

## DCAA Stomps on Ray of Hope Offered by DFARS Class Deviation

Written by Administrator

Wednesday, 29 September 2010 00:00

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We [recently wrote](#) about a “ray of hope” offered by the August 17, 2010 DFARS Class Deviation issued by the Honorable Shay Assad, Director, Defense Procurement and Acquisition Policy. The Class Deviation deleted the words “for contractors with approved billing systems” from DFARS language discussing DCAA’s authority to “authorize direct submission of interim vouchers for provisional payment to the [DOD] disbursing office.” In other words, whether or not DCAA authorized a contractor to directly submit its invoices to DFAS was no longer tied to the adequacy of the contractor’s billing system.

We thought this was great news, especially given DCAA official position on the matter (as expressed in the DCAA Contract Audit Manual), which was: “It is Agency policy to obtain the maximum contractor participation in the direct submission (direct billing) of interim vouchers program.” Great news, we thought, because now DCAA could follow its policy and restore the direct billing authority for all the contractors where that authority had been withdrawn based on inadequate or unaudited business systems (which, by the way, were not necessarily the contractors’ billing systems).

We thought it was also great news for the audit agency, because it could redeploy its scarce audit resources away from this non-valued-added activity toward areas with more risk and vulnerability for waste, fraud, and abuse. Given that the contractors were only submitting “interim vouchers for provisional payment,” the risk of overpayment was minimal. After all, those vouchers and contract costs were going to be reviewed again during the audits of the contractors’ incurred costs. Redundant audits made no sense, especially when DCAA was so under-resourced it could only audit 65% of the audits it was required to perform (by its own admission).

This was great news. Hallelujah! Or so we thought.

But we were wrong.

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DCAA issued Memorandum for Regional Directors [MRD 10-PPD-022\(R\)](#) on August 26, 2010, in order to clarify that DCAA's policy of denying contractors direct billing authority based on inadequate or unaudited business systems was unaffected by the Class Deviation. The MRD stated—

This deviation does not impact current DCAA policy for authorizing contractors direct billing authority (CAM 6-1007). Auditors should continue to use existing policy for authorizing contractors direct billing authority and the additional guidance provided in MRD 09-PPD-006(R), dated April 15, 2009.

Now it seemed to us that the intent of the Class Deviation was *exactly aimed* at impacting the current DCAA policy. But DCAA not only disagreed with our interpretation of the intent of the Class Deviation, it also asserted that the Class Deviation was issued at its request! The MRD reported—

The deviation was issued to address a DoDIG interpretation of the subject DFARS language. The DoDIG has interpreted that the DFARS language requires that a comprehensive evaluation of the billing system internal controls is required for all contractors to participate in the direct billing program. We determined that conducting such reviews at smaller contractors would not be a prudent use of audit resources or taxpayer dollars. DCAA currently performs other audit procedures tailored to the risk to the Government when authorizing nonmajor contractors to direct bill. Therefore, we requested the DFARS class deviation to allow DCAA to use its existing policies and procedures for authorizing the direct submission of interim vouchers for provisional payment to the disbursing office.

So according to DCAA, the Class Deviation applies only to “nonmajor” contractors, such as small businesses. The “major” contractors will continue to suffer delays in cash receipts.

First, we question DCAA's interpretation. We don't care what DCAA intended the Class Deviation to do; all we have to go on is what it says. The "plain language" of the Class Deviation removes the linkage between direct billing authority and business system adequacy. *Period.* The Class Deviation does not contain any express language that would limit its application only to businesses of a certain size or class. While it may be true that the intent was to make the Class Deviation applicable only to small businesses, that's not what the regulation says—either before or after the deletion of the language.

Granted, DCAA has the authority to authorize or not authorize direct billing authority, and it can do so based on whatever rationale it wants to cook up. But at least its actions should be consistent with its own published policy, or so it seems to us.

Second, we note that, based on the date of the MRD, it should have been published on the DCAA website already. The website says it includes all audit guidance "open as of August 31, 2010"—but you can't find this particular one listed there. DCAA has told contractors that it publishes all releasable open audit guidance every month, but this particular MRD somehow slipped through the cracks. We have to ask whether DCAA is trying to slip its flawed interpretation under the radar?

This is not the first time that DCAA has delayed, for whatever reason, publishing audit guidance for inspection by the public. Given the Obama Administration's [push](#) for openness and transparency, we would have thought that DCAA would be eager to share all of its audit guidance with the public in a timely fashion. And just like our thoughts about the DFARS Class Deviation, we would have been wrong.

Perhaps we are overreacting to the situation. It wouldn't be the first time! But here's how we see it: DCAA is interpreting the current DFARS language (after implementation of the Class Deviation) in a manner that appears to be arbitrary, capricious, and self-serving. It appears to be interpreting the DFARS language in

a manner that is inconsistent with its own policy statements and in a manner that actually harms its own self-interest, as it cannot redeploy audit resources to more fruitful areas as it should.

DCAA reports to DOD Comptroller Hale in a separate vertical from that of DCMA. But given that the Class Deviation was issued by the DOD Procurement and Acquisition Policy Directorate, one might think it would carry some weight with the DOD auditors. Can DCAA simply ignore promulgations it disagrees with—or reinterpret them in ways it finds more palatable? Or is this situation something akin to insubordination? We don't know, but (frankly) nothing DCAA says or does surprises us anymore.

Finally, President Obama has issued an [Open Government Directive](#), and that Directive applies to all Executive Agencies and Departments—including the DOD and its auditors, the DCAA. That Directive states—

Agencies shall respect the presumption of openness by publishing information online (in addition to any other planned or mandated publication methods) and by preserving and maintaining electronic information, consistent with the Federal Records Act and other applicable law and policy. Timely publication of information is an essential component of transparency. Delays should not be viewed as an inevitable and insurmountable consequence of high demand.

Given that DCAA is not publishing its audit guidance timely, one has to ask whether it is meeting the expectations established by the President's Directive. Or is DCAA treating that Directive with the same strategy it has applied to the DFARS Class Deviation?

But perhaps that's not all ... *Dare we say it?*

Yeah, let's go there ...

*By apparently ignoring the requirements of the Open Government Directive, is DCAA being insubordinate to the lawful orders of the Commander-in-Chief? In a time of war?*

Okay, we admit it—we are *definitely* overreacting to the situation. But we're concerned, and we're asking tough (rhetorical) questions. If DCAA wants to email us an official response, we'll be happy to post it here. And we'll post it timely, too.

And you too can post your thoughts on this site. Every member can post comments here, and you are welcome to do so. Agree, disagree, or have a story to share? Feel free to leave a comment.