



DCAA and DCMA: Not Exactly Working Together

By Michael Steen, CPA, Senior Director at Redstone Government Consulting, Inc.

In 2010 and in 2012, then Directors of DCAA (Defense Contract Audit Agency) and DCMA (Defense Contract Management Agency) co-signed memorandums declaring their mutual efforts to recover costs on outstanding issues (outstanding DCAA audit reports and DCAA Form1s). In 2011 DPAP (Defense Procurement Acquisition Policy), issued a policy memorandum which stressed the need for complementary contract oversight by DCAA and DCMA. Although unstated, all of these were designed to address strained working relationships as a by-product of a July 2008 GAO Report followed by DCAA's focus on independence (from contractors and from undue influence from contracting agencies and contracting officers). Starting in 2010, at least publicly, it appeared that DCAA and DCMA were cooperatively working to accomplish common goals; in DCAA lingo, to protect the American Taxpayer.

Hidden in the back-ground, DCAA wasn't totally committed to a cooperative working relationship as evidenced by a 2009 DCAA MRD (Memorandum for Regional Directors) which opened the door for DCAA auditors to refer (to the DOD-IG) contracting officers whose decisions failed to sustain an audit recommendation. DCAA maintains that it (the Agency) will not refer a contracting officer to the DOD-IG; however, DCAA acknowledges that individual auditors have referred ACO decisions using the DOD-IG hotline. In fact, DCAA cannot restrain its individual auditors and it would appear that several DOD-IG reports are responses to hotline referrals (undisclosed source with enough information to suggest that it was a DCAA auditor(s)). As early as 2010, a DOD-IG report clearly involved a referral from a DCAA auditor(s) as it related to an ACO's failure to wait for a DCAA follow-up audit of contractor corrective actions involving EVMS (Earned Value Management System). There are a number of DOD-IG reports with similar implications (a DCAA auditor hotline referral); however, more recently the DOD-IG is self-initiating reviews which are resulting in reports which are highly critical of DCMA ACO actions or more accurately inactions with respect to DCAA audits of contractor business systems (DODIG reports 2015-139 and 2016-001). On a similar path, the DOD-IG issued a report (2016-005) critical of DCMA's Cost Analysis (reviews of contractor bid proposals) which was a follow-

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up to an earlier IG report which stated that DCMA's cost analysis was at risk in terms of losing \$249 million (costs questioned if DCAA and not DCMA audited the contractor bid proposals). It should not go unnoticed that the \$249 million is based upon the fact that DCAA tracks its audit results (net savings), whereas DCMA does its cost analysis without tracking results. It is apparently lost on the DOD-IG that it continues to accept at face value DCAA's unaudited reporting of DCAA net savings.

In addition, the DOD-IG just announced a review which will address ACO actions (or inactions) on DCAA Incurred Cost Audit Reports (triggered perhaps by mid-year 2015 cost sustained percentages which were a dismal 22%; i.e. for every \$100 questioned by DCAA, DCMA ACOs were only recovering \$22). Based upon every other DOD-IG review of DCMA versus DCAA, the outcome will predictably be very negative towards DCMA (ignoring the fact that DCAA audit opinions/cost questioned might not be well supported in the context of FAR/CAS). As long as the DOD-IG blindly accepts the validity of DCAA audit reports/conclusions, DCMA and its ACOs will be the scape-goat for low sustentation rates.

Although many of the more recent and planned DoD-IG actions are not the result of DCAA hotline referrals, it does appear that DCAA and the DOD-IG have an undeclared alliance which is targeting DCMA actions/inactions with respect to DCAA audit reports. Not exactly conducive to improved working relationships between DCAA and DCMA. Perhaps unintentionally, DCAA has reinforced that there is a fractured working relationship as evidenced by an August 2015 MRD which announced the termination of a DCAA-DCMA MOU involving complementary actions on EVMS (for years, DCAA has played a supporting role to DCMA in EVMS surveillance). The August 2015 MRD stated that DCAA would have no further involvement in EVMS reviews; oddly and perhaps unintentionally contradicting the 2010 DODIG report on EVMS which stated that it was absolutely critical that DCAA be involved with an EVMS follow-up review (but that was then and now is now).

Most recently, we have a DCAA MRD (October 2015) regarding DCMA Requests for Tailored Audit Support of Forward Pricing Rate Proposals. The focus of that DCAA MRD is anything but cooperative with respect to DCMA's use of tailored audit support requests (most likely to narrowly focus

DCAA audits in hopes of receiving more timely audit results). Specifically, DCAA references FAR 42.101(a) which establishes DCAA's responsibility for submitting information and advice to the requesting agency based on (DCAA's) analysis of the contractor estimated costs. Predictably DCAA references a highly generic FAR clause, "contract audit responsibilities", and fails to consider any other FAR reference, including FAR Part 15 which indicates that there is a team leader (DCMA, in this case) who decides if/how others will support the government's evaluation of cost estimates (bid proposals or forward pricing rates). Although DCAA's October 2015 MRD states that DCAA field offices should attempt to work with ACOs; the MRD makes clear that disagreements (with the ACO regarding the tailored audit support) should immediately be elevated to DCAA Headquarters. Translated, DCAA is not going to be limited to a request for tailored audit services if DCAA (independently) believes that it must do more to protect the American Taxpayer. Which begs the question, isn't DCMA equally responsible for protecting the American Taxpayer and who made DCAA the more qualified of the two?

