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Government Contracting Alert

April 2016

Overview

Firm Fixed Price, Time and Materials, and Labor Hour Expired Contracts

The Internal Revenue Service (IRS), Office of Procurement, has just published a notice giving the industry an opportunity to comment on proposed closeout procedures prior to implementation. The IRS would like to utilize a bulk closeout approach for Firm Fixed Price (FFP), Time and Materials (T&M)/Labor Hour (LH) contract actions whose period of performance ended on or before September 30, 2015.

The IRS currently has about 24,000 actions that have been identified for closeout. Unfortunately, the IRS does not have the internal manpower to close out these actions; DCAA has been mandated not to perform audits for civilian agencies; and the use of third party vendors to process these closeouts has not reduced the backlog to a level sufficient for the IRS. Therefore, the IRS is proposing to follow the approach listed in its Memorandum for Public Release, bite the bullet, and automatically close out contracts unless vendors takes exception within a timely manner.

It is interesting that the IRS includes T&M contracts but does not differentiate between T&M contracts with no “material” component and those with a “material” component. Do they expect to use the bulk closeout approach if the “material” portion of the expired T&M contract is reimbursed based on final audited indirect rates? This memorandum does not seem to address this question unless they are including them as part of the Cost Reimbursement (CR) Actions. Seems like a good question to ask the IRS.

Cost Reimbursement Expired Contracts

Cost Reimbursement expired contracts will not be subject to the bulk closeout procedures. The IRS is exploring several options on how to deal with closing out Cost Reimbursement contracts/task orders. One of the options is to use third party audit vendors to perform the audits since DCAA cannot do them.

In the interim, the IRS is implementing new procedures that are similar to Department of Defense (DoD) past practices. One of the new procedures is that the IRS will wave audits for contracts less than \$25 million when justified based on a risk assessment by IRS.

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Hiring and best practices

The IRS has been given the authority to hire employees in FY2016 to perform future closeout actions. The IRS will be reviewing their close out processes and streamlining them so that more expired contracts may be closed out.

This means that contractors need to make sure that they have all of the proper documentation to support contract closeouts. They won't have the current luxury of the bulk closeout approach in the future.

Conclusions and Recommendations

The IRS' endeavor to close out expired contracts is commendable. It benefits both the Government and the contractors. The cost and manpower required to perform contract closeouts on both sides are significant. It is refreshing to see that the IRS, as a civilian agency, is taking such steps to deal with this challenge. Hopefully, other civilian agencies will follow suit. I do wonder if other civilian agencies do follow suit, will there be any uproar from the politicians as to lost dollars.

This is a great opportunity for contractors to review their current closeout processes, improve/streamline their processes, and ensure that data is maintained in such a manner that when it comes time to close out contracts/task orders, all of the relevant data is available at the contractor's finger tips. People come and go and it seems that records do too. Locating historical documents seems to be a challenge for many contractors due to the sheer volume of data. Electronically store closeout data; ensure that software applications where the data resides are operable until audit is completed (especially timesheets); have someone internally be responsible for knowing where the data is stored; and ensure that when that person leaves the company, the baton is passed on to the next person who knows where this data is stored.

If you have any questions, please don't hesitate to contact:

Sabria Biberaj, CPA, CITP, CFCM, CGMA, CPCM

Principal

571-221-7771

www.costtrend.com

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Subject: IRS Notice of Intent for Automatic Closeout of Expired Contracts



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, DC 20224

April 13, 2016

MEMORANDUM FOR PUBLIC RELEASE

FROM: Shanna Webbers
Chief Procurement Officer, Internal Revenue Service

SUBJECT: IRS Notice of Intent for Automatic Closeout of Expired Contracts

Purpose:

The Internal Revenue Service, Office of Procurement, is publishing this notice to give industry an opportunity to comment on proposed closeout procedures prior to implementation. The IRS will be utilizing a bulk closeout approach for Firm Fixed Price (FFP), Time & Materials (T&M)/Labor Hour (LH) contract actions whose period of performance ended on or before September 30, 2015. The IRS will also be using revised procedures for cost type contracts. All comments or exceptions to this approach are **due by May 16, 2016**. All correspondence shall be sent to the Procurement Customer Service mailbox, at Proc.Customer.Service@IRS.gov, with a copy to the Contracting Officer (CO) and Contracting Officer's Representative (COR) of the specific action, if applicable.

Background:

The Internal Revenue Service has identified a critical need to resolve a backlog of closeout actions. IRS Procurement, in conjunction with the IRS Chief Financial Officer has determined a new process is necessary to resolve this backlog in an efficient and effective manner. The IRS currently has approximately 24,000 actions that have been identified for closeout. Due to limited staffing and workload concerns, the IRS has tried different approaches to resolve this backlog including the use of a third party vendor to

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process these closeouts. Despite the ongoing efforts, the backlog still remains and has been identified as a critical area by the CFO for resolution during Fiscal Year (FY) 2016.

Current Plan of Action:

FFP and T&M/LH Contract Actions – All FFP/T&M/LH actions that have a period of performance that ended on or before September 30, 2015 and have not had any activity or invoices submitted in 90 days shall be closed automatically. This posting serves as notice of the Government's intent to close these actions. Any vendor who takes exception with this approach or has unresolved invoices shall submit their final invoice or email their request, including supporting rationale, to not automatically close out their contract action to the individuals identified above by May 16, 2016. Failure to do so timely will be construed as concurrence with the closeout approach outlined in this document.

Cost Reimbursement (CR) Actions – CR actions will not be subject to the bulk closeout procedures. Based on the recent decision by the Defense Contract Audit Agency (DCAA) to discontinue audits for civilian agencies, the IRS is exploring several options to meet its closeout needs, including contracting with a third party audit vendor. In the interim, the IRS is implementing new procedures relative to CR contract action closeout practices in accordance with DoD past practices. The IRS will waive audits for contracts less than \$25 million when justified based on a risk assessment by IRS. If monies are owed the Government, the CO will issue a demand letter if a final voucher is not submitted within the required timeframes. The demand letter would include notification that interest will be assessed as of the date specified in that letter.

Future Plan of Action:

IRS Procurement has been given authority to hire employees to staff a new closeout group within Procurement. These individuals will be hired during Fiscal Year 16 and should provide the staff resources to ensure that future closeout actions are handled timely utilizing these streamlines closeout procedures. The IRS Office of Procurement Policy will also be reviewing current best practices and making recommendations regarding further process streamlining. These include, but are not limited to, development of standard language to require submittal of a final invoice within 60 days of Government acceptance, closing the contract without a final invoice if the amount due is less than \$1,000.00 and/or less than 10% of the contract value.