

Government contracting hot topics

NCMA Boston workshop

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Written by



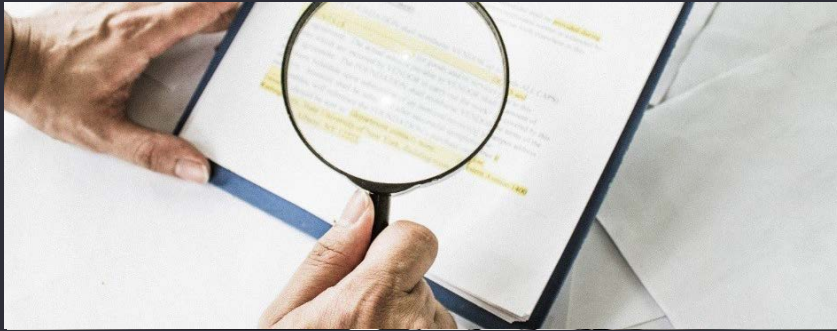
Agenda

- **Other Transaction Authority current trends**
- **Section 809 Panel**
- **Business system updates**
- **Cybersecurity**
- **Audit guidance on revised treatment of incomplete or inadequate prime contractor cost or price analyses**
- **Sustainment of question costs**
- **Contract closeout**
- **Aerospace and defense trends**

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Other Transaction Authority current trends

Expanded use based on recent National Defense Authorization Acts, FY16-18



FY16 National Defense Authorization Act (NDAA)

- Made permanent the use of OTAs for prototypes by the Department of Defense (DoD)
- Broadened the application for OTAs

FY18 NDAA

- Training for contracting personnel
- Expanded definition of “transaction”
- Expanded authority for prototypes
- Increased thresholds for approval
- Preference for OTAs as mechanisms to fund science, technology and prototypes

DoD OT guide



- **New Other Transaction (OT) guide was released December 2018**
 - New guide provides expanded guidance and some case studies
- **Covers all DoD OT types**
 - Research
 - Prototype
 - Follow-on production
- **A key change is that if follow-on work is being contemplated then it MUST be stated in solicitation and prototype OT documents**

Recent awards and activity

Tanium

**United States Marine Corps
handheld targeting systems**

**Squad Multipurpose Equipment
Transport (SMET)**

Microsoft

Joint Enterprise Defense Infrastructure (JEDI) update



Joint Enterprise Defense Infrastructure cloud computing

Background

Initial contract award, reaction and clawback

Schedule:

- Revised final solicitation scheduled for May
- Contract award was expected in September
- Oracle protest
- IBM protest
- Now expected in Q1 of 2019
- Indefinite delivery, indefinite quantity award expected to run 10 years

Request for Proposal (RFP) and process concerns:

- Provisioning tool
- Structure
- Evaluation
- Timeline

Additional concerns and criticisms

- Single-source risks: innovation, security, flexibility
- Favoritism
- Barriers to entry

Congressional oversight

- Explanation of RFP process
- Cloud computing standards

DoD comments

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Section 809 Panel

Section 809 Panel

Overview

- **Established by Congress under 2016 National Defense Authorization Act**
- **Tasked with identifying ways to streamline and improve defense acquisition**
 - **Interim Report, May 2017** — recommended modifying or eliminating statutory and regulatory requirements to reduce the burden and improve the functioning of DoD's acquisition process
 - **Volume 1 Report: January 2018** — introduced framework for optimizing how DoD operates across a dynamic marketplace
 - **Volume 2 Report, June 2018** — contains recommendations addressing the acquisition workforce, commercial source selection, the Cost Accounting Standards Board and services contracting

Section 809 Panel

Overview

- **Volume 3 Report (final report) issued January 2019 – addresses issues related to defense-unique acquisition**
 - **Thirteen major Sections of defense-unique acquisition highlighted**
 - **Examples of recommendations:**
 - **#71 Implement a new professional practice guide (PPG) – and establish a PPG Working Group composed of DCAA, GAO, AICPA, DCMA and industry.**
 - **#72: Replace 18 system criteria from DFARS 252.242-7006, Accounting System Administration, with an internal control audit to assess the adequacy of contractors' accounting systems based on seven system criteria.**
 - **#73: Revise the definition of business system deficiencies to more closely align with generally accepted auditing standards.**
 - **#81: Clarify and expand the authority to use Other Transaction agreements for production.**
 - **Ninety-eight specific recommendations identified in total**
 - **Many actions require Congressional action to be implemented or changes to existing procurement regulations**

