

Written by Nick Sanders
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In a government contracting world threatened by the recently revised and strengthened DFARS Business System Administration contract clause, Apogee Consulting, Inc. continues to bring you the latest info and insight into how it is impacting Defense contractors.

(Can't you just hear that sentence in the voice of the [movie guy](#) ?)

Anyway, here's what we've learned.

DCMA has not yet implemented the new Business System regime across the entire defense industrial base. Instead, only *the top 5* defense contractors—those who have Corporate Management Councils—have been subject to reviews under the new Business System adequacy criteria with potential payment withholds for significant deficiencies. But the rest of you shouldn't get complacent: DCMA has reiterated that its goal is to expand the reviews “to all [defense] contractors”.

In the meantime, those five defense contractors have *more than 1,000 individual business systems* that DOD has to assess and disposition. So it's going to be some time before the mid-tier gets to experience reenergized DOD oversight.

We told you that DCMA had created a Review Board to provide oversight over preliminary Contracting Officer decisions to find that a contractor's business system was inadequate, based on audit findings of significant deficiencies. According to the information we received, that Review Board has conducted 19 oversight reviews to date. 15 of those reviews addressed recommended system disapprovals. (We are unsure what the other 4 reviews were for. Perhaps DCMA is reviewing all Business System determinations and not just disapprovals?)

Only five of the 15 reviews resulted in business system disapprovals. In 10 of 15 reviews, the Review Board “non-concurred” with the Contracting Officer's preliminary finding—effectively over-riding the Contracting Officer. This, we think, bodes well for defense contractors. That being said, those 5 concurrences resulted in an aggregate payment withholding of \$42 million to date.

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We were informed that any reductions in payment withhold rates (e.g., reductions from 5% to 2% based on submission of an acceptable corrective action plan), do *not* trigger an immediate return of previously withheld funds. DCMA's position is that changes to withholding rates are prospective only, and that the withheld funds will be retained by the Government until the contractor's corrective action plan is complete and the business system has been approved. This was not only DCMA's position; it was also the official position of Defense Procurement and Acquisition Policy (DPAP).

Interestingly, we were informed that one of those five contractors fully implemented its corrective action plan, and had 100% of their withheld payments returned to them. This is another fact that we think bodes well for defense contractors.

As we've noted in other blog articles, the current DFARS regime of six contractor business systems may not stay static. In particular, we were informed that DCMA is actively considering eliminating the "Material Management and Accounting System (MMAS)" business system, and replacing it with a business system focused on detection and prevention of counterfeit parts (the "secure supply chain" system). DOD Leadership has become concerned about this issue and a proposed DFARS rule will be issued shortly to implement Section 818 of the 2012 NDAA.

Readers of this blog will recall that Apogee Consulting, Inc. has long been a proponent of securing the program supply chain. (We think those particular blog articles contain some of our best rants.) If this actually happens, we are so going to post a big "we told you so".

So that's the status of the DFARS contractor business systems administration regime at the end of 2012. Stay tuned for 2013.