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This newsletter includes topics on DCAA (Defense Contract Audit Agency), media releases and/or reports by other agencies including DOJ (Department of Justice) and the DoD-IG (Inspector General) and brief discussions of some recent published decisions (e.g. ASBCA or Court of Federal Claims). Additionally, a guest article by Jerry Gabig Esq., on DCAA and DCMA responsibilities for contractor business system oversight.

In general, articles do not mention contractor names; however, any "by name" disclosure of a particular contractor is a function of the previous public disclosure by a Government Agency.

THIS ISSUE:

DCAA MRD Establishes New Compensation Caps (FAR 31.205-6(p)(4))

By Michael Steen, Senior Advisor

In MRD 20-PSP-004 (Memorandum for Regional Directors and Corporate Audit Directors), DCAA advised its auditors of increased compensation caps for contractor fiscal years' 2019 and 2020. These caps have increased to $540,000 and $555,000, respectively, from the previous cap (2018) of $525,000. Regardless of an executive's (or actually any employee's) actual annual compensation, a contractor subject to FAR 31.205-6(p) can only claim the annual cap for the applicable fiscal year (the components of compensation which fall under this cap are defined in 31.205-6(p)).

Of more than passing interest, DCAA notes that OFPP (Office of Federal Procurement Policy) has yet to publish the new caps, but that OFPP has "published the formula and that allows anyone to compute the new caps once the BLS (Bureau of Labor Statistics) published the ECI (Employment

Cost Index) used in the formula". In the 40-plus years of experience of this author, this is the first time DCAA has assumed the role of OFPP, "crunched the numbers", and posting the new statutory cap (ignoring the fact that FAR 31.205-6(p)(4).explicitly states that the "benchmark compensation amount determined applicable to the contractor fiscal year by the Administrator, Office of Federal Procurement Policy"). The last we checked; an "amount" is not the same as publishing a formula from which "anyone can compute the amount".

Although it is inexcusable that OFPP has not bothered to actually post an amount, the fact is that for many contractors, the slight increase is "noise" because i) no employee is compensated at that level or ii) the increased cap doesn't even move the contractors rates (typically the G&A rate). DCAA's action does serve as a point of reference for contractors to consider revising previously submitted indirect cost rate proposals (i.e. for FY 2019 if rates have not been finalized and if the slightly higher 2019 cap is worth the trouble of a revised proposal) and to project higher caps when forecasting costs/rates for 2021 and beyond (although projections for employment cost increases are only in the 1-3 percent range).

DCAA Renews its Contractor Floorchecks

By Michael Steen, Senior Advisor

For many government contractors, DCAA floorchecks have no real meaning because (except for a few very large government contractors) DCAA has not been performing this type of audit for years. DCAA had insisted that it lacks the resources for this and a number of other types of audits in spite of the fact that floorchecks are a "MAAR" or Mandatory Annual Audit Requirement (a DCAA designation which presumably means that no one else cares if these are really discretionary audits). Now that DCAA has erased its incurred cost audit backlog, DCAA does have available audit resources for floorchecks as evidenced by a number of contractors/clients who have received courtesy emails from DCAA, announcing a planned DCAA floorcheck (for the most part, "virtual" audits performed remotely using an audio-visual application). As these audits begin to resurface, it presents an opportunity to discuss some of DCAA's expectations or ground-rules along with some tips for successfully dealing with the wonderful experience of a DCAA floorcheck.

DCAA's ground-rules include some of the following:

- Floorchecks (virtual or face-to-face) are unannounced
- DCAA expects one or two contractor employees (e.g. government compliance or accounting/finance) to accompany the auditor (or participate in the on-line meeting) for the purpose of notetaking, but not to answer any of the auditor's questions
- DCAA will notify the company of the floorcheck and the first selected employee with an email with expectations that the employee will "join" the online meeting/floorcheck within five minutes
- DCAA will request the employee to show his/her employee badge or driver's license and confirm his/her name, job title (for any employee without access to an online camera, the employee will email the auditor a picture of the employee holding his/her employee badge).
- DCAA will request a number of documents (e.g. work authorization, timesheets, etc.) during the floorcheck and the employee will display those ("share-screen") on the employees' computer,
- DCAA will ask and the employee will be required to answer multiple questions (none provided to the contractor in advance).
- DCAA will subsequently compare certain answers to the actual labor distribution reports (job number and hours worked from the start of the pay period to the date/time of the floorcheck)

