



We frequently have written about issues—both real and imagined—concerning the jurisdiction and authority of DCAA and DCMA with respect to oversight of Government contractors. For example, we reported on hearings held by the Commission on Wartime Contracting in Iraq and Afghanistan in which DCMA was [lambasted](#) for “caving to the contractors and not acting properly on the Defense Department’s behalf.” Another article reported that “a lack of cooperation” between DCMA and DCAA “is hindering the oversight of contractors’ business systems.” We’ve even gone so far as to [ask](#) whether DCAA and DCMA would merge to form one agency dedicated to oversight of DOD contractors.

## DOD Outlines DCMA/DCAA Dispute Resolution Process

Written by Administrator

Tuesday, 08 December 2009 00:00

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In the midst of finger-pointing within the Defense Department, attacks from without continued. GAO [reported](#) abysmal DCAA audit report quality for the second year in a row (corroborated by an independent audit by the DOD Inspector General). We reported on hearing s in both the Senate and House that rose to levels of near-hysteria. More relevantly, the audit quality findings subsequently were [utilized](#) in another GAO report to criticize DCMA (and DOD in general) for relying on DCAA audit reports to perform surveillance over contractors, saying “The effectiveness of DOD’s cost surveillance process depends, to a large extent, on the adequacy of [ ] DCAA procedures. Our recent work has raised concerns in this regard.”

Well, the storm waves are starting to settle as the calendar year draws to an end. DCAA Director April Stephenson has been “reassigned” to another SES-level position in the DOD and Shay Assad (Director, Defense Procurement and Acquisition Policy) has emerged as the mediator between DCMA and DCAA—thus positioning DOD to report back to the Commission on Wartime Contracting that significant progress has been made in resolving differences between the two Defense oversight agencies. On December 4, 2009 Assad issued a memo entitled “Resolving Contract Audit Recommendations” that established a framework for how the resolution process will work.

The memo, which can be found [here](#) , discusses how the two agencies will resolve “significant disagreements”—defined as when a contracting officer’s pre-negotiation memorandum indicates that “less than 75 percent of the total recommended questioned costs in a DCAA audit report on a contractor proposal valued at \$10 million or more.” It’s interesting that the resolution process memo seems to be aimed at contractor proposals—including “price proposals” for new work as well as cost impact proposals, and forward and final indirect cost rate proposals. The memo seems to omit any discussion of how DCMA and DCAA would resolve differences of opinion regarding the adequacy of contractor internal control “business systems” or noncompliances with Cost Accounting Standards or allegations of “defective pricing”. Thus, it focuses on a subset of oversight interactions but not the entire universe of activity. And the omitted areas are the areas the critics have pointed at, such as the adequacy of contractor control systems. As we say, interesting ....

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The first step of the resolution process is to discuss the differences of opinion. DCMA contracting officers are required to “discuss the basis of the disagreement with the auditor prior to negotiations”. The DCMA contracting officers must then “document that discussion, and the basis for disagreement, in the pre-negotiation objective (or pre-business clearance) and in a written communication to the auditor prior to negotiations ....” The memo notes that an email to the auditor is considered to be an adequate written communication. Once the negotiation objective is approved, “the contracting officer may proceed with negotiations.”

The next step of the resolution process takes place with the auditor continues to disagree with the contracting officer’s position. In such circumstances, “DCAA management” may request that the DOD “Component management” review the contracting officer’s decision. The DCAA request for review must be submitted within three business days after receiving the written communication from the contracting officer.

The next step of the resolution process takes place if DCAA management and the DOD “Component’s highest management level” cannot resolve the difference of opinion. In such circumstances, the DCAA Director will bring the matter to the attention of Mr. Assad. If that doesn’t work to resolve the differences, the DCAA Director may bring the matter to the attention to the Under Secretary for Defense (Acquisition, Technology & Logistics) and/or the Under Secretary for Defense (Comptroller).

In addition to the foregoing, the memo notes that the DCAA Director can bring any matter to Mr.

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Assad's attention that "he believes requires my attention (e.g., precedent setting or of high interest to the Department)."

The memo concludes as follows—

It is neither expected nor necessary that the contracting officer and contract auditor agree on every issue. They have different, yet complementary, roles in the process. It is expected that the auditor and contracting officer will work together, recognizing that it is the contracting officer's ultimate responsibility to determine fair and reasonable contract values.

As noted above, this memo positions DOD to report back to the various stakeholders (e.g., Commission on Wartime Contracting) that it has made significant progress toward resolving the alleged dysfunctional relationship between DCAA and DCMA. Even if it curiously omits discussion of the more contentious areas, it is nonetheless progress. And the memo positions Mr. Assad as the mediator between the two DOD oversight agencies, hopefully to resolve differences of opinion before they become grist for the various Commissions and Committees. It seems to be a good first step.

It will be interesting to see whether the process outlined in the memo actually can be worked by the contracting officers and auditors in the field.

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