

“He said, I am the voice of one crying in the wilderness, Make straight the way of the Lord, as said the prophet Isaiah.” – John 1:23, King James 2000 Translation

Well, we were lucky enough to make the acquaintance of the owner of a small business who not only has had significant “lessons learned” about dealing with DCAA and DCMA, but has [blogged](#) about the company’s travails. The blog is called “Small Business Government Contracting: Adventures in Dealing with DCMA, DCAA, and Other Government Bureaucrats.” From the first post, we were hooked: it’s a must-read.

We had never heard of Quimba Software before we received an e-mail from a company executive, but maybe we should have—these Quimba folks are no strangers to disputes with the Department of Defense. [This ASBCA decision](#) sheds some light on why the Quimba folks are so passionate in their contempt for the DOD bureaucracy that, in their view, has wronged them.

It’s a short and to-the-point decision. Quimba received a Contracting Officer’s Final Decision (CoFD) disallowing certain deferred executive compensation costs. Quimba filed an appeal, but did so on the 91st day after receipt of the CoFD. Unfortunately for Quimba, the ASBCA Judges strictly enforced its 90-day appeal period, and dismissed Quimba’s appeal without hearing any arguments on the merits. End of discussion.

It may sound harsh, but that’s the way the government contracting game is played. What seems unfair to one party (Quimba) seems perfectly fair to the other party (the United States). The United States, the Sovereign, consents to be sued, but only within strictly enforced circumstances. If you fail to follow the playbook, you lose the game.

Now, we could take off on a rant here ourselves. We could rail that treating the US Federal government as “sovereign” is a hold-over from English jurisprudence. The English had a Sovereign, but we fought a revolution in order to rid ourselves of that concept of governance. Treating the Federal government as a “sovereign” perpetuates an anachronistic system that has no place in freedom-loving America. But that kind of ranting does no good in this context, since Quimba (and all other government contractors) *consent* to this treatment when they execute their contracts and accept the government’s money.

Another Voice in the Wilderness

Written by Nick Sanders

Monday, 13 August 2012 00:00

Sure the game is rigged, but if you don't bet you can't win.

So with that background, let's start quoting some of Quimba's "lessons learned"—clearly published with the intent of warning other small businesses about the landmines that Quimba tripped in its dealings with the Department of Defense.

About DCAA:

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The biggest mistake many entrepreneurs new to the government contracting game make is to think DCAA has, or under any miraculous set of circumstances, will have even an iota of interest in your success.

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DCAA's most important function in our experience is to help the PCOs negotiate the best possible deal for the government and help the ACOs reduce the ultimate contract value (what the government actually pays) by as much as possible.

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DCAA auditors appear to have been trained to minimize communication with contractors; are frustratingly averse to almost any written communications; and generally pick their words carefully in order to leave themselves plenty of room to change their position – the old “wiggle room”.

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I promise you, however, that a DCAA auditor that consistently does not find “something

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wrong" with contractor cost calculations will probably be banished to the children's table at their annual agency picnic! Same is true, though with a twist, of DCMA staff, particularly the Administrative Contracting Officers or the ACOs. An ACO who fails to perform as a de facto employee of DCAA and follow the auditor "recommendations" will probably not be invited to DCMA's holiday party.

About DCMA:

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In retrospect, I am not sure if we should actually be surprised since the DCMA definitely and directly benefits from beating small businesses into submission and reducing their contract values.

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In my direct experience, however, most ACOs simply do not care enough about small businesses to do anything but try to get them off their "to do" list as fast as possible. ... In my direct experience, DCMA also intentionally fosters a defective management structure that promotes lackadaisical and inconsistent enforcement that breeds a contemptible lack of supervisory sophistication. ... In short, in my direct experience, DCMA has intentionally structured a management environment that promotes and rewards incompetence by its staff, particularly the ACOs.

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I would in fact venture as far as to say that you are NEVER done negotiating terms and pricing on any contract until it is closed. Up until then you should absolutely expect the government, through its duly authorized employees in DCAA and DCMA to focus on reducing your contract's value – or the total amount you will ultimately receive on your contract regardless of what they themselves agreed to, either explicitly or implicitly. This is cheating.

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Simply stated, just because DCMA and DCAA represent the US flag, it does not mean their policies, or their employees, will either be fair or reasonable. The bureaucrats you will be dealing with care only about what any bureaucrat cares about – stay under the radar, get the paycheck, and build the pension. These bureaucrats also do know that any contract dispute is likely to spend several years in the agency's internal administrative processes before starting on a long and windy legal road. Given that it could take a decade or more before a dispute is resolved, most bureaucrats simply push it off on to the next guy. At least this has been our experience. And the guy who is stuck with you at the end of this musical ACO game is sure going to let you know just how unhappy s/he is that you do not simply submit to the bureaucrat's will.

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Throughout this ordeal, it has been my personal experience that DCMA staff are intentionally hostile and abusive – and they like it that way. It has also been my experience that there are absolutely no management controls in DCMA to rein in the type of abuse we have been subject to over the past FIVE , yes F-I-V-E years. How hard is it, we have continually wondered, to verify that ACO [Named Withheld] made an error and correct it?

Well, we here at Apogee Consulting, Inc. feel Quimba's pain. The Quimba folks are expressing the frustration that many of us feel, all too often. Let's keep in mind that Quimba was awarded an SBIR Phase 2 contract, so it (theoretically) had something that the DOD was interested in obtaining. But no that's not going to be happening.

So in this story, there are no winners—only losers. Quimba is (quite possibly) out lots of money—and, even if the company ultimately prevails at the Court of Federal Claims, they are out quite a lot of attorney fees. The Defense Department loses out on some promising software. And we, the taxpayers, lose out because our taxes are going to a contract dispute that should be easily solved—if anybody cared to negotiate.