountability Office, GAO-21-368G, Government Auditing Standards 1 (2018 rev.; technical update Apr. 2021), https://www.gao.gov/assets/gao-21-368g.pdf.

[5]Testimony of Mr. James Thomas, Assistant Vice President for Policy, National Defense Industrial Association on Evaluating the Defense Contract Auditing Process Before the H. Comm. on Armed Services Subcomm. on Oversight and Investigations, 115th Cong. 5–6 (Apr. 6, 2017), https://docs.house.gov/meetings/AS/AS06/20170406/105777/HHRG-115-AS06-Wstate-ThomasJ-20170406.pdf.

[6]Administrative Judge Robertory in AT&T Techs., Inc., DOTCAB No. 2007, 89-3 BCA ¶ 22,104, at n.19.

[7]See generally DCMA Manual 2201-04, Contract Audit Follow Up 14–15 (Mar. 2, 2019), https://www.dcma.mil/Portals/31/Documents/Policy/DCMA-MAN-2201-04.pdf, which states that "the ACO must . . . [d]ecide what position to take regarding each of the audit findings, whether to agree or disagree with DCAA."

[8]For example, U.S. Dep't of Defense Inspector General, Report No. DODIG-2019-070, Report on Evaluation of Defense Contract Management Agency Contracting Officer Actions on DoD Contractor Executive Compensation Questioned by the Defense Contract Audit Agency (Mar. 29, 2019), available at https://www.dodig.mil/reports.html/, found for 18 of 35 audit reports it selected for evaluation, DCMA contracting officers failed to document an adequate rationale for disagreeing with DCAA's questioned executive compensation. See also U.S. Dep't of Defense Inspector General, Report No. DODIG-2021-056, Evaluation of Defense Contract Management Agency Actions Taken on Defense Contract Audit Agency Report Findings Involving Two of the Largest Department of Defense Contractors (Feb. 26, 2021), available at https://www.dodig.mil/reports.html/, where the DODIG found DCMA contracting officers did not adequately explain why they disagreed with $97 million in questioned costs from eight DCAA incurred cost audit reports.

[9]DCAA Memorandum for Regional Directors, Audit Guidance 09-PAS-004(R), Audit Guidance on Reporting Significant/Sensitive Unsatisfactory Conditions Related to Actions of Government Officials (Mar. 13, 2009). This 2009 change is now captured in § 4-804, "Unsatisfactory Conditions (Mismanagement, Negligence, etc.) Related to Actions of Government Officials," of the DCAA Contract Audit Manual (DCAM), available at https://www.dcaa.mil/Guidance/CAM-Contract-Audit-Manual/.

[10]Disagreements between DCAA and administrative contracting officers (ACOs) commonly occur in the area of defective pricing. See generally DCAM § 4-304.3, "Postaward Audits of Certified Cost or Pricing Data for Possible Defective Pricing." To manage these disagreements, the Under Secretary of Defense issued a memo on September 30, 2020, entitled "Delegation of Defective Pricing Authority to the Defense Contract Management Agency," https://www.acq.osd.mil/dpap/policy/policyvault/USA002090-20-DPC.pdf.

[11]Manos, 4 No. 3 Cost, Pricing & Accounting Rep. ¶ 26(f) (May 2009).

[12]Pachter, "The Incredible Shrinking Contracting Officer," 39 Pub. Con. L.J. 705, 723–24 (Summer 2010) (footnotes omitted).

[13]This could be good fodder for deposing a contracting officer if the contracting officer is willing to acknowledge that the disallowance was against his or her better judgment. See generally Nash, "Contracting Officer Decisions: How Much Independence?" 27 No. 1 Nash & Cibinic Rep. ¶ 3 (Jan. 2013).

[14]For contractors that pursue a dispute challenging the disallowed cost, they may be able to recover the costs of litigation under the Equal Access to Justice Act (EAJA) if the contracting officer's final decision is not substantially justified. However, EAJA recoveries are limited to individuals whose net worth does not exceed $2 million and organizations whose net worth is no more than $7 million and with no more than 500 employees. 5 U.S.C.A. § 504; 28 U.S.C.A. § 2412. See Whalen, "Equal Access to Justice Act: Recent Developments," 02-05 Briefing Papers 1 (Apr. 2002).

