

Cost Accounting and Cost Allowability

Many contracts with the federal government are subject to special cost accounting and allowability rules under the Federal Acquisition Regulation (FAR) and the Cost Accounting Standards (CAS). Understanding the rules for determining the allowability and allocability of costs to government contracts is critical to maximizing legitimate cost recovery and complying with the myriad requirements imposed by these regulations and standards. Government contractors are also subject to increasingly rigorous and comprehensive audits of their accounting practices and policies, particularly by the Defense Contract Audit Agency (DCAA).

Our Government Contracts attorneys are experienced in cost accounting matters and are routinely called upon by clients of all sizes to determine how best to respond to audit findings and concerns, and to resolve cost accounting and related disputes before litigation occurs.

When litigation is necessary, we routinely represent contractors in cases spanning all types of cost-related issues. Representative results include:

- Successfully obtained summary judgment in an appeal of a government claim seeking penalties on the ground that the contractor's executive compensation costs exceeded the statutory cap that the Office of Federal Procurement Policy had announced for the prior fiscal year and were therefore expressly unallowable. *Ology Bioservices, Inc.*, ASBCA No. 62633, May 20, 2021.
- Successfully represented contractor seeking to recover legal costs for its defense against third-party claims relating to its contract to provide linguist services to the Army. *Engility, LLC*, ASBCA No. 61281, Aug 19, 2019, 19-1 BCA ¶ 37,430.
- Successfully obtained summary judgment based on the Contract Disputes Act's (CDA) statute of limitations in an appeal of a government claim demanding repayment of direct costs. The Board rejected the Government's argument that its right to audit under the Allowable Cost and Payment clause effectively tolls the CDA's six-year statute of limitations. *Sparton DeLeon Springs, LLC*, ASBCA No. 60416, Dec. 28, 2016, 17-1 BCA ¶ 36,601.
- Successfully represented contractor in its appeal of a government claim for allegedly unreasonable executive compensation. *F. Taylor, Inc.*, ASBCA No. 56105, Jan. 18, 2012, 12-1 BCA ¶ 34,920.
- Successfully represented major defense contractor in a long-running appeal before the U.S. Court of Federal Claims (COFC) of the denial of claims to recover more than \$400 million in costs related to the restructuring of the Evolved Expendable Launch Vehicle program. The matter involved a voluminous record with dozens of witnesses and hundreds of potential trial exhibits addressing complex accounting

issues. Before trial, the parties engaged in a multi-day mediation and reached a favorable settlement of more than \$300 million.

Additional representative experience includes:

- Advising clients and providing contractor training on the intricacies of the FAR cost principles and CAS, including all aspects of cost allowability and allocability, CAS Disclosure Statements, changes in disclosed accounting practices, and incurred cost submissions.
- Representing clients in connection with DCAA audits and audits by other federal agencies and Inspectors General, including preparing responses to auditor questions, findings, document requests, and audit reports, and advising clients on DCAA requests for contractor internal audit reports.
- Advising clients on compliance with Department of Defense business systems rules, Defense Contract Management Agency (DCMA) Contractor Purchasing System Reviews, and DCAA business systems audits.
- Representing clients in connection with government and contractor claims relating to disallowed costs, CAS noncompliance, and accounting change cost impacts, including responding to and negotiating closure or settlement of government demands for payment, and litigating government and contractor cost claims at the boards of contract appeals.
- Preparing termination settlement proposals in convenience terminations and counseling clients on the special cost accounting rules related to terminations.
- Assisting clients in responding to allegations of defective cost or pricing data and advising clients regarding the Truthful Cost or Pricing Data Act (formerly the Truth in Negotiations Act (TINA)).
- Analyzing cost accounting issues that may arise in other contexts, such as allegations under the False Claims Act (FCA), debarment proceedings, and bid protests.

Contact Us

Tracye Winfrey Howard
202.719.7452 | twhoward@wiley.law