Tips for successfully dealing with DCAA floorchecks:

- DCAA's access to contractor employees is through FAR 52.215-2 (so-called Access to Records clause) which defines records, but not in the context of employees. Most contractors work with and cooperate with DCAA in extending the access to records to contractor employees, but there are limits which could include DCAA questions which are leading or inappropriate (e.g. asking an employee about other employee's time-charging).
- DCAA's email notification of a planned, future floorcheck should cause the contractor to have one or more timekeeping training "refresher" sessions with

all employees. These can be supplemented by daily or weekly reminders of timekeeping policies.

- DCAA's time-frames (i.e. five minutes) are not supported by any regulation or contractual clause; hence, a contractor can express their intent to work with reasonable response times, but in no case be held to an absolute limit of five minutes for the employee to be available.
- In most cases, neither DCAA nor the employer can require the employee to answer each/all DCAA's questions or for that matter to compel an employee to cooperate. Most employees will cooperate or be persuaded to cooperate (in responding to reasonable questions), but there are "exceptions", i.e. employees who are unwilling to participate in a floorcheck. A point of reference related to this issue is the "Q&A" when FAR 52.203-13 was published (November 2008). This FAR clause can invoke mandatory disclosures (by the contractor) of contract fraud as well as contractor cooperation with any investigation or audit. Contractor cooperation included making employees available to an investigator or auditor, but the FAR councils acknowledged that the contractor cannot compel an employee to cooperate. Perhaps obvious, but this could also involve HR policies, collective bargaining agreements or even state laws which may define employee and employer rights.
- Contractor compliance personnel (participating in the floorcheck) should take notes and be alert for employee responses which may not be accurate (employee guessed at the answer), may be misleading, or may be motivated by a dissatisfied/disgruntled employee. Additionally, note the job numbers and hours stated as worked and make sure that information matches that shown when labor distribution processes.
- DCAA's expectation for an email containing a photo of the employee holding his/her badge is pushing the boundaries of access to records. Creating this photo is creating a record solely for the auditor and nothing in FAR 52.215-2 supports DCAA's request. Nonetheless, it's preferrable to provide this even though it will probably be a totally useless document (i.e. unlikely that the badge photo will be of sufficient clarity to match it to the person holding it)….an example of a useless audit step conceived by someone who believes there is a risk of contractors having ghost employees (someone who has no physical existence).

Unfortunately DCAA's floorchecks are back and these really are something of a no-win situation for contractors because a totally successful floorcheck is never reported (it becomes an internal memorandum for record within DCAA files) whereas floorcheck issues are potentially reported as an accounting/business system deficiency (internal control deficiency with or without any cost impact). Although the contractual accounting system requirements for timekeeping are terse, DCAA has been allowed (through passivity and/or evolution) to expand and to define the detailed requirements and contracting officers have deferred to DCAA's "professional judgment" on accounting matters.

At risk to government contractors is an accounting system deemed inadequate for a broad range of government contract types (including cost type or time and material). In other words, if a contractor's ability to obtain certain types of contracts is dependent on having an adequate accounting system, preparing for DCAA floorchecks (or any other audit which is focused on accounting system internal controls) is essential.

DCAA Incurred Cost Audit Challenge: Consultant Costs (FAR 31.205-33)

By Michael Steen, Senior Advisor

If/when DCAA (or a qualified independent auditing firm) performs an audit of a contractors indirect cost rate proposal (ICP), one can rest assured that the auditor(s) will drill-down in terms of requesting supporting documentation related to consulting costs (direct or indirect). This category of cost has its own DCAA standard audit program and professional and consulting costs also have specific documentation requirements (FAR 31.205-33(e) including:

I. Agreement which describes the services and the fees (e.g. hourly rate)
II. Invoices which detail the services provide, the hours, and the charge
III. Work-product

In Chapter 58 of DCAA's Selected Areas of Cost Guidebook, the FAR criteria as well as an expanded discussion of audit considerations related to consulting costs are provided. This Guidebook also has Chapter 59 which addresses purchased labor (aka: contract or temporary labor), but without any FAR reference (only a reference to CAS 418). In 2013, DCAA also published an audit guidance memorandum which addressed both consulting costs and purchased labor. Although these have a common thread (services provided by non-employees), the two are completely different in terms of regulatory requirements for documentation.

