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The Lightning Learning Version:

Government Contracts Compliance – Time Charging

HOSTED BY: Federal Publications Seminars
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Speakers



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Topics

1 Offenses & Penalties

2 Compliance Programs & Mandatory Disclosure

3 Setting Up An Effective Ethics & Compliance Program

4 Handling Procurement Information

5 Influencing Government Action

6 Personal Conflicts of Interest

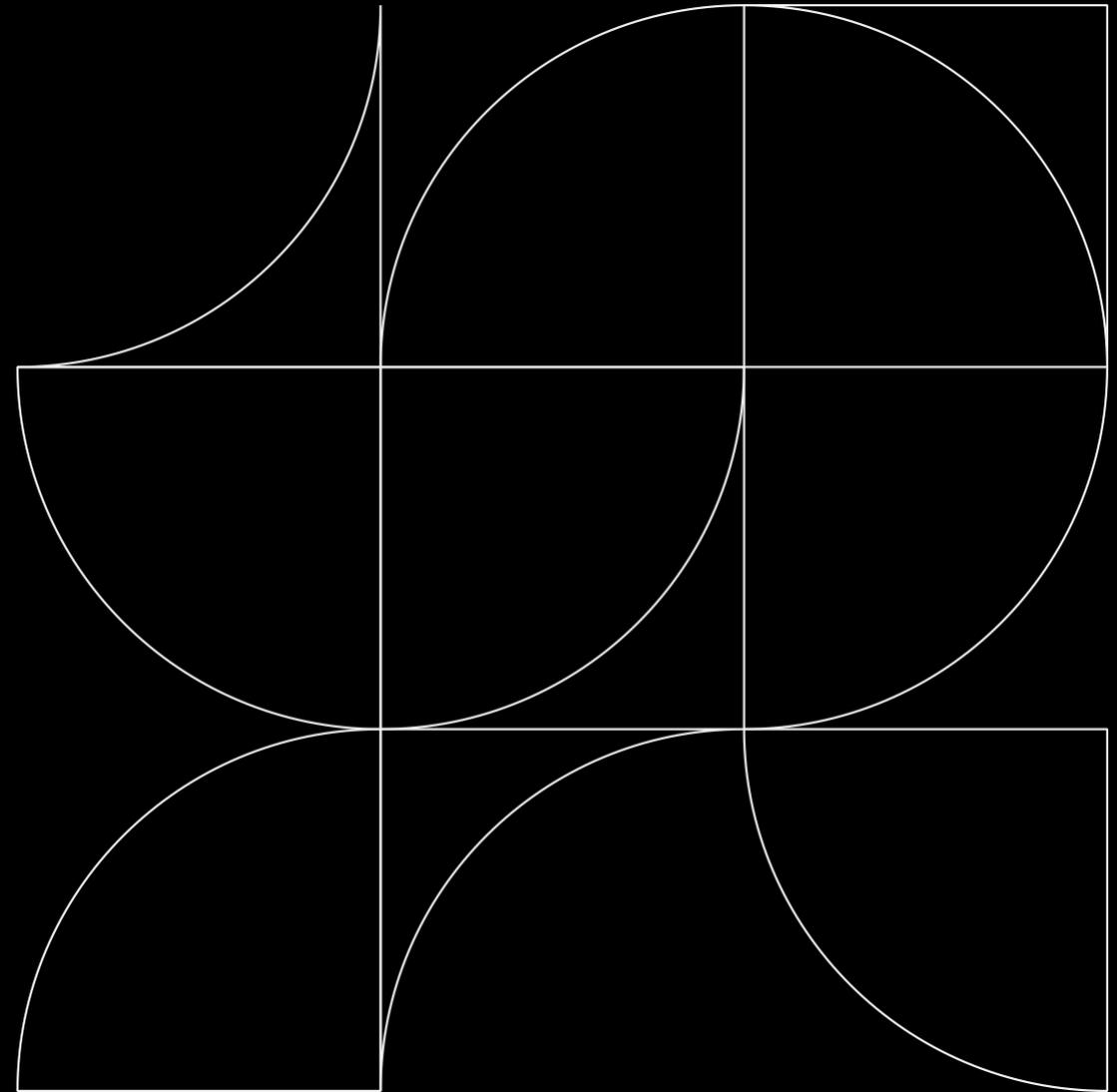
7 Organizational Conflicts of Interest

8 Defective Pricing

9 Time Charging

10 Contract Claims

Time Charging



Objectives

Avoiding Fraud in Labor Billings

- What checks and balances can contractors implement to deter manipulation of labor data and ensure accuracy of labor costs submitted?