[15]In fact, if a contracting officer's final decision is appealed, it is not entitled to any deference by either a court or a board of contract appeals. The Contract Disputes Act of 1978 provides that "[s]pecific findings of fact [by the contracting officer] are not be binding in any subsequent proceeding," 41 U.S.C.A. § 7103. According to the ASBCA: "When suit is brought following a contracting officer's decision, the findings of fact in that decision are not binding upon the parties and are not entitled to any deference. The contractor has the burden of proving the fundamental facts of liability and damages de novo." Lebolo-Watts Constructors 01 JV, LLC, ASBCA No. 59738, 19-1 BCA ¶ 37,301.

[16]DCAA FY 2020 Report at 7.

[17]The figure would be more credible if DCAA were to back out forward pricing sustentions. A point of reference might be the following findings by the Department of the Treasury Inspector General: "The [Internal Revenue Service (IRS)] paid nearly $5.7 million for DCAA audits for Fiscal Years 2005 through 2014 but derived minimal benefit from the audit results in terms of recoup-

ment of questioned costs. [The Treasury Inspector General for Tax Administration] reviewed 25 DCAA audit reports issued during this period, identifying questioned costs totaling more than $80 million, and determined that the IRS could only document about $545,000 in recoveries." Treasury Inspector General for Tax Administration, Resolution of Defense Contract Audit Agency Findings of Questioned Contractor Costs Need Significant Improvement (Mar. 15, 2017), https://www.treasury.gov/tigta/auditreports/2017reports/201710019fr.pdf. Applying the math, DCAA recoveries for the IRS for FYs 2005 to 2014 were .7% of questioned costs.

[18]FAR 52.242-1(a)(1).

[19] FAR 52.242-1(a)(2).

[20]DFARS subpt. 242.8.

[21]DFARS 242.803(b)(i)(D). As a practical matter, the DCAA Form 1 is rarely used because improvements in DCAA's contract audit follow up (CAFU) system tracks recommendation of disallowance of costs.

[22]DFARS 242.803(b)(ii)(B).

[23]DCAM § 6-902(g).

[24]DFARS 242.803(b)(i)(D).

[25]FAR 42.801(a). Anecdotally, contracting officers often perceive that this obligation has been fulfilled since DCAA's course of doing business is to allow contractors to comment on draft audit reports.

[26]FAR 42.801(a).

[27]FAR 52.242-1, "Notice of Intent To Disallow Costs."

[28]FAR 42.801(c).

[29]For example, see Fiber Materials, Inc., ASBCA No. 53616, 07-1 BCA ¶ 33,563 (government cost disallowance, via a unilateral rate determination, was a government claim).

[30]A claim is defined in FAR 2.101 as "a written demand or written assertion by one of the contracting parties seeing, as a matter of right, the payment of money in a sum certain."

[31]Lockheed Martin Integrated Sys., Inc., ASBCA No. 59508, 17-1 BCA ¶ 36,597, 59 GC ¶ 24.

[32]M. Maropakis Carpentry, Inc. v. United States., 609 F.3d 1323 (Fed. Cir. 2010), 52 GC ¶ 225.

[33]Greenland Contractors I/S, ASBCA No. 61113, et al., 19-1 BCA ¶ 37,259, 61 GC ¶ 78.

[34]For a primer on recovering costs, see Arnavas, "Government Contract Cost Recovery," 01-06 Briefing Papers 1 (May 2001).

[35]Taylor, "Burden of Proof in Government Contracts," 82-3 Briefing Papers 1, at n.22 (June 1982).

[36]Eyak Servs., LLC, ASBCA No. 58552 et al., 14-1 BCA ¶ 35,570 ("Because these appeals are from government claims, the government bears the burden of proof.").

