

Government Contracts Blog

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"DCAA And the Art of Intimidation" - Some Historical Perspective

Last month, in what one of my colleagues has described as a "[lucid rant](#)," I discussed the recent DCAA [Memorandum for Regional Directors](#) calling for increased referrals to agency Inspectors General of contracting officers engaged in such dastardly conduct as awarding contractors "unreasonable or excessive costs and/or profit" under their Government contracts, with "unreasonable" and "excess" defined to mean whatever DCAA on any given day deems them to mean.

Subsequently, in a recent meeting of the Accounting, Cost & Pricing Committee of the ABA's Section of Public Contracts Law, we were reminded that the more things change the more they stay the same. Indeed, this very issue had been addressed years ago by a special "Ad Hoc Committee on the Role of DOD Contracting Officers." Given the thrust of DCAA's latest initiative, some of the comments reflected in that 1987 report are worth dusting off for renewed reflection. Some of the more telling comments tendered to the Committee at the time included the following:

"[Contracting officers] cannot exercise good business judgment to resolve issues. Instead they must do what DCAA recommends or spend excessive time working a way around the audit recommendations that are frequently one-sided or incorrect to be productive."

"DCAA and [legal] personnel should be reconfirmed as advisors to the contracting officer."

"They should be allowed to make sound business decisions without fear of DCAA criticism."

No one would seriously argue that the audit function is unimportant or that the number or scope of audits conducted by DCAA should in any way be curtailed. That was not the contention of the

Ad Hoc Committee in 1987, and it is not anyone's contention today. But, as the Ad Hoc Committee specifically concluded in 1987, "There is a steady and continuous erosion of the authority of contracting officers," and one of the principal factors in that erosion has been the ascendance of the auditor, an ascendancy that has come at the expense of those who, by warrant, are the only ones authorized to act on behalf of the United States in contract matters. The Ad Hoc Committee summed it up quite nicely 22 years ago:

"In effect, the auditor has no final decision authority but does hold unlimited authority to give advice; the contracting officer does have decisional authority but must justify refusal or failure to follow that advice. This situation is not conducive to effective contracting practice. It is inconsistent with the concept that the contracting officer holds the authority to contract for the government. *The Committee believes that the contracting officer-auditor relationship should be put back into balance.*" [emphasis added]

The Committee's words remain as relevant today as they did when its report was issued in 1987, only more so in light of DCAA's latest "shot across the bow" of independently minded contracting officers.

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