

Government Contracts Blog

Posted at 6:25 AM on May 12, 2009 by Sheppard Mullin

The Assault on Contracting Officer Independence Continues Apace

A recent DoD Inspector General Report issued on April 8, 2009 continues the intra-governmental assault on the independence of contracting officers in the disposition and compromise of contracting disputes. Billed as the “first in a series of reports we plan to issue on the actions that contracting officers took in response to audit reports of DoD contractors involved in Iraq reconstruction efforts,” the [IG Report \(D-2009-6-004\)](#), takes issue, *inter alia*, with contracting officer decisions relating to the compromise of a dispute with respect to a credit for self-insurance costs and to the recognition of a cost accounting change as “desirable,” thereby rendering allowable the increased costs associated with the change. Both contracting officer decisions had at least one characteristic in common, *i.e.*, they disregarded the recommendations of the DCAA.

The amounts at issue here were not large by some standards of reference. The self-insurance credit involved a contracting officer decision to settle for \$2.7 million, without litigation, a claim that DCAA quantified at \$3.2 million. The cost accounting change was estimated by DCAA to have a \$1.1 million impact. And the matters appear to have been expressly regarded by the IG as “complex.” Those circumstances hardly seem to have called for the hard line response that emanated from the IG:

“DCMA has not developed a program whereby contracting officers can obtain advice on complex non-compliance issues such as these to help ensure that the contracting officer’s actions are sound. DCMA needs to develop such a program to ensure that the Government’s interests are protected when contracting officers do not possess the necessary training and experience.”

Maybe these contracting officers were poorly trained and maybe they were inexperienced. Nothing in the IG Report informs the reader of their credentials. It may well be, of course, that the IG is equating disagreement with DCAA as evidence of inexperience and poor training, but the Report never comes out and says that either. What we do know is (a) that some contracting officers wrangling with admittedly complex issues came to conclusions that differed from those of DCAA, (b) that difference of opinion eventuated in a referral to the DoD IG, (c)

the DoD IG issued a formal report criticizing not merely the individuals involved but the entire DCMA structure for allowing such developments to occur, and (d) that the DCMA Executive Director concurred in its recommendation.

With respect to this last mentioned point, the IG Report mentioned that DCMA had already issued a policy change notice requiring [Contract Management Boards of Review](#), on [specified actions](#), based on dollar thresholds, or high risk, controversial or precedent setting items. Although not specifically referenced, it appears that this policy change notice is [Instruction Change Notice No. 09-051](#), which went into effect as an “interim instruction” on November 12, 2008. That guidance lays out the levels at which various types of cost issues at various dollar thresholds will be reviewed within DCMA.

Authored by:

John W. Chierichella

(202) 218-6878

jchierichella@sheppardmullin.com