[37]FAR 31.201-3(a). The origin of this FAR provision is 10 U.S.C.A. § 2324(j) for military agencies and 41 U.S.C.A. § 4309 for civilian agencies. The 10 U.S.C.A. § 2324(j) version states: "In a proceeding before the Armed Services Board of Contract Appeals, the United States Court of Federal Claims, or any other Federal court in which the reasonableness of indirect costs for which a contractor seeks reimbursement from the Department of Defense is in issue, the burden of proof shall be upon the contractor to establish that those costs are reasonable."

[38]FAR 31.201-3(a).

[39]FAR 31.201-3(b).

[40]FAR 31.201-3(b).

[41]Phoenix Data Sols. LLC, F/K/A Aetna Gov't Health Plans, ASBCA No. 60207, 18-1 BCA ¶ 37,164.

[42]Phoenix Data Sols. LLC, F/K/A Aetna Gov't Health Plans, ASBCA No. 60207, 18-1 BCA ¶ 37,164.

[43]Kellogg Brown & Root Servs., Inc., ASBCA No. 56358, 14-1 BCA ¶ 35,639, aff'd in part, vacated in part, rev'd in part, McHugh v. Kellogg Brown & Root Servs., 626 Fed. Appx. 974 (Fed. Cir. 2015).

[44]Kellogg Brown & Root Servs., Inc., ASBCA No. 56358, 14-1 BCA ¶ 35,639, aff'd in part, vacated in part, rev'd in part, McHugh v. Kellogg Brown & Root Servs., 626 Fed. Appx. 974 (Fed. Cir. 2015).

[45]Kellogg Brown & Root Servs., Inc., ASBCA No. 56358, 14-1 BCA ¶ 35,639, aff'd in part, vacated in part, rev'd in part, McHugh v. Kellogg Brown & Root Servs., 626 Fed. Appx. 974 (Fed. Cir. 2015).

[46]Kellogg Brown & Root Servs., Inc., ASBCA No. 56358, 14-1 BCA ¶ 35,639, aff'd in part, vacated in part, rev'd in part, McHugh v. Kellogg Brown & Root Servs., 626 Fed. Appx. 974 (Fed. Cir. 2015).

[47]See generally BearingPoint, Inc., ASBCA No. 55354, 09-2 BCA ¶ 34,289 ("After considering the testimony and exhibits, as well as the briefs of the parties, we conclude that BearingPoint has met its burden of proof regarding labor allocability.").

[48]A-T Sols., Inc., ASBCA No. 59338, 17-1 BCA ¶ 36,655, 59 GC ¶ 70.

[49]A-T Sols., Inc., ASBCA No. 59338, 17-1 BCA ¶ 36,655, 59 GC ¶ 70.

[50]Johnson Controls World Servs., Inc., ASBCA No. 46674 et al., 96-2 BCA ¶ 28,464.

[51]SRI Int'l, ASBCA No. 56353, 11-1 BCA ¶ 34,694.

[52]SRI Int'l, ASBCA No. 56353, 11-1 BCA ¶ 34,694.

[53]FAR 31.201-3(a).

[54]Parsons Evergreene, LLC, ASBCA No. 58634, 18-1 BCA ¶ 37,137, aff'd in part, rev'd in part, and remanded, Parsons Evergreene, LLC v. Sec'y of the Air Force, 968 F.3d 1359 (Fed. Cir. 2020), 62 GC ¶ 244. Administrative Judge Clarke issued the opinion of the board, with Administrative Judge Shackleford and Administrative Judge Prouty concurring in the result.

[55]Parsons Evergreene, LLC, ASBCA No. 58634, 18-1 BCA ¶ 37,137.

[56]Parsons Evergreene, LLC, ASBCA No. 58634, 18-1 BCA ¶ 37,137.

[57]CB&I Areva Mox Servs., LLC v. United States, 139 Fed. Cl. 725 (2018).

[58]CB&I Areva Mox Servs., LLC, 139 Fed. Cl. 725.

[59]See GSC Constr., Inc., ASBCA No. 59046, 16-1 BCA ¶ 36,437 ("Where a contractor fails to provide accounting or other evidence to substantiate its allegations of a quantum recovery, it has not met its burden of proof and is therefore not entitled to payment.").

