We **told you** back in November 2010 that DCMA and DCAA had been directed to work together to "aggressively target contractual opportunities to recover taxpayer dollars by dispositioning reportable audits, suspended/disallowed costs, cost accounting practice changes, and other cost allowability and allocability issues". This joint project, dubbed the "Cost Recovery Initiative," was designed to address nearly $300 million worth of issues "currently awaiting the Administrative Contracting Officer's ... disposition."

We opined at the time that—

This Cost Recovery Initiative is Good News for DCAA, because the agency will look like it is saving the taxpayers money. And the Initiative is Good News for DCMA, because the agency will look like it is taking prompt action based on DCAA audit recommendations. And the Initiative is Good News for the DOD, because it will look like the two oversight organizations are cooperating and not locked in a 'dysfunctional' relationship. And, as noted above, the Initiative is likely to prove to be a Good Thing for government contracts attorneys (such as those at Crowell & Moring).

But we predict it will be Bad News for DOD's contractors, whose counter-factual arguments and red-faced finger-pointing at the inept DCAA audits will very likely avail them nothing—and they will be forced to either concede or litigate.

In January 2011, the DCAA issued guidance to its auditors (**MRD 11-PAC-001(R)** , dated January 18, 2011) that may prove troubling for any contractors that have outstanding Cost Accounting Standards (CAS) cost impact analyses awaiting disposition. The guidance memo directs auditors to prepare Rough Order of Magnitude cost impacts ("ROMs") to aid the cognizant ACOs in issuing demand letters to those contractors who have, for various reasons, not yet submitted their cost impact analyses. To be clear: if the contractors cannot (or will not) estimate the gross dollar magnitude cost impact related to its CAS issue, *then the DCAA will calculate it for them.*

The guidance memo notes that "The timely resolution of these audit issues is of the highest importance since delays in resolving these issues may impact the Government's ability to recover the amounts owed." Yeah, that whole pesky Contracts Dispute Act statute of limitations can really get in the way, can't it? You'd think that six years would be plenty of time to resolve

even the thorniest of CAS disputes—or get the litigation started—but (apparently) you'd be wrong.

The fact that this is even an issue, that six years may not be sufficient time to resolve difficult issues, shows just how screwed-up the DOD oversight environment is. Anybody seeking to fix the system has to first address why it takes so dang long to move the ball forward when the parties can't agree on the issues.

Anyway, back to the guidance.

Our first problem with the guidance is that it lumps issues related to (alleged) CAS noncompliances with issues related to voluntary changes in cost accounting practice. Though DCAA loves to approach each in the same, one-size-fits-all way (and indeed 2005 changes to FAR 30.6 and related CAS contract clauses confused and conflated the distinction between the two all to hell), the fact is that each is a distinct issue within CAS administration and each has a different objective for the Federal government. With respect to CAS noncompliances, the Government's objective is to recover any resulting overpayments (with interest). With respect to voluntary changes to cost accounting practice, on the other hand, the Government's objective is to prevent payment of increased costs (in the aggregate). While the distinction may be subtle, it is nonetheless crucial.

Our second problem with the guidance is the ROM itself. The ROM is neither a Gross Dollar Magnitude ("GDM") cost impact nor a Detailed Cost Impact ("DCI") proposal. It is neither fish nor fowl. As the MRD states—

The ROM should be a high level estimate of the cost impact of the accounting change or noncompliant practice and would not be at the level of detail or format required in a GDM or a DCI. The ROM will be used by the ACO to implement the 10 percent withholds authorized in FAR 30.604(i) and 30.605(i) and/or issue a final decision and unilaterally adjust affected contracts. The basis of the ROM needs to be adequately documented and be a good faith estimate by the auditor based on the data available. If the FAO is missing critical data necessary to compute the ROM and experiences difficulty in obtaining the data timely, it should request ACO assistance in obtaining the data.

Importantly, DCAA is to calculate the ROM as part of "nonaudit services" that are not subject to GAGAS. Moreover, the DCAA guidance asserts that generating a ROM will not impair the auditors' independence and they will be free to audit the contractor's subsequent cost impact proposal, even though they already have submitted a number to the ACO and may have some pride of authorship about it. (This point strikes us as simply whistling in the dark. But whatever ….)

Tell us what you think of this paragraph in the MRD guidance—

Because the ROM is a high level estimate of the cost impact and is not at the level of detail or format required to be submitted by the contractor in a GDM or a DCI, performing the ROM calculation as a nonaudit service will generally not impair independence for an audit of the cost impact, should the contractor subsequently submit one. The contractor's cost impact proposal (generally a GDM) should be based on the FAR requirements and the level of detail and methodology used will generally be significantly different from the FAO's ROM calculation. If it is not, the FAO should consider whether the contractor's cost impact proposal is adequate based on the FAR requirements. In those rare cases where the FAO determines that the contractor's cost impact proposal is adequate and it is substantially the same as the FAO's ROM calculation (e.g., based on the level of detail, the methodology, and estimates used), the FAO should coordinate with Headquarters PAS through the regional office for further guidance regarding possible independence concerns.

So to sum up, the DCAA auditors will be calculating their own cost impact numbers using their own methodology, and they will not be following GAGAS when doing so. The cognizant ACO (or "CFAO" as the position is called in CAS terminology) will use DCAA's guess to implement payment withholds. And when the contractor does issue its formal cost impact proposal, the same auditors who already told their management (and the DCMA) one number will be "independently" reviewing another number calculated by the contractor.

And this whole process is designed to speed things up and disposition old, thorny, issues that the parties couldn't agree on in the first place. This is supposed to be an improvement over the current approach.