

Virtual Roundtable: Compliance Check-in – DoD’s Proposed Business Systems Changes

Q. Do you think the final rule will require CPA review or will other third-party consultants be allowed to do system audits? Could there be something like Enrolled Agents for the IRS?

A. The proposed rule as currently written contemplates an audit report from an independent CPA firm. We are unaware of any effort to create an “Enrolled Agents” listing. Several of the commenters asked that DCAA or DCMA “pre-qualify” firms to do the work, but the published proposed changes definitely specify CPAs. They also include very involved requirements for how the contractors being audited are to go about “qualifying” the firms they engage to do the audits.

Q. Will this apply to contractors with contracts with agencies other than DoD?

A. Once the proposed rule becomes either an interim rule or a final rule, it will be applicable for DoD contracts only. But, it will only take one contract with the applicable clause for the rule to apply to the entire segment. Oftentimes, once the DoD publishes a final rule, the Civilian agencies follow up with a version of the same rule. Usually the Civilian agencies follow DOD pretty quickly. In this case, adopting this rule could save the agencies a good bit of money. Until now, they have had to either pay DCAA to do this work for them or hire CPA firm contractors to do the work. You have to think pushing the costs onto the firms being audited will be pretty attractive.

Q. Do I understand correctly that non-CAS covered contractors need not worry at all then?

A. The proposed rule broadly affects CAS-covered contractors. However, a Contractor Officer can request an Estimating System audit at their discretion for volumes as low as \$10 million. Regardless, for contractors who are not CAS covered, they may want to engage with a third party CPA firm so they are not at a competitive disadvantage for a future procurement. Approval, however, can only be granted by the cognizant Contracting Officer. And, for DoD, cognizant contracting officer means the ACO at DCMA. The real problem, though, is that without an approved system, small companies may be locked out of more and more competitive solicitations.

Q. Any potential to apply risk levels to smaller contractors?

A. The way the proposed changes are written, the change would only apply to contractors subject to CAS. In as much as small businesses have a blanket exemption from CAS, I see no way the audit requirement could be imposed on a small business.

Q. I've heard of a billing system audit going on for 2 years with over 10,000 hours booked to it. How's a CPA firm supposed to do it in 40?

A. You raise a very good point. One end of the spectrum to measure the reasonableness of audit time might be DCAA’s assessment of the time it would take. Some consider that perspective to be laughable. Another end of the spectrum is the example you provided covering a multiple years-long

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audit. Reasonableness is somewhere in the middle. Typically, the CPA firm is going to negotiate a firm fixed price engagement with the contractor for the audit. It is going to be competitive – at least early on before the rush begins – so the marketplace should keep the prices reasonable. Believe me, when a CPA firm is working for a fixed price, the audit is NOT going to drag on for years.

Q. Will there be a list of these CPA firms who are qualified?

A. We are not aware of any such list being proposed or gathered. There are a number of qualified CPA firms with the requisite expertise. As currently written, the rule VERY clearly requires each contractor to select AND QUALIFY the firm to do the audit. The rule even specifies the minimum criteria for qualification in great detail.

Q. Once your accounting system is "approved," how long would that approval from the ACO last?

A. Theoretically, the approved status would remain in effect until something changed. However, the proposed rule requires an annual certification and a triennial audit by an independent CPA firm. DCMA has been very clear that they will NOT “automatically” revoke or “expire” a contractor’s system adequacy determination based on the passage of time alone. That said, we are pretty sure that failure to submit either the required report of self-assessment OR the CPA firm independent audit report on time would pretty quickly result in a revocation of the adequacy determination. Since the self-assessment is an annual requirement, there will be an “opportunity” each year to miss a deadline and lose the determination of adequacy.

Q. Will this impact surveillance on EVM systems? Will DCMA still audit contractors, or will they start outsourcing it as well?

A. The proposed rule as currently written only addresses the audits conducted by DCAA for Accounting, Estimating and MMAS. In the future, there might be some movement on the other three systems, Purchasing, Property and Earned Value, but there is no indication that the DCMA is headed in that direction at this time.

Q. What recourse will non-CAS covered (read smaller also) contractors have if we begin to get locked out of competition?

A. That is a great question and one of the possible unintended consequences of the proposed rule. Your voice needs to be heard through industry advocacy groups. Such a lock out would be an interesting Bid Protest position. There have already been several protests of solicitation provisions requiring proof of an adequacy determination. So far, GAO has denied every one, saying that it will not insert itself into the agency’s determination of its requirements. GAO is not interpreting such provisions as evaluation criteria or even part of the responsibility determination, but as a performance requirement.

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- Q. If we already have an approved accounting system as a small company, how frequently should our accounting system be approved again?
- A. The problem, of course, is that you may never see DCAA again – at least for a system audit. You can hire a CPA firm to do an independent audit, but it is unknown at this time whether a non-CAS-covered contractor would be permitted to submit the CPA firm’s report voluntarily to the ACO and whether the ACO would do anything with it. As uncomfortable as the answer is, this may be a case of wait and see.
- Q. Can you cite the DFARS clause?
- A. For your reference, the DFARS Case for the proposed rule is 2012-D042

The various DFARS clauses include:

- Accounting System 252.242-7006
- Estimating System 252.215-7002
- Material Management Accounting System 252.242-7004

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