

As we previously [reported](#) , the FAR was revised in December 2008 to require contractors to have (1) a written code of business ethics and conduct, (2) a business ethics and compliance training program, and (3) an internal control system that facilitates timely discovery and disclosure of improper conduct, and ensures corrective measures are promptly instituted and carried out. On July 23, 2009 DCAA revised its audit programs, audit guidance, and internal control matrices to address the impact of the revised requirements on the control environment and overall accounting system controls of Federal contractors. The revised DCAA audit [guidance](#) provides a good recap of some of the new requirements.

Importantly, the audit guidance directs that a contractor's failure to disclose wrongdoing under the mandatory disclosure requirements should be treated as an internal control deficiency, calling into question the adequacy of the contractor's accounting system. In addition, the guidance claims that the new contract clause 52.203-13(c)(2)(ii)(G) requires "full cooperation with any Government agencies responsible for **audits**, investigations, or corrective actions" and implies that this cooperation should be extended to DCAA auditors. [Emphasis in original.]

In fact, in the FAR revision promulgating comments, the FAR Councils stated--

The proposed rule was not intended to have any application or impact on the Government's exercise of its audit and access to records rights in the routine contract administration context except as the issue arises when a contractor discloses fraud or corruption or the Government independently has evidence sufficient to open an investigation of fraud and solicit the contractor's cooperation. The issue of contractor cooperation in this rule arises primarily in the context of Government investigation of contract fraud and corruption and any application of this rule in any other context by the Government would be clearly overreaching.

Another new aspect of the DCAA audit guidance is the direction to auditors to "verify that the business ethics awareness and compliance program includes an ethics training program for all principals and employees, and as appropriate, the contractor's agents and subcontractors. Selectively test this control by evaluating training program materials and training records of completion." Moreover, the audit guidance directs auditors to "verify that the contractor performs periodic reviews (i.e., at least annually) of company business practices, procedures, and internal controls for compliance with the contractor's code of business ethics and conduct and special requirements of Government contracting, including the specific requirements in FAR 52.203-13(c)(2)(ii)(C). Review the results of the recent reviews and assess any impact on this audit." The former requirement assumes individual auditors can evaluate contractor's training program materials without providing them any specific guidance on how to do so, while the latter requirement ignores well-settled case law that contractors' internal audit reports are protected from DCAA review.

In summary, the new DCAA audit guidance addresses the new FAR requirements, but in such a way as to attempt to expand DCAA audit access beyond that contemplated by the FAR Councils or by the Courts. Contractors should establish their position(s) with respect to the new DCAA audit guidance, and be prepared to "push back" when it is in their interests to do so. On

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the other hand, many contractors will find that their position(s) lie on the path of least resistance, and will give in to DCAA demands in order to avoid "access to records" issues and potential litigation. An early internal discussion of these potential land mine issues will permit contractors to react timely and crisply to DCAA internal control evaluations of their accounting systems.