In spite of DCAA's internal guidance which differentiates consulting costs from purchased labor, clients still encounter audits/auditors who assert that the documentation required is identical and that absent the three types of documentation (listed above), consulting or purchased labor costs are unallowable. Unfortunately for the contractor (auditee), these encounters are a reminder that not all DCAA auditors are well trained and/or adequately supervised as evidenced by the following statement in an email from the auditor to the contractor:

"I noticed that you have a number or transactions/costs for purchased labor which are in a business development (G&A) account. I could not find any FAR or other guidance applicable to purchased labor but have been told that purchased labor could be a consultant. Therefore, FAR 31.205-33 applies and I will question all the costs for purchased labor unless you can provide the agreements, detailed monthly invoices and the work product (see FAR 31.205-33)."

In a perfect world with audits performed by well trained and competent auditors, one would never see this email from an auditor; however, it is an example of a situation where the contractor has to "help" in terms of explaining that FAR 31.205-33 only applies to consultants and in this case, that DCAA's own guidance (Chapters 58 and 59, Selected Areas of Cost Guidebook) explain the distinctions. We could all agree that it should not be the job of a contractor (auditee) to direct a DCAA auditor to DCAA's guidance, but this is one of the realities of working with inexperienced auditors. In some cases, these have involved a more devious and experienced auditor who probably knows of DCAA's internal guidance but is consciously ignoring it in order to achieve his/her objective of questioning costs (yes, this happens). On those occasions, introducing DCAA's own guidance in a contractor rebuttal is "as good as it gets".

In summary, when dealing with audits or any other contract oversight activity, one cannot overstate the importance of knowing what is actually in a contract or contract clause and considering that when dealing with audit demands/inquires and audit challenges to cost allowability. Further, consider DCAA's internal guidance, which is not a contractually authoritative reference, but it will not be ignored by a DCAA auditor.

Procurement and Compliance News-Miscellaneous

By Michael Steen, Senior Advisor

DoD-IG Semi-Annual Reports. The DoD-IG (Department of Defense-Inspector General) submits reports to Congress for the six months ending March 31 and September 30, respectively. In each of these, there are several sections or appendices of potential interest to government contractors. For the period ending March 31, 2020, the IG reports included the following:

- **Core Mission Areas: Procurement Fraud Investigations.** One of the reported actions involved a $10.5 million settlement for overbillings for contractor employees who did not meet the qualifications per contract. Allegedly the contractor knew of the overbillings as early as 2011 but did not disclose this to the Government until 2015. By implication, the contractor failed to comply with the mandatory reporting requirements in Far 52.203-13 (although not specifically defined, the reporting must be "timely").

  A second FCA (False Claims Act) settlement was only for $110,000 but it involved duplicate billings for computers along with the fact that the computers were used, but represented as new. Not sure why the Government would pursue an issue that may have involved $35,000 in fraudulent charges (assuming the $110,000 reflects treble damages) other than the information was provided through a relator (Qui Tam) who may have made it a "slam

dunk" to pursue. Also, a reminder that there may have been far more at stake for the contractor, such as debarment and/or suspension.

- **Contract Audit Reports Issued (Appendix E).** Summary statistics regarding DCAA audits issued, dollars examined, and dollars questioned of funds put to better use (the last category represents audit exceptions applicable to contractor bid proposals or forward pricing). For incurred cost audits (773 reports issued) DCAA questioned 1.2% of the approximately $30B examined compared to forward pricing proposals (343 reports issued) where DCAA questioned 5.7% of the $63.4B examined. DCAA also issued 11 reports for defective pricing with a total recommended price reduction of $84.4 million. No surprise, DCAA's return on investment is heavily dependent upon forward pricing audits where DCAA consistently reports a payback of $20 to $1.