Detecting and Rectifying Fraud in Labor Billings

- What programs are available for monitoring fraud in time-keeping practices and for increasing accountability when unacceptable billing practices occur?

Surviving Government Scrutiny

- What evidence can the contractor offer government inspectors general and audit agencies that they took reasonable measures to deter, monitor, and timely report fraud?

OVERVIEW

LEGAL DUTIES

- Sources of legal duty for truthful reporting of labor practices and labor hours.
- Overbilling and mischarging scenarios in fixed-price and cost-reimbursable contracts.
- Case law and consequences of mischarging the Government.

TIME-CHARGING POLICIES

- Comprehensive and lucid written policy drafted with input from management, accounting, and legal.
- Policies and procedures regarding time-keeping, access to cost codes, approval of time-cards, and transferring of time.
- Repercussions for violations of time-charging policy.

COMPLIANCE MEASURES

- Scope and severity of compliance measures may depend on company size, culture, and available resources.
- Selecting the best electronic labor data systems for tracking labor costs.
- Implementing an effective floor check/attribute test.

Legal Duties: FAR Part 31

Federal Acquisition Regulations (FAR) (Part 31)

Key Concepts

- FAR Part 31 requires labor costs to be “allowable,” meaning labor hours must be reasonable, allocable, and consistent with the limitations in the contract.
- Reasonable = labor hours were incurred by a prudent person conducting similar activities in competitive business. E.g., excessive time charging.
- Allocable = labor hours are traceable to specific activities relating to the scope of work in the contract. E.g., allocation to other contracts or manipulation of cost codes.
- Contractual Limitations = labor must be billed at agreed-upon rates or not-to-exceed costs, or other limitations on salary, benefits, etc.

Legal Duties: TINA

Key Concepts

Truthful Cost or Pricing Data Act, 41 U.S.C. §§ 3501, *et seq.*

- Formerly known as Truth in Negotiations Act and commonly still referred to by the acronym “TINA.”
- Generally requires contractors to certify “accurate, complete, and current cost or pricing data” when negotiating contracts or modifications in excess of \$2 million.
- Pricing data includes not just estimated labor hours or labor rates, but also all factual representations in a technical proposal concerning labor codes, assignments, labor tracking, compliance practices, etc.
- False statement regarding labor data or recording practices can warrant reduction of equitable adjustment and potential civil and criminal penalties.

Legal Duties: Contract Disputes Act

Key Concepts

**Contract Disputes Act, 41
U.S.C. § 7103(b).**

- All claims over \$100,000 (or multiple claims aggregating over \$100,000) must include certification stating that the supporting data submitted with a claim are “accurate and complete to the best of the contractor’s knowledge.”
- CDA fraud provision (Section 7103(c)) states that contractor may forfeit part of claim or be liable for Government costs of reviewing claim where “attributable to a misrepresentation of fact or fraud by the Contractor.”
- Separate statute—Special Forfeiture of Claims Statute—may provide for complete forfeiture of an entire claim where contractor “corruptly practices or attempts to practice fraud against the United States.” 28 U.S.C. § 2514.

Legal Duties: Motives for Mischarging

Labor-Mischarging By Misallocation

Four Common Misallocation Scenarios

1. Fixed Price to Cost Reimbursable – contractor inflates costs and profit on CR contract and avoids loss on FP contract by transferring hours from FP to CR.
2. Cost-Reimbursable to Fixed Price – contractor expedites payment on FP contract by shifting hours from CR to FP. May also be to avoid GMP or labor allowance.
3. Cost-Reimbursable to Cost-Reimbursable misdirection of labor hours to a contract carrying higher negotiated labor rates. May also be to avoid GMP or labor allowance.
4. Fixed Price to Fixed Price – accelerates payment on one contract while avoiding cost overruns on the other.

Legal Duties: Case Law

United States v. Systems Architects, Inc., 757 F.2d 373 (D Mass. 1985)

Facts: SAI had various government contracts for professional architecture services under cost-reimbursable contracts. SAI maintained an overhead account over which it spread out all overhead on public projects. DOJ charged both SAI and its two owners with criminal and civil False Claims Act charges.

Findings: the trial court found that the evidence supported findings of the following misconduct:

- ➔ Alteration of employees' timesheets by management
- ➔ Mis-allocation of hours from one project to another;
- ➔ Mis-allocation of direct work hours to overhead pool;
- ➔ Tampering with corporate accounting ledgers;
- ➔ Directing employees to overstate hours.

