

Considering Contractor Fraud

Written by Nick Sanders

Wednesday, 24 January 2018 00:00

You know when you have your DCAA entrance conference, and the auditor gets all serious and asks about fraud? The auditor asks “Are you aware of any allegations of fraud related to this audit?” or something very much like that. And most times that happens, you wonder who would ask such a silly question and why they would think it would be appropriate to ask it of you.

You think it’s silly because, really, *how would you know?* Fraud allegations are handled by Legal and discussed with Senior Management, and you would honestly have *no idea*

if there were any allegations of fraud or if those allegations had been confirmed or if those confirmed allegations had been reported as required by contract clause 52.203-13. You honestly have no clue (unless you yourself made or investigated such allegations) and you wonder how to answer the question.

Because you have to answer it. The question (or questions) about known or alleged or suspected fraud must be answered. The auditor must ask and the contractor must answer, honestly.

The question(s) must be asked and answered.

Typically, the question is punted over to Legal for an official answer. And that takes time, because Legal is concerned about risks and what words mean, and the lawyers want to ponder the meaning of words like “fraud” and “allegation” and “suspicion,” and they want to review all open investigations and all recent Hotline reports to see if, maybe, there is an allegation of fraud related to the audit.

While Legal is reviewing the files and preparing the official answer, the auditors are waiting. And they are getting suspicious while they wait, because they are thinking “why would this take so long?” The only answer they can come up with is “because there’s something there—something the contractor wants to hide.” While you are waiting for Legal to get you the answer to the question(s), the auditors are thinking they are going to learn something important. (This rarely happens.)

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Less typically, the audit liaison answers the question, and answers it in the negative. The negative response is also honest. “No, I am not [*personally*] aware of any allegations of fraud related to this audit.” The *personally*

part is never said out loud, but it’s certainly implied. “

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am not aware, and

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am not aware that management is aware...” Because

you are not aware

, because they haven’t told you anything.

The auditor notes the response and the date and the fact that it was you who said it ... and if it ever turns out that there were, in fact, allegations or suspicions or actual disclosures of fraud that were relevant to the audit, then you will certainly have some explaining to do.

You cross your fingers and hope it never comes to that.

Regardless of which scenario you are participating in, the auditors have asked their fraud-related questions, and received and recorded the answers—thus, one more step in the audit program has been completed.

It’s a required step in most DCAA audit programs. The auditors are required to consider contractor fraud as part of their audits. You know that asking about fraud is probably not the best way to consider fraud, but it’s certainly one way. To be clear, it’s not the only way.

Another resource used by DCAA auditors to consider contractor fraud are the Fraud Detection Resources for Auditors, maintained by the DoD Office of Inspector General. You don’t have to be an auditor to use these resources; anybody can visit the DoD OIG [website](#) and peruse “General Fraud Scenarios and Indicators,” “Fraud Red Flags and Indicators,” and “Contract Audit Fraud Detection Resources.” You can also review “Fraud Detection Guidance,” or “Auditor Responsibilities,” or even “Best Practices” for identifying and assessing potential fraud risk factors during audit planning and performance. It’s free!

If you click on (say) “Contract Audit Fraud Detection Resources,” you will see a bunch of

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interesting stuff, including Fraud Scenarios linked to:

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Incurred Cost Audits

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Business System Audits

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Forward Pricing Proposal Audits

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Billing Audits

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Post-Award Audits

If you are a diligent audit liaison, you will actually review the fraud indicators and scenarios that are relevant to the audit you are supporting, because you know that the DCAA auditors are reviewing them and you'd like to have an inkling about what things they are going to be sensitive to in the audit they are performing at your company.

But if you are the average person, *no*. You're not going to take the time to review all that stuff, because you're convinced the whole thing is a "check the box" exercise, without any substance and therefore without any consequences.

And you'd be wrong.

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The fact of the matter is that there is a non-zero probability that any DCAA audit is going to unearth some type of fraud. There is a non-zero probability that any contractor a DCAA auditor audits is actually committing some type of fraud right at that moment.

Yes, your company.

In 2017, contractors made 388 “disclosures” to the DoD OIG. And that’s just one Inspector General out of many across the Federal government. According to DoD OIG reports, the number of contractor disclosures is trending up over time, not down. Contractor fraud is a growing problem and DCAA auditors would be silly if they didn’t consider that every single time they performed an audit, there was a chance they would encounter some type of fraudulent activity. You might not like the way they handle it, but it’s something they absolutely have to handle.

Examples of contractor fraud abound on this website, even though (a) we don’t report fraud in the health-care industry, and (b) we don’t report anymore about “routine” contractor fraud—it’s got to be something interesting to merit a blog article. A keyword search using “fraud” as the single term returns more than 40 individual articles dealing with contractor fraud.

So get over it. Auditors are going to continue to ask questions about fraud and they are going to continue to expect answers to those questions.

In unrelated news, on January 19, 2018, Lockheed Martin “agreed to a settlement valued at \$4.4 million to resolve allegations that it violated the civil False Claims Act by providing defective communications systems for the United States Coast Guard’s National Security Cutters,” according to [this](#) Dept. of Justice press release. The settlement resolved allegations brought by a *qui tam* relator (a former employee, naturally) who “will receive \$990,000 as his share of the government’s recovery from Lockheed.” Importantly, apparently this matter was not disclosed by Lockheed Martin pursuant to the requirements of contract clause 52.203-13.

In more unrelated news, the DoD OIG [confirmed](#) allegations that government contractor

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Leidos had retaliated against an internal whistleblower. Report DODIG-18-044, issued January 3, 2018, stated—

We determined that Complainant made two protected disclosures, one to a company official, and one to a Government official. We also determined that after Complainant's protected disclosures, Leidos took actions against Complainant by non-selecting her for contract continuation. We further determined Leidos had knowledge of Complainant's protected disclosures.

Leidos officially disagreed with the IG's findings. Nonetheless, the matter was referred to the Secretary of Defense for further action.

Moving forward, let's agree that contractor fraud exists and that government auditors are not being oversensitive or overzealous when they consider that it might be existing right in front of their eyes. Let's agree to make sure that, when we answer auditors' fraud-related questions, we do so quickly and forthrightly. As a further step, let's agree to try very hard to make sure the answers to those questions are "no"—because we've already been checking for fraud at our companies, as the government expects us to.