- **Status of Action on Post-Award Contract Audits (Appendix F).** Summary statistics of audit reports and dollars questioned tracked against the "target" of administrative issue resolution within six months of the audit report date. Of the 2,036 open reports, about 83% are beyond the target date, and of those 220 are in litigation and 62 under criminal investigation (with rare exception issues under investigation are not administratively resolved at the direction of the investigative agency). There is one remarkable statistic which is the 54.4% sustention rate for the 251 reports, $355.2 million cost questioned that were closed (dispositioned) in the six months ending March 31, 2020. This is 20-25 percentage points higher than the sustention rates reported over the last three-four years. It is impossible to determine if this reflects better quality audits across all 251 reports or if a few very large dollar dispositions had extremely high sustention rates (inflating the simple average).

- **Contract Audits Issued with Significant Findings (Appendix H).** It remains a secret as to what criteria is used to determine what reports are listed, noting that there were only 15 reports listed for the 915 reports listed in Appendix E. For each report, the report number identifies the type of audit such as contractor claims, incurred cost, defective pricing or CAS related. Of note, two reports pertain to defective pricing with $78.1 million (combined) dollars questioned. Thus, only two of eleven defective pricing audits generated 93% of the cost questioned for that audit type (merely confirming that summary level averages can be a bit misleading).

DOJ Settlement and/or Indictments. The DOJ (Department of Justice) website includes a dropdown for news/media releases which include numerous media releases related to contract and other forms of fraud (indictments and/or settlements). Late August and September have been a busy month for these releases which notably included a $920 million settlement with JP Morgan-Chase, announced on September 29, 2020 (in the nick of time to count on the DOJ fraud recoveries for Fiscal Year 2020). Of interest, other media releases included the following:

- **COVID-19 Relief Fraud.** DOJ announced at least five indictments and one settlement involving allegations of fraud related to the PPP (Paycheck Protection Program). In most cases, the scheme was intercepted before any funds were released, but in total the alleged fraudulent forgivable loan applications was $20.1 million. Most were fraudulent applications for non-existent companies or businesses (including two neighbors falsely representing themselves as farmers) and one stupid-criminal scheme for PPP loans for 19 different non-existent companies, including at least two application which contained identical employee data (coincidentally reminiscent of my auditing days wherein we occasionally observed vendor invoices purportedly from different suppliers, but with all fields/data/dollars identical except for the vendor name address…which had been clumsily changed using "white-out"). One unusual COVID-19 settlement involved an individual who created COVID-19 Relief Organizations which promised financial relief which never came (apparently involving administrative or other application fees with absolutely no intentions of providing anything for those fees).

Contract Fraud (FCA Violations). Although these settlements are dwarfed by other types of settlements (e.g.

Health Care and Financial Institutions), they still surface, in part due to mandatory disclosures (FAR 52.203-13) as well as whistleblower or Qui Tam disclosures. In June 2020, a large defense contractor entered an FCA settlement for $5.98 million related to allegations of mischarging labor costs on task orders ISSUED under the AMCOM EXPRESS Contract. The contractor self-disclosed labor charges to task orders with available funding; however, the labor was associated with other task orders without funding or awaiting funding. Similarly, employees had misused administrative leave as a temporary charge for work in advance of funding, later clearing that account by inflating hours worked after funding was received. A note of caution that the issue of having available, but idle employees because of delayed funding is a recurring theme for contractors with task orders and sequential/follow-on work. Under no circumstances should employees work in advance of funding, but subsequently make it appear as if the hours/labor costs were incurred after funding was available. The DOJ did not provide any information concerning the settlement amount and how much if any was for "damages" above the actual mischarged costs. Historically, DOJ has settled FCA violations initiated by contractor disclosures for double versus treble damages while noting that the FCA entitles the Government to treble damages. In other words, the contractor should feel good about making a mandatory disclosure including all of the details of the internal investigation and only having to pay double damages.