[60]Fru-Con Constr. Corp., ASBCA No. 55197, 07-2 BCA ¶ 33,697.

[61]In BAE Sys. San Francisco Ship Repair, ASBCA No. 58809, 14-1 BCA ¶ 35,642, the DCAA report verified that $28,101 had been incurred. However, the contractor was unable to recover because the contractor did not meet its burden of proof as to reasonableness of the incurred cost. Still, the decision is useful to argue that a DCAA audit is a business record that can help establish that specific costs were actually incurred. Although the author is unaware of any precedents, it would appear that a contractor could also use an audit report that acknowledges quantum as a declaration against interest by the government.

[62]Hydrothermal Energy Corp. v. United States, 26 Cl. Ct. 1091, 1100 (1992).

[63]Hydrothermal Energy Corp., 26 Cl. Ct. at 1100.

[64]See 41 U.S.C.A. § 7103; Lebolo-Watts Constructors 01 JV, LLC, ASBCA No. 59738, 19-1 BCA ¶ 37,301.

[65]C.H. Hyperbarics, Inc., ASBCA No. 53077 et al., 04-1 BCA ¶ 32,568.

[66]C.H. Hyperbarics, Inc., ASBCA No. 53077 et al., 04-1 BCA ¶ 32,568.

[67]C.H. Hyperbarics, Inc., ASBCA No. 53077 et al., 04-1 BCA ¶ 32,568.

[68]C.H. Hyperbarics, Inc., ASBCA No. 53077 et al., 04-1 BCA ¶ 32,568.

[69]Tech. Sys., Inc., ASBCA No. 59577, 17-1 BCA ¶ 36,631, 59 GC ¶ 41.

[70]Tech. Sys., Inc., ASBCA No. 59577, 17-1 BCA ¶ 36,631, 59 GC ¶ 41.

[71]Tech. Sys., Inc., ASBCA No. 59577, 17-1 BCA ¶ 36,631, 59 GC ¶ 41.

[72]Tech. Sys., Inc., ASBCA No. 59577, 17-1 BCA ¶ 36,631, 59 GC ¶ 41.

[73]Tech. Sys., Inc., ASBCA No. 59577, 17-1 BCA ¶ 36,631, 59 GC ¶ 41. Professor Nash has opined that "course of dealing" is still a viable argument: "If you call it 'retroactive disallowance,' the disallowance is proper, but if you call it 'course of dealing,' it may be improper. All of this was fought out in Technology Systems, Inc." Nash, "Allowable Costs: Can the Government Retroactively Change Its Mind?," 31 Nash & Cibinic Rep. NL ¶ 25 (May 2017).

[74]See Samuels, "The Statute of Limitations Under the Contract Disputes Act: Recent Developments," 17-4 Briefing Papers 1 (Mar. 2017).

[75]41 U.S.C.A. § 7103(a)(4)(A).

[76]Laguna Constr. Co., ASBCA No. 58569, 14-1 BCA ¶ 35,618.

[77]Laguna Constr. Co., ASBCA No. 58569, 14-1 BCA ¶ 35,618.

[78]Laguna Constr. Co., ASBCA No. 58569, 14-1 BCA ¶ 35,618.

[79]Laguna Constr. Co., ASBCA No. 58569, 14-1 BCA ¶ 35,618.

[80] Laguna Constr. Co., ASBCA No. 58569, 14-1 BCA ¶ 35,618.

[81]Sparton DeLeon Springs, LLC, ASBCA No. 60416, 17-1 BCA ¶ 36,601, 59 GC ¶ 28.

[82]FAR 52.216-7(g).

[83]Sparton DeLeon Springs, LLC, ASBCA No. 60416, 17-1 BCA ¶ 36,601, 59 GC ¶ 28.

[84]Sparton DeLeon Springs, LLC, ASBCA No. 60416, 17-1 BCA ¶ 36,601, 59 GC ¶ 28.

[85]Department of Defense Authorization Act, 1986, Pub. L. No. 99-145, tit. IX, § 911, 99 Stat. 583, 682 (1985), which has been codified at 10 U.S.C.A. § 2324(b) through (d).

