

DOE Withdraws Proposed Business System Rule

Written by Nick Sanders
Tuesday, 12 July 2016 00:00

More than two years ago we [reported](#) on the Department of Energy's implementation of a business system administration regime, one that was remarkably similar to (but not a copy of) the DOD's business system administration regime. Late last year, we collected some of our [thoughts](#) on the state of the DOD's business system administration regime. Since that time we have found no reason to change our mind regarding those thoughts. The current DOD business system administration regime just ain't working out the way the DAR Council thought it would.

Everybody knows it just ain't working; but nobody has said so publicly.

Except for Apogee Consulting, Inc. We called for a new approach last November at the ABA Section of Public Contract Law meeting. Not that our call for action resulted in any action being taken

Everybody knows DCAA is understaffed to perform its share of the business system reviews. Everybody knows that DCMA is unable to review and issue System adequacy determinations within the timelines established in the applicable DCMA Business Instructions. Everybody knows it takes too long and costs too much money to fulfill the regulatory (and internal) requirements associated with Contractor Business Systems administration and management. They just don't talk about it.

We all shrug and try to do the best we can with a misguided and obviously flawed approach. What else can be done? There seems to be no appetite for change at the moment. Which is unfortunate

Thus, we took it as a very good sign that the DOE [withdrew](#) its proposed rule that would have officially implemented its version of Contractor Business System administration on July 6, 2016.

No rationale was provided. The Federal Register notice said simply: "the Department has determined that it will not proceed with the rulemaking and, as such, is withdrawing the proposed rule."

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We are left only with speculation regarding the motivation(s) for withdrawing the proposed rule.

Was it a belated recognition that five years of evidence has shown the flaws inherent in the DOD's implementation?

Was it an acknowledgement that DOE lacks the necessary resources to effectively implement the proposed rule—especially because (for the moment) DCAA is prohibited from performing any business system reviews on behalf of DOE?

Was it recognition of the resources and costs associated with contractor business system administration and management—costs which would have to be borne by DOE? Did somebody do the math and calculate the impacts to DOE's budget?

Obviously we don't know *why* DOE withdrew the rule after more than two years of consideration. But we are glad the Department did so.

Good move, DOE.