In a more egregious violation of the FCA, a Virginia Company agreed to an amount of $37.8 million to settle allegations of bribery charges. The scheme allegedly involved the creation of a "corrupt partnership" between the Company President and an Air Force Contracting Official, the latter providing competitive/procurement sensitive data to the company. Additional settlements were paid including $500,000 by the Company President to settle individual FCA liabilities. Although the media release identifies a "boat-load" of agencies which were involved in the investigations, it does not disclose how the Government became aware of the illegal bribes (no mention of a Qui Tam relator).

One other notable FCA settlement involved a Research Institute which agreed to a $10 million settlement related to grants from NIH. Allegedly over a period of nine years, the researchers mischarged time to existing grants for effort spent writing proposals in pursuit of other grants (this cannot be charged direct to an existing grant). Other effort was apparently for research not within the scope of the existing grant. In this case, the government's source was a Qui Tam relator whose commission was $1.75 million.

One observation concerning FCA settlements (individual and cumulative), it is noteworthy that for several years, traditional defense contractors are a relatively small percentage (source) of FCA actions and settlements. Additionally, most of the settlements with traditional; defense contractors are initiated with mandatory or voluntary disclosures (from the contractor and not from a whistleblower or Qui Tam Relator). Perhaps internal controls inclusive of internal hotlines are working as intended and it is time for government contracting oversight (e.g. audits) to work with these contractors on "cooperative/joint oversight.

Published Decisions (CDA or Contract Disputes Act)

By Michael Steen, Senior Advisor

Cost Reasonableness (FAR 31.201-2). In an appeal decided by the US Court of Appeals for the Federal Circuit on September 1, 2020, a large logistical support contractor was unsuccessful in recovering approximately $50 million for its (flow-through) subcontractors claims for extended storage and double-handling life support trailers in Kuwait as a result of delays in their ability to be delivered to various camps in Iraq. The delays are attributed to the continuing saga of the lack of convoy protection in 2003 when US Army resources were focused on other missions. Although convoy protection per contract was to be "government furnished" (provided by the US Army), the prime contractor ultimately hired private security (another issue in dispute), Back to the $50 million claim, the Court of Appeals rejected some of the logic used by the ASBCA (i.e. there is no requirement for the prime contractor to obtain the subcontractor's actual cost associated with the claim), but ultimately concluded that the prime contractor was entitled to no amount because the prime contractor only provided a two-page analysis which (obviously because it was only two pages) failed to meet its burden of proof concerning the reasonableness of the claim (FAR 31.201-2(a)).

This prime contractor has a track record of falling short on cost reasonableness challenges including prior decisions involving subcontracted dining facilities in Iraq as well as the

reasonableness of the cost for private security. A point of reference for any contractor subject to FAR Part 31 Cost Principles, even if all facts point to entitlement (e.g. for costs which were obviously incurred, claimed delays or breach of contract), the governments defensive wild card can be FAR 31.201-2(a). Ideally contemporaneous documentation at the time a contractor enters a subcontract, issues a purchase order or enters into an agreement for purchased labor or consulting. As has been demonstrated in multiple CDA decisions, a judge considers the contract terms and conditions and discounts the exigencies of a war as a reason for contractor noncompliance with the contractual clauses.

Six-year Statute of Limitations (SOL). FAR 33.206 impose a six- year statute of limitations on government claims or contractor claims. In either case, the claim must be filed within six years of the accrual date (date when all events that fix the liability were known or should have been known). In 2013 there were two published decisions which accepted contractor assertions that the government's claim accrued on the date of the contractor submission of its annual indirect cost rate proposal; however, subsequent decisions have agreed with government assertions that an indirect cost rate proposal falls short of the having sufficient detail for the government to know that it has a claim. In ASBCA 61691 the contractor asserted that the government should have known that the contractor had been overpaid because DCAA had cited the contractor for having an inadequate (non-existent) accounting system. DCAA never identified any unallowable/unbillable costs, but simply "left the building" once it realized that there was no General Ledger, thus no place to even initiate transaction testing. Unfortunately for the contractor, that falls far short of providing the government with either the actual or even an estimated amount for overpayments) Regarding the six year statute of limitations, it had been a recurring consideration when DCAA had failed to timely audit, but as of now, DCAA is auditing incurred cost proposals within 365 days of receipt. If there is a potential six-year SOL issue, it might result from inaction by the contracting officer after receipt of a DCAA audit report (but even these are few and far between).

