Our previous **article** recapped the varied activity over the past several weeks, as the DOD contract oversight process has come under fire from the Government Accountability Office (GAO), DOD Inspector General (DOD IG), the Commission on Wartime Contracting (CWC), and the Senate Committee on Homeland Security and Governmental Affairs (HSGA).

After we went to press another reaction emerged, one with such a unique perspective that we wanted to make it the subject of its own article. What we are talking about is a "commentary" published on FederalTimes.com entitled "Give DCAA More Resources". Readers can find the entire commentary **here** . Calling it a commentary is misleading; a better description would be *apologia*
, which is loosely defined as a defense or justification. According to Thesaurus.com, other possible synonyms for apologia might be: apology, excuse, explanation, rationalization, exculpation, fish story, jive, song and dance, and whitewash.

According to the commentary by Professor Charles Tiefer and Adjunct Professor Richard Loeb (both of the University of Baltimore Law School), DCAA is "a tough and independent auditor that does quality oversight on the biggest and potentially the most errant of defense contractors, from KBR in Iraq to the builders of major weapons systems plagued by cost overruns." Apparently, we are to believe that all of DCAA's problems stem from the government's relaxation of "vital laws, regulations and practices in favor of contractors …." The Professors assert that "now that the auditing risks in 'acquisition reform,' like the auditing risks in derivatives and mortgage instruments have been exposed, the public has less tolerance for the excesses of unregulated contracting."

By implication, it is unnamed principals in "the government" whose "acquisition reform" (quotations in original) led to the current "unregulated contracting" environment. It was they

who created an environment of “relaxed vital laws, regulations and practices” that “favor” defense contractors. Ignore the fact that these unnamed “government” officials included members of Congress; ignore the fact that as part of the public-rulemaking process, both DOD and DCAA had a chance to comment on the so-called “relaxed” laws and regulations. Let’s focus on the statement that the current contracting environment is “unregulated” akin to that experienced by Enron. (Think that comparison is an example of over-reaching? That’s the one they used.)

Anybody who works in the world of Defense contracting knows just how fully regulated that environment actually is. From the Truth-in-Negotiation Act (TINA) to the Federal Acquisition Regulation, and from the Cost Accounting Standards to the False Claims Act, there is hardly a more regulated environment in existence anywhere in the world. In the mid 90’s, Coopers & Lybrand **estimated** that DOD paid a price premium equal to roughly 20% over would it would have paid, but for the regulations imposed on its contractors. It is true that a part of the Clinton-era acquisition reforms was to emphasize acquisition of so-called “commercial items” with minimum regulatory oversight; but these reforms were based on lessons learned in the First Gulf War, where the DOD was unable to acquire items such as radios because the suppliers wouldn’t agree to provide such bureaucratic items as (for instance) “cost or pricing data” as was then required by TINA.

The point here is that, far from a series of negligent actions taken by “the government” or actions taken at the behest of defense industry lobbyists, Clinton-era acquisition reform was a studied roll-back of non value-added bureaucratic impediments that kept warfighters from receiving necessary equipment. Moreover, the DOD Defense Science Board (DSB) recently **in formed**
the Secretary of Defense that the DOD was
still
too bureaucratic to meet the needs of the warfighter. According to the DSB—

- The DOD is "not geared to acquire and field capabilities in a rapidly shifting threat environment."
- "Current long standing [DOD] business practices and regulations are poorly suited" to the dynamics of a “rapidly shifting threat environment."
- "Today, the DOD is saddled with processes and oversight built up over decades, and managers leading them who are often rewarded for risk aversion."

So, far from an “unregulated” contracting environment, as Professors Tiefer and Loeb allege, the DOD contracting environment still suffers from overregulation (at least according to the DSB). The answer to DCAA audit quality problems is not to add more regulations.

Nor is the answer to add more auditors. According to the two apologists, “Congress can assist the agency by providing adequate resources ….” While we agree that DCAA staffing has lagged DOD contract spending in a dramatic and unacceptable fashion, the same is also true of DCMA contracting officer staffing. Adding staff to both DOD agencies must be done to assure proper government oversight. But simply adding staff won’t change an organization’s culture. More is not different. If the seemingly pervasive audit quality problems are to be addressed in an effective manner, DCAA must do things differently. (More on that in an upcoming article.)

Further, we have seen the additional staff added this summer, and they are (almost without exception) brand new trainee auditors just out of school. There’s nothing wrong with these individuals and we wish them well. But what DCAA needs is seasoned, experienced auditors with the ability to use independent judgment to conduct appropriate audit procedures. The new trainees need training and mentoring; they won’t be able to use independent judgment for at least a few years. In the meantime, DCAA continues to churn out audit reports, hoping that multiple layers of management review will ensure that the agency complies with GAGAS.

The two apologists conclude with an assertion that “DCAA has intensified its audit work with contractors and contracting officers. These actions should be applauded.” It’s unclear what they mean by “intensified”. If “intensified” means to change audit guidance to reduce auditor discretion, to threaten contractors with forfeiture of outstanding contract payments for failure to turn over data fast enough, and to call one-off mistakes serious “control system deficiencies,” then yes, we agree DCAA has “intensified” its audit work. But another viewpoint is to see such changes as window-dressing that do not address the fundamental issues of generating audit reports of high quality based on accurate assessments of facts and circumstances. That’s what contractors want to see, and that’s what DCMA contracting officers want to receive.

It’s not really surprising that Professors Tiefer and Loeb are apologists for the DCAA. From the Iran-Contra scandal of the ‘80s to “Bosniagate,” Professor Tiefer has long been a vocal critic of DOD and its contractors. He has routinely offered testimony and regulatory comments advocating more oversight, and he has been **quoted** as saying, “Our Defense Department has continued to pay, through pliant contractors, for a flock of Iraqi political exiles as our paid political agents in Iraq.” Professor Loeb was former Acting Deputy Administrator of the Office of Federal Procurement Policy (OFPP)—and Executive Secretary of the Cost Accounting Standards Board. His high-handed management style drew a **rebuke** from the American Bar Association, who noted that the CAS Board did not follow the rule-making procedures required by law. While acting in his CAS Board role, Professor Loeb was directly responsible for implementing the revisions to the Cost Accounting Standards that exempted commercial item contracts from CAS. In other words, he is one of those government principals who is directly responsible for implementing the very regulatory changes of which he is now complaining.

Coming up: Are there any lessons to be learned from the brouhaha?