

ASBCA Throws-Out DCAA's Methodology for Determining Allowable Executive Compensation!

Written by Nick Sanders

Wednesday, 01 February 2012 00:00

On January 18, 2012, the Armed Services Board of Contract Appeals (ASBCA) confirmed what many in the profession had long suspected—finding that DCAA's methodology for evaluating the reasonableness (and allowability) of the compensation paid to executives was “fatally flawed statistically” and “therefore unreasonable”.

Here's the [full decision](#) , for your review.

To summarize, J.F. Taylor, Inc. (JFT) is a privately held government contractor, who has been performing for the DOD for more than 20 years, to glowing CPARS reviews. DCAA's “Mid-Atlantic Compensation Team” (MACT) reviewed the compensation paid to its executives during audits of the company's incurred cost submissions for its Fiscal Years 2002 through 2005, and questioned a total of \$849,000. DCAA recalculated JFT's submitted rates based on its questioned costs, and the cognizant ACO used those rates to unilaterally determine JFT's final indirect rates for the four years in question. The ACO demanded that JFT submit adjustment vouchers based on the unilaterally determined final indirect rates—and demanded refunds of the “overpayments” of roughly \$620,000 made to the company via payment of its interim vouchers (of which about \$29,000 was related to a contract not administered by DCMA).

A dispute ensued.

The government's witnesses included the MACT Supervisory Auditor and Paul Dorf, Managing Director of Compensation Resources. Mr. Dorf did not fare well. We will not heap derision on the problems with his resume and his claimed P.h.D. We will simply quote the Judge: “We give little or no weight to the testimony of Dorf.”

JFT's expert witness was Jimmy J. Jackson, who is an expert in statistics and quantitative analysis. Jackson found “numerous” “fundamental flaws” in DCAA's methodology, which (in his expert opinion) rendered DCAA's findings “significantly overstated and speculative.”

Jackson found nine separate errors in DCAA's methodology, including—

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Ignored data dispersion/Use of arbitrary “range of reasonableness” allowance

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Ignored differences in survey sizes

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Inconsistent reliance on surveys

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Inconsistent use of 50% percentile vs. mean

The government argued that DCAA's methodology for determining reasonable compensation was "sufficiently valid to serve as the basis for the ACO's decision". Unfortunately for its case, the Judge wrote—

The government made no effort at the hearing or in its brief, to respond to [Jackson's] statistical arguments ... and thus we are left with un rebutted evidence that the methodology used by DCAA was fatally flawed statistically and therefore unreasonable. Moreover, the government effort to support its own methodology was supplanted by an expert witness of questionable judgment. Consequently, we conclude that there are statistical flaws in the government methodology for determining reasonable compensation and that the computations performed by Jackson to overcome these flaws are reasonable. ... JFT has met its burden of showing its executive compensation costs were reasonable, except for [roughly \$42,000].

While the government may still appeal this decision, in the meantime it's a great victory for a relatively small company who took on DCAA and won. Contractors facing significant compensation disallowances are advised to scrutinize this case closely, and evaluate whether the flaws found by Jimmy Jackson are present in their individual disputes.

JFT was represented by the well-respected firm of Wiley Rein. Here's [a link](#) to a summary of the case from the Wiley Rein attorneys who handled the case.