Meshing a GAO Report with a Behavioral Study on the Effect of Family Photos in the Workplace

By Michael Steen, Senior Advisor

This may seem to be a strange combination, but two recent and seemingly unrelated reports just might have a connection. The first, a GAO report on agency reporting of employee time-card "misconduct". Of note, the GAO reported (and accepted as accurate) that for 19 Government Agencies over the five-year period 2015-2019, Agency Inspector Generals had substantiated five or fewer instances of employee misconduct. Doing the math, that equates to less than one instance per year for 19 agencies, hundreds of thousands of government employees, and millions of time-keeping transactions. In the unrelated behavioral study, researchers found that employees who have family photos in their respective work area are less likely to cheat on travel expenses, time sheets, etc. By implication, because my spouse, parents and/or kids are watching, I must be honest (Seriously?).

Now for the magic connection between these two sources, we have to assume that government employees all have family photos in their respective work area; hence, the incredibly (absurdly) low occurrence of substantiated time- card misconduct. Either that or the GAO Report ranks high on the list of missing the obvious (that perhaps agencies are oblivious to time-card misconduct).

The Difference Between DCAA and DCMA is More than a Single Letter

By Jerry Gabig, Wilmer & Lee

Newcomers often confuse DCAA and DCMA because of the similarity of the names—Defense Contract Audit Agency and Defense Contract Management Agency. With experience comes an understanding of the different roles each entity plays as a member of the Government Acquisition Team.[1] According to DCAA's web site, DCAA "provides audit and financial advisory services to the Department of Defense and other federal entities responsible for acquisition and contract administration." DCAA has approximately 4,500 employees located in approximately 300 locations. According to DCMA's web site, DCMA "provides contract administration services for the Department of Defense, other federal organizations and international partners, and is an essential part of the acquisition process from pre-award to sustainment." DCMA has approximately 12,000 employees who deploy to 15,000 contractor locations worldwide.

Put in perspective, the Federal Acquisition Regulations (FAR) require certain contractors who do business with the Government to maintain acceptable business systems that reduce risk to the Government and taxpayers. Government contractors may have up to six vital business systems that require Government reviews depending on a variety of factors such as size of the company, type of contract, and nature of the work.[2] For three of these business systems, DCAA has primary oversight responsibility: (1) Accounting; (2) Estimating; and (3) Material Management & Accounting. For another three systems, DCMA has primary responsibility: (4) Purchasing; (5) Property Management; and (6) Earned Value Management. Each of these six contractor business systems is separately discussed below:

(1) Accounting

This contractor business system is for accounting methods, procedures, and controls to gather, record, classify, analyze, summarize, interpret, and present accurate and timely financial data for establishing compliance. Compliance is generally dictated by applicable laws, regulations, and contractual provisions. Accounting systems often include subsystems for specific areas such as indirect and other direct costs, compensation, billing, labor, and unallowable costs. The risks which concern the Government generally arise in the administration of cost-reimbursement, incentive type, time-and-materials, or labor-hour contracts. The Government also has an interest in assuring that progress payments are properly accounted for.

FAR §16.301-3(a)(3) states that a cost reimbursement contract can only be awarded if "the contractor's accounting system is adequate for determining costs applicable to the contract or order." Similarly, FAR § 32.503-3(a)(2) only allows progress payments if the contractor possess "an adequate accounting system." The criteria for an acceptable accounting system is identified in DFARS § 252.242-7006(c).