Holding: both the company and the individual owners were convicted on 11 counts of criminal false claims, sentenced to 1 year in prison, community service, probation, and ordered to pay \$3.5 million in restitution to the Government, on top of the FCA penalties.

Written Policy: Drafting a Time-Charging Policy

- Every company working with the Government should have a written time-charging policy that is a comprehensive statement of company protocols, time-charging practices, and disciplinary measures applicable to time-charging violations.
- Scope and breadth of policy will depend somewhat on corporate culture and resources. Balancing risks of fraud and investigation with expenditure of preventing, monitoring, and reporting fraudulent labor billing. Most policies around 8-10 pages.
- Input from legal is valuable and lawyers usually draft, but policy should read easily enough that the average person could read it, understand it, and be able to follow its terms in practice.

Written Policy: Issues to Cover

Key Issues to Cover in a Labor-Charging Policy

Cost Codes

- How are cost codes assigned to projects or agencies?
- Who is responsible for assigning cost codes to time-keepers?
- What are the cost codes for vacation time? PTO? Worker's Comp?
- What are the relevant overhead codes and who can access them?
- Is there a separate code for authorized overtime work?
- When does a cost code expire?

Time Entry and Approval

- How detailed is the information entered for each time entry?
- How often are employees required to enter time?
- How often are time entries reviewed, and by whom?
- What issues should managers be spotting for (consistency, duplication, nexus to assignment, clerical errors)?

Written Policy: Issues to Cover

Key Issues to Cover in a Labor-Charging Policy

Time Transfer Policy

- Transfer of labor time is a serious red flag and should be rare.
- What is the deadline for transferring time from one project to another project, or to overhead?
- Who is authorized to initiate a time transfer?
- Who needs to sign off on a time transfer, and how is that done?
- Are there special procedures for transferring from fixed-price contract to a cost-reimbursable contract?

Remote Work Policy

- Increased scrutiny during pandemic and most common form of time-charging manipulation and fraud.
- Who is eligible to work from home full time? Part time?
- Are there time limits on how long an individual may work from home?
- What are the protocols for authorizing and re-authorizing remote?
- What is the policy for VPN login for remote workers?
- Do remote workers have independent or additional record-keeping requirements or requirements for periodic meetings?

Written Policy: Issues to Cover

Key Issues to Cover in a Labor-Charging Policy

Repercussions

- Time-charging policy should be clear that compliance is mandatory, not voluntary.
- What disciplinary action corresponds to a violation of the time-charging policy (additional training, suspension, PIP, pay docking, termination?)
- Is there a warning system, three strikes policy, etc.?
- How are violations of the time-charging policy documented for the violating employee?
- What are the repercussions for management that fails in their duty to review and approve time entries?

Accounting Issues

- Accounting department should participate in drafting and providing feedback on time-charging policy to shed light on GAAP and company accounting practices.
- Cost Accounting Standards (CAS) Disclosure Statement Form CASB DS-1 gives a good list of issues that auditing agencies consider when auditing labor issues.

Written Policy: Other Issues to Consider

Other Issues to Consider

Dissemination – time-charging policy is only worth something if it is distributed to all employees. Electronic distribution ensures there is a record of policy having been provided to covered employees.

Updates – good practice to update the time-charging policy at least every 2 years. Shows the Government that you are staying up to date with accounting and time-keeping practices.

Consulting/Third-Party Review – not imperative, but also may aid defense of allegations of intentional fraud to have independent consultant review policy and train employees.

Compliance Initiatives

The Three T's

Technology – identifying the proper software and integrating it into your IT system.

Training – ensuring that employees not only receive the policy, but are trained and re-trained on it on a periodic basis and feel free to ask questions about the policy.

Testing – implementing measures to monitor time-keeping and billing practices, detect and deter fraud, and report to the Government where appropriate.

Compliance Initiatives

Technology

No legal bar on hand-written record-keeping, but very rare circa 2022. Virtually all time-keeping done electronically. No specific system required by FAR, but time-keeping systems acknowledged by DCCA Manual include: Clockify, Timerack, SpringAhead, Quickbooks.

Training

Good practice is to hold a 1-2 hour training session during which HR discusses the key practices under the time-charging policy. Employees to acknowledge receipt of policy and training, which can be used as evidence to defray intentional fraud allegation. Periodic re-training every 6-12 months can be worth the cost of fraud deterrence. Avenue for posing questions to HR, potential on an anonymous basis.

Testing

Two internal audit programs most commonly used by DCAA are the Floor Check and the Attribute Test. Accounting department heads the effort, which is typically semi-annual.

Floor Check = physical observation of how employees spend and track time.

Attribute Test = statistical sampling of time-cards within a designated period.

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