3 Business system updates

DFARS purchasing system: Latest findings

Latest findings

Summary information of CPSR findings from FY17

FY17 findings	Material	Nonmaterial	Total
Protecting the government's interest when subcontracting with contractors debarred, suspended or proposed for debarment	65	24	89
Cost/price analysis	59	21	80
Defense Priorities and Allocation System (DPAS) rating	54	0	54
Limitation on use of appropriated funds to influence certain federal contracting and financial transactions (anti-lobbying)	50	0	50
Federal Funding Accountability and Transparency Act (FFATA)	46	0	46
Sole-source selection justification	43	25	68
Commercial item determination	42	20	62
Truthful cost and pricing data (TINA)	30	0	30
Policies and procedures manual	23	91	114
Cost accounting standards	20	0	20
Documentation	0	57	57
Self-audit	0	34	34
Negotiations	0	32	32
Training	0	27	27
Handling change orders and modifications	0	21	21
Total	432	352	784

DFARS purchasing system: Commercial item determination

Commercial item determination developments

- DoD published a final rule amending the DFARS and implementing section of the NDAA to reduce barriers to entry for commercial contractors and streamline procurement procedures.
- Key elements of the final rule:
 1. Prior commercial item determination reliance
 2. Transitioning procurements from commercial to noncommercial
 3. Nontraditional defense contract treatment
 4. Price reasonableness support and methods
 5. Commercial information technology acquisition preferences
 6. Requirement updates for record access

DFARS accounting system: Audit accounting system pilot

Accounting system pilot

Initial approach and experiences

DCAA approach

- Two teams:
 - Accounting system team
 - Information technology team
- Risk assessment and system design shared with contractor for confirmation
- Initial scope focusing on IT, billing, labor and control environment



Industry experiences

- Heavy focus on risk assessment process
 - Up to 10-12 months
 - Detailed walk-throughs and requests lists
- Extensive document and data requests during fieldwork

4 Cybersecurity

Rule overview

DFARS

- Safeguarding Covered Defense Information and Cyber Incident Reporting (DFARS 204.7301)

Focus

- The regulation focuses on the protection of controlled unclassified information (CUI) on a contractor's systems, including what constitutes this information and what steps should be taken to adequately safeguard it.

Requirements



NIST control
framework

Cyber incident
reporting

Flow downs

Ongoing compliance

Common pitfalls

Not understanding which data needs protection

Misunderstanding what it means to be in “compliance” with DFARS

Failing to proactively communicate with prime contractors and COs throughout the process



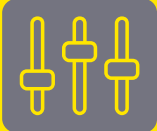
Assuming reliance on third-party certifications

Supplier assessments and follow-ups

Assuming that the requirements can be satisfied purely through IT solutions (one size fits all)

Not understanding the relationship among shared networks, policies and IT resources when assessing systems and designing controls

Determining and demonstrating compliance



The DoD has stated that it will not accept any third-party certification asserting compliance. It also has stated that it will not provide any assurance that a contractor is in compliance.

21 January 2019, DoD released a memo stating that DCMA will be including this in CPSRs. DCMA will review the following:

- Contractor procedures to ensure contractual DoD requirements for marking and distribution statements on DoD CUI flow down appropriately to their Tier 1 Level Suppliers.
- Contractor procedures to assess compliance of their Tier 1 Level Suppliers with DFARS Clause 252.204-7012 and NIST SP 800-171.



The DoD has emphasized the importance of a comprehensive SSP and POAM as being essential to compliance with the requirements.

DoD continues to up the ante on cybersecurity compliance for contractors



1

The DoD is tracking progress on the implementation of the NIST requirements. The DoD will consolidate this information to develop a baseline understanding of current cybersecurity capabilities across the industry and to identify areas where enhancements can be made.

2

There will be an increasing emphasis on hardening IT environments against evolving threats.

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17 December 2018, Kevin Fahey (Assistant Secretary of Defense for Acquisition), issued a memorandum that addressed (i) access to and delivery of contractors' and subcontractors' SSPs, (ii) access to and delivery of a contractor's plan to track flow down of Covered Defense Information (CDI) to subcontractors and restriction on unnecessary sharing/flow down of CDI and (iii) the requirement for a prime contractor to flow down (ii) and (iii) to its first-tier subcontractors.

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On 21 January 2019, Ellen Lord (Under Secretary of Defense for Acquisition and Sustainment) issued a second memorandum that focused on assessing contractor compliance with DFARS cyber clause through DCMA CPSRs.

Audit guidance on revised treatment of incomplete or inadequate prime contractor cost or price analyses

DCAA audit guidance revision

DCAA MRD 18-PSP-006(R) dated 27 November 2018

Audit Guidance on Revised Treatment of Incomplete or Inadequate Prime Contractor Cost or Price Analyses:

- If the prime/higher-tier contractor has not completed the required cost or price analyses, or if the completed cost or price analyses are inadequate, the audit team should perform alternative procedures to establish a reasonable basis for the audit opinion.
- **Change:** The audit team should not classify the associated costs as unsupported unless the audit team is unable to obtain sufficient appropriate evidence through performing alternative procedures.
- FAR 15.404-3(b), Subcontract pricing considerations, requires the prime contractor or higher-tier contractor conduct appropriate cost or price analyses to establish the reasonableness of the proposed subcontract prices.
- FAR requires that the prime contractor include the results of these analyses in its proposal.

