

Government Contracts Blog

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DCAA's Promises Of A "New Mode of Operation" Leading To "Mutually Beneficial Relationships" Evaporate Within Less Than Three Months

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Just three months ago, newly appointed DCAA Director Patrick Fitzgerald told contractors and acquisition agencies that his agency's new mode of operations would aim at developing "mutually beneficial relationships" with both contractors and DOD acquisition agencies. DCAA would spring "no surprises" on contractors; it would conduct "more frequent communication with" them; DCAA would assure the provision of "responsive and timely services to agency stakeholders"; and – in a marked sea change from its traditional attitude, DCAA would abide by DOD direction that, while "the contracting officer and auditor work together... it is the contracting officer's ultimate responsibility to determine fair and reasonable contract values." (DCAA, *Director's Message*, CODSIA Operating & Policy Committees Meeting, March 10, 2010, ppt slide 12; Memorandum, Office of the Undersecretary of Defense for Acquisition, Technology and Logistics, Subject: *Resolving Contract Audit Recommendations*, December 4, 2009).

What's the phrase? "Significant if true"?

Some contractors hoped that Director Fitzgerald's purported "new mode" would actually lead to reasonably cooperative relationships and more frequent communication with agency auditors, to include continuing communications through interim conferences during and informative exit conferences upon completion of the auditor's fieldwork. "Not true." Within weeks of Director Fitzgerald's announcement, DCAA began shutting down communications with contractors, forcing at least some to fight just to have interim conferences with auditors, and informing others that post-audit exit conferences will now be held only after the auditor has written the draft report and it has been reviewed and approved by the Supervisory Auditor and the Branch Manager or Regional Auditor – in other words only after the report's conclusions are set in stone and impossible for the contractor to change, even when shown to be based on erroneous factual conclusions. In fairness, DCAA has indicated that it will allow the contractor to take exception to information provided at the *post hoc* and largely ceremonial exit conference by writing a response that will be attached to the report.

Those contractors and acquisition agency personnel who entertained hopes that Director Fitzgerald would keep his promises were not being entirely foolish – those promises were, after all, wonderfully consistent with provisions of the DCAA Contract Audit Manual (“CAM”) Chapter 4-300, Section 3 - *Conferences With the Contractor (Entrance, Interim, and Exit) on Audit Plans and Results*, which, like the Director’s promises, were published within the last three months. These provisions include guidance that:

- “The issuance of a report is not intended to limit or prevent discussions of findings, conclusions, and recommendations with ...contractor personnel...such discussions are encouraged.” CAM 10-101 (c).
- “Findings should be presented in an objective and unbiased manner” CAM 10-103.2(b).
- Interim Conferences are to be conducted “with the contractor as necessary to obtain a full understanding of the basis for each item in the contractor’s pricing data or other cost representation...with further discussions to be conducted as the audit progresses.” CAM 4-303.1 (“General Procedures for Interim Conferences”).
- Exit conferences are to be held “[u]pon completion of the field work on each ... assignment” at which the audit results are to be “summarized.”
- During the exit conference the auditor is to request “the contractor’s reaction to any audit exceptions ... for inclusion in the audit report.”
- The auditor is to “[d]ocument the exit conference in the working papers, including ... specifically discussed items and associated contractor’s reaction ... [thus providing] the information to be incorporated in the audit report” CAM 4-304.1 (“General Procedures for Exit Conferences”).

DCAA’s behavior is obviously inconsistent with the mutually beneficial relations envisioned by Director Fitzgerald’s supposed new mode of operations. But it is also in direct conflict with the explicit recent instructions of its own audit manual because it:

- “Prevent[s] discussions of [audit] findings, conclusions, and recommendations with ... contractor personnel.”
- Limits the possibility of presenting findings in an “objective and unbiased manner.”
- Limits the conduct of interim conferences with the contractor.
- Precludes the conduct of exit conferences “[u]pon completion of ... field work.”

- Precludes auditors from using the exit conference to request “the contractor’s reaction to any audit exceptions ... for inclusion in the audit report.”
- Precludes the incorporation of “specifically discussed items and associated contractor’s reaction ... in the audit report....”

It is difficult to know what to make of an agency that describes itself on its home page as “Dedicated To Providing Timely and Responsive Audit and Financial Advisory Services In Support of Our National Defense,” yet behaves in a manner directly contrary to its own explicit—and newly-minted—instructions. For those of you familiar with the fable of the scorpion and the crocodile, maybe the answer is just that simple – “I can’t help it; it’s my nature.” In this regard, we have previously written about (1) how DCAA has engaged in the dark art of [intimidation](#) (with [historical perspective](#)); (2) how a contracting officer’s mere [disagreement](#) with the DCAA could result in DCAA’s referral of that officer to the IG; and (3) explored the “[Top Ten Reasons DCAA Should Let COs Do Their Bloody Job](#).” What can we say? Promises are not action. As they say on the Continent, *plus ça change, plus c’est la même chose*.

By the way, in the fable, the scorpion ends up sealing his own demise. Now there’s something to dream on.

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