(2) *Estimating*

The contractor business system for estimating involves policies, procedures, and practices for budgeting controls to generate estimates of costs and other data for use in proposals in response to Government solicitations. As explained in FAR § 15.407-5, "using an acceptable estimating system for proposal preparation benefits both the Government and the contractor by increasing the accuracy and reliability of individual proposals." An acceptable estimating system encompasses a contractor's organizational structure, established lines of authority and responsibility, internal controls, estimating methods (including accumulation of historical costs), and the analyses used to generate the estimates.[3]

DFARS § 252.215-7002(b) requires a contractor to "establish, maintain, and comply with an acceptable estimating system." The DFARS § 252.215-7002 clause is required for all contracts awarded on the basis of certified cost and pricing data. DFARS § 215.408. The criteria for an acceptable estimating system is:

I. Is maintained, reliable, and consistently applied;

[1] *See generally*, FAR § 1.102-4 Role of the Acquisition Team.

[2] The six contractor business systems are listed in DFARS § 252.242-7005(b).

[3] DFARS § 252.215-7002(a).

II. Produces verifiable, supportable, documented, and timely cost estimates that are an acceptable basis for negotiation of fair and reasonable prices;
III. Is consistent with and integrated with the Contractor's related management systems; and
IV. Is subject to applicable financial control systems.

DFARS § 252.215-7002(a).

(3) *Material Management & Accounting*

The purpose of a material management and accounting system (MASS) is to:

- Reasonably forecasts material requirements;
- Ensures that costs of purchased and fabricated material charged or allocated to a contract are based on valid time-phased requirements; and
- Maintains a consistent, equitable, and unbiased logic for costing of material transactions.

DFARS § 252.242-7004(b)(1). See also DFARS § 242.7202(a).

A MASS is defined as:

[T]he contractor's system or systems for planning, controlling, and accounting for the acquisition, use, issuing, and disposition of material. Material management and accounting systems may be manual or automated. They may be stand-alone systems or they may be integrated with planning, engineering, estimating, purchasing, inventory, accounting, or other systems.

DFARS § 252.242-7004(a)(1).

There are ten "system criteria" for an adequate MMAS as set forth in DFARS § 252.242-7004(d). The following two of the ten criteria are especially noteworthy:

- A 98 percent bill of material accuracy and a 95 percent master production schedule accuracy are desirable as a goal in order to ensure that requirements are both valid and appropriately time-phased.
- Maintain a consistent, equitable, and unbiased logic for costing of material transactions.

(4) Purchasing

Purchasing systems involve make-or-buy decisions, the selection of vendors, analysis of quoted prices, negotiation of prices with vendors, placing and administering of orders, and achieving the delivery of materials. A component of a purchasing system is assuring that subcontracts include FAR clauses that are required to be flown down. If a contractor does not have an approved purchasing system, Government consent to subcontract is required for cost-reimbursement, time-and-materials, labor-hour, or letter contracts, and also for unpriced actions (including unpriced modifications and unpriced delivery orders) under fixed-price contracts that exceed the simplified acquisition threshold.[4]

FAR Subpart 44.3 addresses Contractor Purchasing Systems Reviews (CPSR). CPSR reviews give special attention to:

- The results of market research accomplished;
- The degree of price competition obtained;
- Pricing policies and techniques, including methods of obtaining certified cost or pricing data, and data other than certified cost or pricing data;
- Methods of evaluating subcontractor responsibility;
- Treatment accorded affiliates and other concerns having close working arrangements with the contractor;
- Policies and procedures pertaining to small business concerns.

FAR § 44.303. DCMA's Contractor Purchasing System Review Guidebook, June 14, 2019 is a thorough reference.[5]

(5) Property

The contractor business system for property involves government property entrusted to the contractor. Generally, contractors come into possession of government property in two different ways. The first is when it is furnished to the Contractor by the Government. The second is when the Contractor acquires the property at Government expense but title vests in the Government. Examples of government

[4] FAR § 44.201-1(b).

[5] https://www.dcma.mil/Portals/31/Documents/CPSR/CPSR_Guidebook_062719.pdf

property include facilities, material, motor vehicles, special tooling, special test equipment, and R&D equipment.

