



DCAA Needs More Staff, Powers To Do Its Job, Report Says

By **Dietrich Knauth**

Law360, New York (March 28, 2012, 8:26 PM ET) -- The federal government should give the oft-criticized Defense Contract Audit Agency more resources to strengthen auditing of contractors, including more money to hire skilled staff and additional authority to subpoena contractor records, according to a Center for American Progress report released Wednesday.

The think tank's "Better Auditing for Better Contracting" report said that with federal budgets shrinking, good oversight is more important than ever and the DCAA is responsible for the lion's share of auditing government contracts. While the DCAA audited \$2.7 billion for the government in 2010, it could recover far more if it was fully staffed and given more authority and independence, the report said.

The report recommended hiring more auditors for the DCAA and other agencies with auditing responsibilities, such as the U.S. Department of Energy, speeding up evaluations of contractors' proposed prices and expanding auditors' authority to subpoena contractor records. The report also suggested providing the DCAA with a general counsel that's independent of U.S. Department of Defense authority, and questioning whether the agency should report directly to Congress rather than the Pentagon.

The DCAA is often called understaffed, and contractors have slammed the agency for an overly adversarial mindset, a checklist approach to audits and an overall lack of expertise — criticism that has only become louder in recent months with the passage of a new regulation allowing the DCAA to recommend automatic pay reductions to contractors who don't pass business system audits.

Angela Styles, head of Crowell & Moring LLP's government contracts practice, said that the agency already has subpoena authority over contractor records related to audits, and was shot down in court after an auditor sought to expand that authority to include income tax records and financial statements. The agency also already has its own general counsel, and separating it from the Pentagon is unnecessary, according to Styles.

"They're trying to make DCAA into something it was never intended to be," Styles said. "I'm not sure why you'd want it to be independent of the DOD."

Attempts to expand the DCAA's role have already led to tension with contractors and attorneys who question the agency's ability to handle recent expansions into new areas, such as reviews of contractors' ethics and compliance systems, which could better be handled by agency inspectors general and suspension and debarment officials, according to Nicole Owren-Wiest, a partner in Wiley Rein LLP's government contracts practice.

"I think folks have lost sight of what DCAA's congressional authority and mission is, which is first and foremost to audit costs of contractors who perform cost type contracts — they're accountants," Owren-Wiest said. "I question whether they have the experience and authority to make judgment in highly subjective areas like the sufficiency of a contractor's ethics and compliance programs."

While she agrees with suggestions to boost the DCAA's funding to hire more auditors, Owren-Wiest said that the agency could improve its audit performance by refocusing on its core mission and not overburdening itself with activities that are tangential to their primary purpose.

The report also included one recommendation that has already taken effect — seeking finalization of a rule that allows for the withholding of 10 percent of contractor payments if they lack adequate business systems. The Pentagon finalized the rule on Feb. 24. In addition to withholding payments, the report also recommended the "naming and shaming" of companies without good financial systems.

The DCAA's production has declined in recent years, according to the report. Three years ago, the government completed 30,000 audits of government contracts, but that number has declined to 10,000 while the annual dollar value of contracts has remained steady. And while the U.S. took 28 days to evaluate contractors' proposed prices just two years ago, that number has swelled to 72 days, the report said.

The declining speed of DCAA review was spurred in part by U.S. Government Accountability Office reports suggesting that auditors worked too quickly and didn't adequately document their work, leading to a new internal focus on documentation at the DCAA, according to the report.

Representatives for the DCAA were not immediately available for comment Wednesday.

--Editing by Andrew Park.

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