Written by Nick Sanders
Wednesday, 09 August 2023 19:17

We've all been there. We've all been in meetings where our management team rolls their eyes and taps their fingers with impatience as we try—once again—to explain some CAS requirement that prevents them from doing what they want to do.

"But CAS 402," we say. Or we try to. Because talking about CAS to non-accountants (especially engineers) is like banging your head against a wall. Afterwards, you wonder why you even bother. Still, they pay us, right? They pay us and we try to deliver our best advice. We try to add value.

But they so very rarely listen to us.

How do we live with the frustration?

Well, speaking for myself, I repeat over and over that I'm an *advisor.* I give advice. I give recommendations. I give recommendations to the people that have the authority to act on my recommendations, or not. My job is to advise them; what they do with that advice is on their shoulders, not mine.

Even more recently, I have redefined my job function. I used to say my job is risk management and litigation avoidance. Which is true! But I can't manage risks if I don't have the authority to do so—right? So, instead, now I define my job as "I read stuff almost nobody else in America wants to read. I read books, articles, and court cases on topics that would put 99% of you to sleep. I read this stuff; then I tell you what it says. That's what I do. And you pay me well for that job."

You pay me well for reading arcane quasi-legal accounting stuff and then advising you about the best course of action based on what I read. I advise you and I make recommendations, all grounded in what I've read and thought about. I do a lot of critical thinking. All that informs my recommendations, which management too often ignores because it keeps them from doing what they want to do. They roll their eyes and (metaphorically) pat me on the top of my head; they tell me that they'll accept the risks involved.

Which is a weird position because almost none of them have the knowledge or expertise to actually assess the risks involved—the probability of occurrence or the likely consequences if the risk materializes. They don't really know, but they're willing to accept the risk.

(Note: we have discussed risk management extensively on this website. Do a keyword search and you'll see a plethora of articles on the topic. Not that anyone ever acts on those articles. *Sigh.*
Writing blog articles that are never acted upon is not unlike giving advice that is ignored. But I digress. Forgive me.)

Telling us they accept the risk is fine. That's management's job, I guess. They pay us so well to ignore so much of what we tell them. My paychecks all clear and I assume yours do as well. So … what's the issue here, really?

The issue is that sometimes—just sometimes—we are right in a big way. The risk materializes and the consequences are devastating. We get to be right, even though we would much rather not have been.

Today we are discussing the recent False Claims **settlement** by Booz Allen Hamilton. We are going to discuss details of the Settlement Agreement, which is found via a link to a .pdf file at the bottom of the DoJ press release.

It's been a decade since we last mentioned Booz Allen Hamilton (Booz Allen) on this site. In 2012, the company had a local business unit suspended by the Air Force for improper conduct. Okay; it was a few bad apples—or so we thought. But if you read subsequent articles on the company, articles that related a similar pattern of improper conduct at yet another business unit, we started to wonder how many bad apples it took to spoil the entire company (ethically speaking).

Coincidentally, at about that time (starting in 2011), Booz Allen started to engage in a pattern of alleged accounting manipulations that ended in one of the Top 5 largest FCA settlements of which we've ever heard. $377,453,150. Call it $377.5 Million. With $69.8 Million going to the *qui*

tam
relator (whistleblower).

How do you like them apples now?

To be clear, Booz Allen denied all allegations; the Settlement Agreement expressly stated that the company was not admitting any guilt. Still … $377.5 Million. That's a *heckuva* lot of money to fork over for something one denies ever happened.

What did Booz Allen do that was so heinous? It violated the requirements of the Cost Accounting Standards.

You know, the stuff that only a few of us ever read? Yeah, *those* Cost Accounting Standards.

According to the Department of Justice and the Settlement Agreement, Booz Allen (allegedly) engaged in the following practices:

1.

Contrary to the Cost Accounting Standards ("CAS") and the Federal Acquisition Regulation ("FAR"), Booz Allen *allocated indirect costs that supported Booz Allen's commercial and/or international businesses to Government contracts and subcontracts that should have been allocated to commercial and/or international contracts or should have been treated as unallowable costs,* including but not limited to: costs identifiable as commercial and/or international costs using the criteria reflected in the spreadsheet exchanged between the parties as of the Effective Date of this Agreement, burdens applied to such costs (including but not limited to G&A, fringe, and intermediate cost allocations), and directly associated costs (as that term is defined in FAR 31.001 and FAR 31.201-6).

1.

Booz Allen created and maintained indirect cost pools that included commingled costs

supporting both (i) commercial and/or international contracts and (ii) Government contracts and subcontracts, *and by virtue of such commingling allocated indirect costs disproportionately between commercial and/or international contracts and Government contracts and subcontracts,* and thus were not in compliance with the CAS or FAR, including but not limited to the homogeneity and proportionality requirements in CAS 418 and the allocability requirements in FAR 31.201-4.

1.