In summary, there appears to be an ever expanding schism between DCMA and DCAA, continuously fueled by DCAA's declaration of independence wherein DCAA's only customer is the faceless American Taxpayer. And the DOD-IG, with its continuing focus on finding fault with DCMA decisions on DCAA audits, seems to be quite content to add fuel to the fire. Unfortunately, as DCMA and DCAA continue with an uneasy alliance, the real losers will be government contractors (those audited by DCAA). Perhaps the worst is yet to come for government contractors as DCMA is only now responding to unfavorable DoD-IG reports which will compel DCMA ACOs to rubber-stamp DCAA audit reports (finding that contractor business systems have significant deficiencies resulting in system disapproval). At some point in 2016, the DOD-IG will issue its report concluding that DCMA has failed to appropriately sustain DCAA's cost questioned on Incurred Cost Audits.

There is a glimmer of hope that the DOD-IG will critically assess DCAA's support for DCAA's incurred cost audit assertions, in which case the DOD-IG might bring some attention to DCAA's weakly supported assertions. If that were to happen, DCAA might be inclined to revisit its audit strategies and issue audits which contain assertions which are fully consistent with and supported by the underlying

regulations. Stated differently, that DCAA will stop reporting approximately 77 percent of the exceptions (cost questioned) which are not sustainable. As we approach the Holidays, this particular “glimmer of hope” reminds us that there just might be a Santa Clause.

Bid Protest Highlights the Confusion with UCOT (Uncompensated Overtime)

By Michael E. Steen, CPA, Senior Director at Redstone Government Consulting, Inc.

In its October 20, 2015 decision, the GAO sustained a bid protest which pertained to UCOT in application to a solicitation which contained specific wording concerning the UCOT; specifically, that uncompensated effort shall not be counted in fulfillment of the level of effort obligations under this contract. Additionally, the solicitation stated that the Government would evaluate the realism of the offeror's proposed costs considering labor mix and rates in light of data available to the Contracting Officer. Although this was a CPFF (cost plus fixed fee) contract award, the restrictions on UCOT are more frequently stated in solicitations involving T&M (time & material) contracts. Consistent with FAR 37.115 (which explicitly discourages the use of UCOT in services contracts where the Government is buying labor hours), T&M solicitations routinely limit bidders to using a standard work year (e.g. 2,080 hour which includes paid-time-off). In many cases, the Government solicitation prohibits the use of UCOT by requiring the bids to be based upon a standard work year (e.g. 2,080 hours which includes paid-time-off). Or in the case in dispute, does not consider uncompensated hours as fulfilling the requirements of the contract notwithstanding the fact that FAR 52.237-10 requires contractors to disclose their policies for UCOT and to propose UCOT hours using the adjusted hourly rate method (including the UCOT; commonly known as a diluted rate).

Jumping back to the bid protest, although the bid protestor had not proposed any uncompensated hours (UCOT), the wily government cost realism evaluators noted that the contractor had historical data which reflected UCOT. Accordingly (and inappropriately) the government increased

the contractor's proposed costs (hourly labor rates) to eliminate the diluting effect of UCOT. One slight problem, UCOT had not actually been proposed which meant that the contractor's proposed hourly rates reflected straight-time labor rates as required by the solicitation. For obvious reasons, the bid protest was sustained on the basis that the government's cost realism adjustment was invalid (there are other more negative descriptors which come to mind, but in the spirit of the holidays, we will avoid those).

For any contractor facing Government solicitations which effectively prohibit proposing/pricing hourly rates which are diluted for UCOT, it needs to be recognized that the Government solicitation is most likely at odds with your timekeeping policies which require TTA (total time accounting which many contractors implemented at the insistence of DCAA auditors). Although there is no regulation which explicitly requires TTA, DCAA has successfully made it an issue by holding hostage contractor accounting systems. If salaried employees work UCOT (more than 40 hours per week) and the contractor only records 40 hours per week, DCAA will assert that the timekeeping system and the overall accounting system are not adequate for cost-type or T&M contracts.

