

CONTRACTING WITH THE UNITED STATES GOVERNMENT

CURRENT GENERAL GUIDELINES

PRESENT OR PROSPECTIVE GOVERNMENT CONTRACTORS

Federal Government Contractors are subject to audits performed by the Federal Government to assure compliance with the terms of the contracts. During the mid-sixties the Defense Contract Audit Agency (DCAA) was formed and remains as the primary Federal Government Agency with responsibility for overseeing the majority of Federal Government procuring. DCAA is under the control of the Secretary of Defense and performs all audits for the Department of Defense (DOD). Upon specific requests, DCAA also performs audit services for other United States Government Agencies. Contractors working for the Government must comply with DCAA requirements in order to maintain adequate performance on contracts that have been awarded to them. Historically the Agency has maintained a very cooperative and helpful attitude by working with contractors in helping them ensure compliance with the Federal Acquisition Regulations (FAR). In the past, the Agency had relied heavily on the judgment of its auditors regarding materiality issues concerning the acceptability of contractor accounting.

Previously, when DCAA found minor deficiencies in contractors' accounting systems the audit report would contain an "inadequate in part" opinion and would allow the contractor time to correct the deficiencies while continuing their performance under the terms of the current contract. DCAA auditors would also typically offer suggestions for changes in systems necessary to eliminate deficiencies and to be considered FAR compliant. When DCAA performed their next scheduled audit, they would perform a follow-up compliance review of previously noted deficiencies to ensure that the systems had been brought into compliance with Generally Accepted Government Accounting Standards (GAGAS).

DCAA falls under the oversight responsibility of the Government Accounting Office (GAO). An audit report issued by the GAO in July 2008 cited the DCAA for a lack of independence in their audits of Government Contractors. As a result of this citation, the DCAA has enacted major changes to their audit policies and their audit guidance letters that mandate and control the functional responsibilities of DCAA auditors.

Major policy changes have been implemented regarding DCAA Audit Guidance Memorandums issued on contractors' internal control systems. A summary of these changes is as follows:

- a) Previously issued "deficient in part" opinions regarding system reviews will now report systems as either "wholly adequate" or "inadequate".
- b) Auditors will no longer be allowed to include suggestions for improvements to contractors' internal control systems.
- c) Upon finding a system to be inadequate, the DCAA auditor is **required** to recommend to the Administrative Contracting Officer (ACO) that payments be **suspended** on any affected contracts.
- d) Within the Audit Guidance Memorandum, the language has expanded the definition of a "significant deficiency/material weakness" to include "failure to accomplish any control objective" even when there is no direct relationship to a Government Contract. The memorandum also stated that a "contractor's failure to accomplish any applicable control objective should be reported as a significant deficiency/material weakness". This will result in an opinion that the related system is inadequate.

In summary, it is apparent that there is a new DCAA audit environment and attitude in place and it is not cooperative with the Government Contractor community of small and mid-sized businesses. The DCAA current mission objective is to perform audits, write opinions and will no longer be helping contractors to stay compliant with GAGAS and the FAR.

In addition, the FAR was amended effective December 12, 2008 implementing two key changes. The first change **mandates** disclosure by government contractors of "credible evidence" of criminal violations, False Claim Act violations and significant overpayments. The second change **obligates** certain contractors to adopt an enhanced internal control system.

The government recognized that the move to a mandatory disclosure program was warranted because the voluntary programs simply did not work. This new era of Mandatory Disclosures will significantly impact those who do business with the Federal Government. It is critical that all companies determine how the new regulations affect them and assess the effectiveness of their compliance programs.

The amendments to the FAR are part of the government's broader efforts to reform government contracting and punish procurement fraud. These increased efforts at prevention, detection and enforcement highlight the requirement for contractors to remain in compliance with the complex laws and regulations governing contracts with the United States.

As part of the audit process, DCAA has teams of professional personnel solely representing the United States Government to ensure compliance with Government Procurement Regulations. As a Government Contractor, you are entitled to similar professional representation to ensure a level playing field during contract negotiation and performance. The costs related to this assistance are minimized because the charges for the related advisory services are allowable expenses either as part of the business indirect rate structure for actual costs or in the forward pricing rate structure for a new business.

Kline & Company can help Federal Government Contractors or prospective Government Contractors in the following areas: preparing for DCAA audits; reviewing accounting system structure; assisting with Federal Acquisition Regulations (FAR) interpretation; assisting with contract cost accumulation procedures and assistance with compliance systems. Kline & Company's team of professionals with over fifty years of combined Federal Government accounting experience would welcome the opportunity to help you with this **Brave New World of Government Contracting**.

Please contact Fred Kline at fkline@klineco.com or 603-881-8185 to schedule a complimentary one hour consultation to discuss your requirements. We would be happy to meet at your location or at our Nashua office.