Booz Allen used costs and cost rates that included indirect costs supporting Booz Allen's commercial and/or international businesses to seek inflated payments and reimbursements under its Government contracts and subcontracts, and *failed to disclose current, accurate, and complete cost or pricing data related to such costs* resulting in inflated prices for Government contracts and subcontracts.

1.

Booz Allen *submitted inaccurate and/or misleading statements (including but not limited to in its CAS Disclosure Statements)* regarding the methods by which it accounted for, and the nature of, indirect costs supporting its commercial and/or international businesses.

1.

Booz Allen *shifted employees and work relating to its commercial and/or international businesses between Responsibility Centers in violation of the requirements of the FAR and CAS*, thereby creating and maintaining indirect cost pools that were not in compliance with FAR or CAS resulting in misallocations of indirect costs to government contracts.

(Emphasis added, of course.)

The DoJ summarized the foregoing allegations as follows—

… from approximately 2011 to 2021, Booz Allen improperly charged costs to its government contracts and subcontracts that instead should have been billed to its commercial and international contracts. In particular, the government alleged that Booz Allen improperly allocated indirect costs associated with its commercial and international business to its government contracts and subcontracts that either had no relationship to those contracts and subcontracts or were allocated to those contracts and subcontracts in disproportionate amounts. The government further alleged that Booz Allen failed to disclose to the government the methods by which it accounted for costs supporting its commercial and international businesses. As a result, Booz Allen obtained reimbursement from the government for the costs of commercial activities that provided no benefit to the United States.

Okay. There's a lot to unpack in the allegations. There are violations of multiple FAR cost principles. There is a violation of CAS 418. There are allegations that the Disclosure Statement was "inaccurate and/or misleading" and that the company violated the Truthful Cost or Pricing Data Act ("TINA") by failing to disclose the truth during price negotiations. So … yeah. Not so great from a government contract cost accounting and compliance viewpoint.

Reminder: the cost principle at 31.201-4 ("Allocability") requires that indirect costs other than G&A expenses must be allocated to final cost objectives (let's call them "contracts" but they need not be) "in reasonable proportion to the benefits received."

Further reminder: CAS 418 ("Allocation of Direct and Indirect Costs") requires (among other things) that "indirect costs shall be accumulated in pools which are homogeneous" and that "pooled costs shall be allocated to cost objectives in reasonable proportion to the beneficial or causal relationship of the pooled costs to cost objectives …." There's a lot more to that Standard, but you can read the rest yourself. You also may want to type "Sikorsky" into this site's keyword search feature to see how Sikorsky dealt with an allegation of non-compliance with the requirements of CAS 418. There was also a relevant legal decision or two in the matter of *AMC General, LLC.* I mean, only if you want to put in the work. Unless you do this for a living, you probably won't want to.

Of course, the requirements of CAS 418 only apply to fully CAS-covered contracts. But for the other contracts, the contracts that are not subject to Full CAS Coverage, see the requirements of FAR 31.201-4.

The point is that, while CAS 418 expressly requires indirect cost pool homogeneity, FAR 31.201-4 basically requires the same thing.

So, what is “homogeneity?”

According to CAS 418-50(b)—

(1) An indirect cost pool is homogeneous if each significant activity whose costs are included therein has the same or a similar beneficial or causal relationship to cost objectives as the other activities whose costs are included in the cost pool. It is also homogeneous if the allocation of the costs of the activities included in the cost pool result in an allocation to cost objectives which is not materially different from the allocation that would result if the costs of the activities were allocated separately.

(2) An indirect cost pool is not homogeneous if the costs of all significant activities in the cost pool do not have the same or a similar beneficial or causal relationship to cost objectives and, if the costs were allocated separately, the resulting allocation would be materially different. The determination of materiality shall be made using the criteria provided in 9903.305.

As has been pointed out by people wiser than I am, the CAS 418 homogeneity rules establish two criteria: (1) each significant activity in the pool has the same or a similar beneficial or causal relationship to the cost objectives in the allocation base, and (2) allocation of the costs of the activities in the pool is not materially different than would be the case if those costs were disaggregated and allocated to the cost objectives in the allocation base separately. Compliance with *either* of the two criteria is sufficient to lead to a determination that the indirect cost pool is homogeneous.

As Terry L. Albertson and Linda S. Bruggeman, attorneys in the Government Contracts Practice Group of Crowell & Moring LLP, wrote in 2006: “… to establish that a pool is not homogeneous, the Government must prove *both* that the activities in the pool do not have a similar relationship to the activities in the base *and* that a different allocation of costs would produce a materially different result.” (Emphasis in original.)

Apparently, given the willingness of Booz Allen to settle the allegations made by the relator and the Government, somebody was prepared to make just that showing.

So, the next time somebody in management rolls their eyes or taps their fingers when you try to explain CAS or FAR requirements to them, or the next time somebody with authority tells you they are willing to “accept the risk,” then remember this settlement. Ask them if they truly understand the risks, including the probabilities and possible consequences.

Then if they nod, pat you on your head, and send you back to your office that’s filled with compliance-related books, you can go with pride, secure in the knowledge that you have done your best.