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In 2004, when confronted with the procurement scandal caused by the illegal behavior of Darlene Druyun and the leaders of The Boeing Company, then Secretary of Defense Donald Rumsfeld **famously opined** that the root cause was "very little adult supervision" over Ms. Druyun's decisions at the Pentagon. Rumsfeld was quoted as saying—

'So what you had with all these vacancies over a 10-year period . . . the only continuity was that single person, who's now pled guilty and is going to go to jail. … When you have that long period of time, with . . . no one above her and no one below her, over time I'm told that what she did was acquire a great deal of authority and make a lot of decisions, and there was very little adult supervision.'

We were once again reminded of Rumsfeld's opinion of Pentagon leadership when the Defense Contract Management Agency (DCMA) issued a **guidance memorandum** on March 23, 2012, concerning "Unallowable Costs for Ineligible Dependent Healthcare Benefits."

We've written about this topic several times before, most recently **right here** . That article discussed a policy memo issued from Mr. Shay Assad (Director, Defense Pricing) to two colleagues: the Director of DCAA and the Director of DCMA. We had some problems with Mr. Assad's memo, and we weren't particularly shy in expressing them. In that article, we concluded as follows—

In our view, this has always been 'much ado about nothing' and we are sad that the DOD policy-makers can't move on to something more important, like **contractor defined-benefit pension costs** . Like a dog with a bone, they keep worrying and worrying at it.

Maybe they should just bury this particular bone in the ground for a while. We're quite sure there are more meaty issues around to deal with.

Perhaps it's just the normal policy flow-down, but DCMA's guidance memo, issued a month after Mr. Assad's memo, brought back the feelings of amazement, frustration, and pity that we feel every time this issue is dealt with by DOD leadership.

*Really?* This is how they choose to spend their time? This minor ankle-biter of an immaterial annoyance, this piffle, this nothing— *this* is the top priority right now in contractor oversight? Have Messrs. Assad, Williams and Fitzgerald nothing better to do with their time? (Hint: we believe they do.)

Certainly taxpayers deserve far better than this.

But let's pull the plug on the ranting. (Just for a minute: we'll get back on our soapbox in just a paragraph or so.) Let's take a look at this latest policy memo and see what it tells DCMA Contracting Officers to do with their FAR-given "independent business judgment."

According to the DCMA policy memo, DOD "will continue to disallow ineligible dependent healthcare benefit costs." We've discussed the various theories as to why those costs might or might not be allowable, and whether they did or did not affect pricing of DOD contracts, and whether inclusion of such costs did or did not result in "defective pricing" under TINA. (See our previous articles on this subject.) So we'll not rehash those theories here. Suffice to say, we think the DOD's position on allowability has a foundation that's on very thin ice.

Moreover, we continue to wonder with some trepidation at what this direction portends for the future of DOD oversight. We are *concerned* by the rather unusual phenomenon of DCMA Headquarters directing Contracting Officers to find a certain category of costs unallowable, without permitting those COs to weigh the individual facts and circumstances of each contractor's situation. Either the COs have authority to make the decision, or they do not. If they don't have the authority, then let's all stop pretending that they do. Let's have Charlie Williams, Jr. make all contracting decisions via email or some other electronic medium that facilitates the kind of autocracy that seems to be developing at Fort Lee.

The DCMA policy memo magnanimously clarifies that penalties will not be assessed on the costs that HQ has determined to be unallowable. Too bad it's a false concession—*i.e.*, DCMA is conceding something that is a certain loser in Court. There is no way that these costs are "expressly unallowable" and subject to penalty. And DOD knows it—which is why they have decided not to pursue penalties … at this time.

The policy memo notes that the Defense Department will pursue "application of penalties under FAR 42.709" when "DFARS is amended to make future ineligible dependent health care benefit costs explicitly expressly unallowable." Let's explore that phrasing.

The Shay Assad memo stated that it was DOD's "intention to amend the DFARS to make future ineligible dependent health care benefit costs expressly unallowable and thus subject to penalties." Okay. We had some choice words about the decision to solve, by regulatory rule-making, a problem that Mr. Assad himself admitted had been "largely corrected" and was no longer a problem. We thought then, and continue to think today, that it is a colossal waste of time and resources.

But notice that the current DCMA memo takes a bit of a different tack. While Mr. Assad discussed an "intention," the DCMA memo assumes that intention is a done deal. In other words, DCMA is telegraphing that it expects to ram the rule through the public comment process and ignore any public input that might point out what a colossal waste of time and resources this whole issue is. Obviously, we're speculating here without much supporting evidence. But you wait and see what happens with the upcoming DFARS Case on this issue. See if we're not being a little prescient here.

One final thing.

DCAA has asserted that inclusion of the costs of ineligible healthcare dependents is a noncompliance with Cost Accounting Standard (CAS) 405. We disagree with that assertion. The DCMA policy memo continues the DCAA charade, directing DCMA COs to "obtain a cost impact proposal from the Contractor identifying the amount of the unallowable ineligible dependent health care costs that were included in indirect cost proposals for all open years." Upon receipt of that cost impact proposal, the CO is directed to "negotiate the amount of unallowable ineligible dependent health care cost or when negotiation is not feasible, make a written decision that states the sum certain is unallowable."

Readers, you must understand that the costs involved here generally are very minimal. It's pretty clear that not more than two or three percent of a contractor's *total population* is actually ineligible for healthcare coverage. But more importantly, jn some cases, there is almost *no additional cost*
associated with the ineligible dependents. For example, if you already have family medical coverage for five dependents—one of whom is ineligible—the difference in cost between four and five dependents is truly
*de minimis*
. In other words, this entire issue is a "tempest in a teapot" and not worthy of any more time spent trying to solve it.

SecDef Rumsfeld thought that inadequate “adult supervision” led to a situation where one DOD acquisition official had too much authority and too little oversight. As a result of the lack of adult supervision, several people went to prison and several major defense programs were significantly impacted. One would have hoped that DOD leadership would have learned from that situation, and taken steps to implement better reviews over the decision-making of such officials.

Yet here we are, eight years later, faced with a similar lack of adult supervision. We have two or three members of the Senior Executive Service ( **SES** ) who have embarked on a course of action that wastes the time, money, and resources of all involved. They have created a problem that exists only in their own minds, and refuse to let it go.

Where is the adult supervision at DOD?