

DCAA Audits – Another Point of View

Written by Nick Sanders
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It's no secret that we've taken a hard line on recent DCAA audit statistics, pointing out decreased productivity and decreased audit quality as well. Not only is DCAA issuing fewer audit reports and questioning fewer costs than ever, the sustention rate is nothing to brag about either. (The sustention rate is the ratio of auditor questioned costs that are upheld by a contracting officer.) We've been hard on DCAA, no question about it.

And then we came across a report from the Department of Treasury that shows another point of view. It shows how valid DCAA audit findings can be thwarted because of contracting officer inaction. To be fair to the audit agency, we wanted to share that point of view with our readers.

The report in question was issued by the Department of Treasury Inspector General for Tax Administration (TIGTA). Audit report no. 2017-10-019, dated March 15, 2017, can be found [here](#)

. The report is entitled "Resolution of Defense Contract Audit Agency Findings of Questioned Contractor Costs Needs Significant Improvement".

DCAA performed audits for the IRS on a reimbursable basis, meaning that DCAA received funds from the Department of Treasury intended to reimburse it for its efforts. (Readers may recall that such audits for non-DOD agencies were curtailed by Congress for a brief period of time, so that DCAA could focus on its core mission of auditing Department of Defense contractors.) The funds that the IRS actually paid DCAA were trivial, amounting to some \$5.7 million over a period of 9 years (2005 through 2014). Nonetheless, TIGTA auditors were upset that their agency didn't see a better return on those payments. Although DCAA auditors questioned more than \$80 million in IRS contractor dollars during that period, the agency only recovered about \$1.4 million of that amount—leading to a situation in which less than 2 percent of questioned costs were recovered.

Actually the situation may have been worse than that, according to TIGTA. Only \$540,000 of the claimed cost recoveries of \$1.4 million "could be documented." But let's go with the \$1.4 million figure because why would anybody lie about it? Anyway, here's the summary from the report:

IRS contracting officers fully recovered questioned costs in response to six DCAA audit reports. In four of the remaining 19 instances, the IRS was able to justify its decisions not to recover

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the full amount of costs questioned by the DCAA. However, in 13 instances, sufficient documentation to justify IRS decisions could not be located or attempts to recover funds from the contractor were unsuccessful. Two instances were still pending a final resolution.

What went wrong? According to TIGTA the fundamental issue could be summarized in one sentence: “the IRS did not timely pursue questioned costs.”

TIGTA reported that “For 22 (96 percent) of the 23 cases we reviewed, the disposition memorandum indicated that the CO agreed with the DCAA findings overall. However, for 10 (45 percent) of these cases, the COs did not take action in response to the DCAA findings or did not recover the majority of the questioned costs identified in the related DCAA reports.”

TIGTA found that “the IRS took action to resolve the findings of DCAA reports within six months of receiving the report in only one ... instance for the 25 audit reports we reviewed. Action was often deferred until contract closeout.”

By then it was often too late to collect questioned costs, because of that pesky Contract Disputes Act Statute of Limitations.

As TIGTA reported—

The Contract Disputes Act of 1978 imposes a six-year SOL on all claims, whether they are asserted by the contractor or by the Government. The limitations period begins to run upon accrual of a claim (when the contractor's certified cost proposal is submitted), which is ‘the date when all events . . . that fix the alleged liability of either the Government or the contractor and permit assertion of the claim . . . were known or should have been known.’ We found that the SOL on recovery of disallowed questioned costs expired in six instances prior to the IRS either initiating or completing actions to recover the related funds, based on the date of the contractor's cost proposal submissions. In two of the six instances, the SOL expired before the IRS received the DCAA report. However, in the remaining four instances, the expiration of the SOL occurred after the IRS received the DCAA report. The IRS was unable to recover the questioned costs in one of the four instances because it did not maintain sufficient documentation to substantiate its position for legal action regarding whether commercial labor rates charged by the contractor were appropriate. In the remaining instances, the IRS

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discontinued the demand for payment when notified by the contractor that the SOL had expired on the IRS's claims. In these three instances, the IRS COs had time (which ranged from two-to-37 months after receipt of the DCAA report) to research the audit's questioned cost findings, decide if the questioned costs were unallowable, and issue a claim to the contractor to recover funds before the SOL expired. However, while the COs may wait for the receipt of a DCAA audit report before making a decision about whether to bring a potential claim against a contractor, it will not extend the SOL time periods for those claims if the underlying facts should have been known earlier. The COs have authority under FAR § 42.801 to disallow costs on their own authority over the life of the contract. The statutory period begins to run when the Government knows or reasonably should know of an alleged violation and the resulting impact, not when DCAA audits identify it. Because the responsible COs did not take action within the six-year SOL period, the IRS lost the opportunity to recoup more than \$22 million in questioned costs identified by the DCAA. These delays occurred in part because the Office of Procurement had not established specific procedures for monitoring the date of the contractors cost proposal submission and the time remaining to recover questioned costs before the SOL expires, and *because the COs did not place a high priority on making cost recoveries.*

(Emphasis added; internal footnotes omitted.)

It wasn't a high priority.

This from the IRS, the agency that's responsible for pursuing delinquent tax payments. For pursuing under-payments of taxes lawfully owed. That's kind of ironic; are we right?

But there's more to the story. According to the TIGTA report—

According to the COs we interviewed, the organizational focus for the COs at the IRS is to expeditiously make awards and obligate funding, not to recover unallowable costs paid to contractors. The COs also cited significant workloads, resource constraints, and a dwindling acquisition workforce due to a hiring freeze at the IRS as reasons for not recouping questioned costs. In some cases, the COs indicated that the questioned cost amount did not warrant the effort and potential expense to make the recovery. In another example, IRS Office of Chief Counsel stated that the COs did not sufficiently develop their position or assemble the documentation that was necessary for them to pursue legal actions to recover disallowed costs from the contractor.

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Put yourself in the shoes of the DCAA auditors performing these audits. You do your job. The contracting officer agrees with your findings. Only the government never gets the money it's owed. That's gotta suck, big time.

Or put yourself in the shoes of the government agency that paid DCAA for performing audits, audits its contracting officers never had the time or inclination to effectively resolve in a timely manner. That would be disappointing, as well.

So here's another viewpoint of government audits, one filled with bureaucracy and frustration. The audit is performed the way it's supposed to be performed, but there is no tangible result as one would expect.

No wonder DCAA has trouble retaining its workforce.