A key clause is FAR § 52.245-1 Government Property which is required for all contracts in which the Government is expected to furnish property. In a nutshell, contractors are responsible for government property in their possession. Because the clause is required to be flown down to subcontractors, subcontractors have similar responsibilities. However, under the clause, a contractor will not be liable for the loss of government property unless the loss "is the result of willful misconduct or lack of good faith on the part of the Contractor's managerial personnel."[6] Anecdotally, DCMA expects a contractor's systems for maintaining government property records to be, at a minimum, equivalent to the contractor's own systems for maintaining records of contractor-owned property.

Another key clause is DFARS § 252.245-7003 Contractor Property Management System Administration. That clause requires contractors to have acceptable property management system. The clause is vague as to what constitutes an acceptable property management system.

(6) Earned Value Management

The contractor business system for Earned Value Management (EVM) is a project management tool which effectively integrates the project scope of work with cost, schedule, and performance elements for optimum project planning and control. EVM allows early insight into potential cost overruns. EVM is primarily used for high value cost reimbursement or incentive contracts.

The essential features of an EVM system are:

- A project plan that identifies work to be accomplished.
- A valuation of planned work, called planned value (PV) or budgeted cost of work scheduled (BCWS).
- Pre-defined "earning rules" (also called metrics) to quantify the accomplishment of work, called earned value or budgeted cost of work performed (BCWP).

The key clause is DFARS §252.234-7002 Earned Value Management System which, when inserted into a contract, requires a contractor to have an acceptable earned value management system. An acceptable earned value management system is nebulously explained as:

I. An Earned Value Management System (EVMS) that complies with the EVMS guidelines in the American National Standards Institute/Electronic Industries Alliance Standard 748, Earned Value Management Systems (ANSI/EIA-748); and
II. Management procedures that provide for generation of timely, reliable, and verifiable information for the Contract Performance Report (CPR) and the Integrated Master Schedule (IMS) required by the CPR and IMS data items of this contract.

DFARS §252.234-7002(b). ANSI/EIA-748 identifies 32 guidelines to implement and maintain a EVM systems. The Department of Defense Earned Value Management System Interpretation Guide of February 1, 2018 can be a helpful resource in gaining insight to the 32 guidelines.[7] Additionally, PGI 234.2 "Earned Value Management Systems" provides useful guidance.

[6] FAR § 52.245-1(h).

[7] https://www.acq.osd.mil/evm/assets/docs/DoD_EVMSIG_14MAR2019.pdf

It is not enough that a Contractor may have to undergo an audit by DCAA for any of the three business systems under DCAA's responsibility. Once the audit is complete, periodic reviews should also be expected. The same is true for the three contractor business systems overseen by DCMA. The table below identified the frequency of reviews which Contractors should expect DCAA and DCMA to perform.

Agency Responsible for Review	Business System	Frequency of Business System Reviews
Defense Contract Audit Agency (DCAA)	Accounting	Every 3 years
	Estimating	Every 3 years unless a risk assessment deems otherwise
	Material Management & Accounting	Every 3 years unless substantiated evidence suggests that the contractor's systems are adequate
Defense Contract Management Agency (DCMA)	Purchasing	Every 3-5 years based on an assessment of risk completed by DCMA administrative contracting officer
	Property Management	Every 1-3 years based on a risk assessment completed by DCMA property administrator
	Earned Value Management	Every 3 years based on results of annual surveillance; full system reviews are performed based on an administrative contracting officer's determination or at the time of initial contract award

In summary, it is beyond contention that employees of DCAA and DCMA are integral members of the Government Acquisition Team. FAR § 1.102-4(c) admonishes:

> The Team must be prepared to perform the functions and duties assigned. The Government is committed to provide training, professional development, and other resources necessary for maintaining and improving the knowledge, skills, and abilities for all Government participants on the Team, both with regard to their particular area of responsibility within the System, and their respective role as a team member.

Just as DCAA and DCMA have in-depth expertise in the three contractor business systems under their responsibility, so too contractors need similar expertise to properly perform awarded contracts. Understanding the roles that DCAA and DCMA play in overseeing contractor business systems is essential knowledge for an experienced acquisition professional.

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Our Company's Mission Statement: Redstone GCI 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.

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