Exactly what does this mean to government contractors? In many cases your customer (solicitation) will preclude or negate the use of UCOT at the same time that DCAA is insisting that all contractor employees record all hours worked, including UCOT. In application to a T&M solicitation, the solicitation will in many cases compel the contractor to propose labor rates (undiluted) which are inconsistent with historical data. In application to the CPFF solicitation and the contract, the proposed hours/rate must exclude UCOT in direct conflict with the accounting policies premised upon TTA. In either case, historical data which includes UCOT and presumably considered cost or pricing data in the context of TINA, cannot be used to support proposed prices which restrict the use of UCOT. And the worst possible outcome, that contractors actually incur UCOT on a CPFF contract which does not recognize uncompensated hours as billable hours. In this situation, TTA (imposed by DCAA) will result in unbillable direct costs on the CPFF contract. Assuming a salaried employee works 50 hours, only 40 hours would be billable; however, DCAA will insist that the salary (labor cost) is pro-rated across all 50 hours. If you do the math, the end result is 10 hours (at the hourly rate diluted by a factor of .80)



is charged to the CPFF contract, but unbillable. The only solution, if a contractor is awarded a contract which only recognizes compensated hours, the salaried employees working on that contract must be prohibited from working any UCOT.

DCAA's insistence on "TTA" and UCOT which are frequently at odds with government solicitations and conceptually inconsistent with FAR 37.115 is one more indication of acquisition dysfunctionality caused by DCAA's fervent insistence on independence from everyone else in the acquisition process. DCAA is apparently free to interpret the FAR (with or without a regulation which explicitly or implicitly supports its interpretation) and the rest of the acquisition process and players are left to devise methods to attempt to solve a needless conundrum. Of passing interest, and perhaps another glimmer of hope in terms of scaling back DCAA's independence which is wreaking havoc on the acquisition processes, on September 29, 2015, DOD published a 160 page discussion paper on "Eliminating Requirements Imposed on Industry Where Costs Exceed Benefits". Unfortunately, that document (which cost \$600,000 to produce) has a long way to go before it has any impact on any requirement; however, it is a start in the right direction.

Announcing CFO Roundtable

Redstone Government Consulting, Inc., Radiance Technologies, Inc., & Warren Averett will be sponsoring a CFO/Controller roundtable for Government Contractors.

All Government contractor CFO's or Controllers are invited to participate. The meetings will be held quarterly beginning February 17, 2016 and will include lunch and networking from 11:30am – 1:00pm. The first meeting will be held in Research Park at the AEgis training facility located at 410 Jan Davis Drive, Huntsville, AL 35806. The second meeting will be held at Radiance Technologies located at 350 Wynn Drive Huntsville, AL 35805. Participants will be notified via email announcements for all future locations and seminar topics.

The CFO Roundtable is **free** to attend. All participants will be invited to share topics of interest and the group will be interactive. Redstone GCI, Radiance Technologies, and

Warren Averett will strive to provide speakers on topics that are of interest to the group each quarter. Please provide us your email address and we will notify you 30 days in advance of each meeting. RSVP's are required.

Sign up for CFO Roundtable [here](#).

Training Opportunities

2015 Redstone Government Consulting Sponsored Seminar Schedule

December 16, 2015 – Government Contractor Compliance Challenges

LIVE EVENT – [REGISTER HERE](#)

Huntsville, AL

December 17, 2015 – Contractor Activities & Costs Allowable, Unallowable, Expressly Unallowable and Directly Associated

WEBINAR – [REGISTER HERE](#)

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Huntsville, AL

December 10-11, 2015 – Government Contract Audits: Dealing with Auditors and Mitigating Audit Risk

Huntsville, AL

Instructors:

- Mike Steen
- Scott Butler
- Cyndi Dunn
- Asa Gilliland
- Sheri Buchanan
- Darryl Walker
- Courtney Edmonson
- Cheryl Anderson
- Robert Eldridge

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Our Company's Mission Statement: RGCI enables contractors doing business with the U.S. government to comply with the complex and challenging procurement regulatory provisions and contract requirements by providing superior cost, pricing, accounting, and contracts administration consulting expertise to clients expeditiously, efficiently, and within customer expectations. Our consulting expertise and experience is unparalleled in understanding unique challenges of government contractors, our operating procedures are crafted and monitored to ensure rock-solid compliance, and our company's charter and implementing policies are designed to continuously meet needs of clients while fostering a long-term partnership with each client through pro-active communication with our clients

In achieving government contractor goals, all consulting services are planned and executed utilizing a quality control system to ensure client objectives and goals are fully understood; the right mix of experts with the proper experience are assigned to the requested task; clients are kept abreast of work progress; continuous communication is maintained during the engagement; work is managed and reviewed during the engagement; deliverables are consistent with and tailored to the original agreed-to scope of work, and; follow-up communication to determine the effectiveness of solutions and guidance provided by our experts.

Specialized Training

Redstone Government Consulting, Inc. will develop and provide specialized Government contracts compliance training for client / contractor audiences. Topics on which we can provide training include estimating systems, FAR Part 31 Cost Principles, TINA and defective pricing, cost accounting system requirements, and basics of Cost Accounting Standards, just to name a few. If you have an interest in training, with educational needs specific to your company, please contact Ms. Lori Beth Moses at lmoses@redstonegci.com, or at 256-704-9811.



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