[86]FAR 42.709-2(a) (emphasis added).

[87]For a more thorough analysis on penalties for unallowable costs, see Lemmer & Masiello, "Penalties for Unallowable Costs," 99-06 Briefing Papers 1 (May 1999).

[88] Manos, "Penalties for Unallowable Costs," 8 Costs, Pricing & Accounting Rep. ¶ 8 (Sept. 2013). See also DCAA Memorandum for Regional Directors 21-PAC-001(R) (Jan. 21, 2021), which states: "This MRD revises Agency Policy for reporting penalty calculations. Audit reports will no longer include a calculation of recommended penalty amounts. As required by FAR 42.709-2, reports will continue to identify which reported questioned costs are subject to penalty and the level of penalty."

[89]Raytheon Co. v. Sec'y of Def., 940 F.3d 1310, 1311 (Fed. Cir. 2019), 61 GC ¶ 320.

[90]FAR 31.001.

[91]Raytheon Co., 940 F.3d 1310.

[92]Raytheon Co., 940 F.3d 1310.

[93] Raytheon Co., 940 F.3d at 1312.

[94] FAR 42.709-6, "Waiver of the penalty."

[95]Raytheon Co., ASBCA No. 57743, 17-1 BCA ¶ 36,724 ("Thus, the CO's discretion is limited. Moreover, while the CO's satisfaction is an element of his analysis, it is subject to an abuse of discretion or arbitrary or capricious standard.").

[96]The grounds for suspension could be FAR 9.407-2(a)(8)—a failure by a principal to disclose a violation of the False Claims Act. Expressly unallowable violations of FAR Part 31 have been asserted to constitute false claims. See generally United States v. Savannah River Nuclear Sols., LLC, 2016 WL 7104823 (D.S.C. Dec. 6, 2016) involving a False Claims Act case brought by the Department of Justice. The U.S. District Court granted the defendant contractor's motion to refer the underlying cost allowability issue to the Civilian Board of Contract Appeals for an advisory opinion.

[97]Kirkpatrick v. White, 351 F. Supp. 2d 1261 (N.D. Ala. 2004).

[98]EAJA recoveries are limited to individuals whose net worth does not exceed $2 million and organizations whose net worth is no more than $7 million and with no more than 500 employees. 5 U.S.C.A. § 504; 28 U.S.C.A. § 2412. See Whalen, "Equal Access to Justice Act: Recent Developments," 02-05 Briefing Papers 1 (Apr. 2002).

[99]See generally ASBCA Rule 12, which is typical of board of contract appeals rules for a small claims procedure. The Rules of the ASBCA are published at 48 C.F.R. ch. 2, app. A, and available at https://www.asbca.mil/Rules/rules.html.

[100]See generally ASBCA Rule 11, which is typical of board of contract appeals rules allowing cases to be resolved without hearings.

[101]See DCAM § 4-303.1(b): "The auditor should discuss preliminary audit findings (e.g., potential system deficiencies, potential FAR/[Cost Accounting Standards] noncompliances, etc.) with the contractor to ensure conclusions are based on a complete understanding of all pertinent facts."

[102]See DCAM § 4-303.1(g): "Document interim discussions in the working papers, including date, participants' names and titles, and primary discussion points." See also ASBCA Rule 4, which is typical of board of contract appeals rules as to what becomes part of the administrative record.

[103]Anderson, "Effective Construction Claim Resolution: Understanding DCAA," 43 Pub. Cont. L.J. 165, 194 (Winter 2014).

[104]A contributor to the frequency in which the statute of limitations has come into play has been DCAA being remiss in not timely performing audits on final indirect cost rate proposals. In its FY 2017 Annual Report to Congress, DCAA reported that it continued to prioritize incurred cost audits by finishing the fiscal year with 6,786 incurred cost years closed. According to the FY 2017 Report, DCAA reduced the incurred cost audit backlog from 21,000 during FY 2011 to 2,860 as of the end of FY 2017.

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BRIEFING PAPERS