DCAA audit guidance revision

DCAA MRD 18-PSP-006(R) dated 27 November 2018

Audit Guidance on Revised Treatment of Incomplete or Inadequate Prime Contractor Cost or Price Analyses:

- If the prime/higher-tier contractor has not completed the required cost or price analyses, or if the completed cost or price analyses are inadequate, the audit team should perform alternative procedures to establish a reasonable basis for the audit opinion.
- Depending on the overall risk and materiality, the audit team can consider a variety of procedures, including, but not limited to, the following:
 - Create a decrement based on purchase order history
 - Create a decrement based on other relevant information (e.g., comparisons of prior subcontract proposals to historical cost or price analyses or negotiated amounts)
 - Or coordinate with the subcontract audit team and request a DCAA assist audit based on the prime/higher-tier audit team's risk assessment

DCAA audit guidance revision

DCAA MRD 18-PSP-006(R) dated 27 November 2018

Audit Guidance on Revised Treatment of Incomplete or Inadequate Prime Contractor Cost or Price Analyses:

- The performance of alternative procedures or receipt of an assist audit does not relieve the prime/higher-tier contractor from its FAR 15 responsibility to perform cost or price analyses of its subcontract proposal(s)
- The audit report should identify amounts associated with incomplete or inadequate cost or price analyses as a material noncompliance (i.e., noncompliance with FAR 15.404-3(b))
- **Change:** The auditor should not classify the costs as unsupported unless it is unable to obtain sufficient appropriate evidence through performing alternative procedure
- **Significance:** Provides the government contracting officer the ability to negotiate proposed costs without having large amounts of costs that were previously deemed “unsupported”

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Sustainment of question costs

DCAA questioned cost sustained

Observation

- FY17 DCAA Activities Report to Congress

Sustention by Amount and Percentage of Audit Exceptions (millions)

Audit	Audit Exception	Exception Sustained	Percentage Sustained
Forward pricing	\$3,958,037	\$2,620,227	66.20%
Incurred Cost	\$2,686,011	\$767,740	28.60%
Special Audits	\$345,309	\$144,506	41.80%
Other Audits	\$181,708	\$78,866	43.40%
Total	\$7,171,065	\$3,611,339	50.40%

- DoDIG FY18 Semiannual Report to Congress (October 2017—September 2018):

Sustention rate of approximately 30% on 824 trackable audits (per DoD Instruction 7640.02) as dispositioned by contracting officers

- Sustention rates remain relatively consistent over the past five years
- Observation: the probability of reversing (or sustaining) a previously questioned cost with a contracting officer at least 50%

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Contract closeout

Contract closeout

Backlog – large quantities of contracts have not been closed out within the timeline required by FAR

- DCAA incurred cost audit backlog contributes to this

GAO was tasked with reviewing the extent of closeout backlog

Five agencies were reviewed:

- DoD, HHS, DHS, DoJ and State Department

Overview of findings:

- None of the agencies were able to track and oversee closeout process agency-wide
- DCAA significantly reduced inventory of ICS audits since 2011, but did not meet the goal to eliminate backlog entirely by 2018
- DCAA averages 885 days from submission date to audit completion

Contract closeout

DoD should develop a means to track, agency-wide, the contract closeout process

Goals and performance measurements for closing contracts should be established

Recommendations specifically for DCAA:

- Assess and implement options to reduce timeline of ICS audits, mainly the time from submission to start of fieldwork
- Assess the use and effect of multiyear audits
- Establish associated performance measures on the above recommendations



Aerospace and defense trends

Aerospace and defense – 2019 trends

- Developing and expanding partnerships in the international market place will fuel additional M&A activity
- Product demand for various weapon systems platforms and spares will remain high due to international tensions
- Utilizing and developing a broad-based global supply network will be critical to ensure delivery of needed components and products
- Internal restructuring of DoD business sectors will remain high to maximize productivity and increase revenue streams
- Assessing existing internal accounting platforms and cost models will be critical to streamline financial operations
- Use of joint ventures/partnership will escalate to expedite product development
- Investing in R&D infrastructure will be significant to expand existing domestic markets and to fuel growth in foreign markets
- Establishment of long-term strategies to contend with changing market conditions, tariffs and international relations
- Safeguarding proprietary data through continued cybersecurity upgrades and monitoring

Questions

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