



## Season 5: Episode 10 – Contract Administration

- **Part 242 – Contract Administration and Audit Services**
- **Part 243 – Contract Modification**
- **Part 245 – Government Property**
- **Part 246 – Quality Assurance**
- **Part 247 – Transportation**
- **Part 251 – Use of Government Sources by Contractors**

# Co-Host – Dave Drabkin

Independent consultant with 41-plus years of federal government contracting experience in both the public and private sector.

Chairman of The Advisory Panel on Streamlining and Codifying Acquisition Regulations (Section 809 Panel), <https://discover.dtic.mil/section-809-panel/>



The President of the United States appointed Dave to the Service Acquisition Reform Act (SARA) and the Multiple Award Schedule (MAS) Panels.

DoD Program Manager for Federal Acquisition Streamlining Act (FASA) Implementation.

Dave has worked for the DoD, the General Services Administration (GSA) and the Homeland Security and Government Affairs Committee (HSGAC) of the U.S. Senate. He has also worked for Northrop Grumman Corporation and Dixon Hughes Goodman, LLP.

[david@drabkinandassociatesllc.com](mailto:david@drabkinandassociatesllc.com)

(703) 927-1116

# Co-Host – Lou Chiarella

- Senior Counsel, Crowell & Moring LLP
- Adjunct Professor at the George Washington University Law School, Government Procurement Law Program.
- Deputy Assistant General Counsel in the Procurement Law Division, Office of the General Counsel, U.S. Government Accountability Office (GAO) (2001-2022).
- Army Judge Advocate (1988-2018), culminating with his assignment as Chief Counsel for the Army Futures Command Task Force, which resulted in the Army's largest acquisition-related reorganization in 50 years.



# **Welcome Back, and Rules of Engagement**

- Class begins promptly at 2:00 pm ET.
- Class will end at 3:30 pm ET.
- Please use the Q&A panel to ask your questions
  - If we don't answer the questions today, we'll get back to you.

## **How to Receive Credits**

- To get credit for the class you must collect the passwords provided during the class.
- You must respond to the email from PCI with the passwords to get credit.

# **Today's Topics: Administering Contracts**

- Part 242 – Contract Administration and Audit Services
- Part 243 – Contract Modification
- Part 245 – Government Property
- Part 246 – Quality Assurance
- Part 247 – Transportation
- Part 251 – Use of Government Sources by Contractors

# What's in the Documents Folder Today?

- DCMA Manual 2501-09 Contract Claims and Disputes, [Contract Claims and Disputes V.508C\\_05182021 \(dcma.mil\)](#)
- DCMA Manual 2501-08 Grants, Cooperative Agreements and Other Transactions, [Grants, Cooperative Agreements, and Other V.508C\\_05182021 \(dcma.mil\)](#)
- DCMA Manual 2501-07 Contract Closeout, [Contract Closeout V.508C\\_05182021 \(dcma.mil\)](#)
- DCMA Manual 2501-06 Terminations, [Terminations V.508C\\_05182021 \(dcma.mil\)](#)
- DCAA Contract Audit Manual, [DCAA > Customers > Guidance > CAM - Contract Audit Manual](#)
- MRDS – Audit Guidance Memos, [DCAA > Customers > Guidance > MRDS - Audit Guidance Memos](#)
- DCAA Professional Practice Guide, [Section 809 Professional Practice Guide Chapters 1 2 Appendix A.pdf \(dcaa.mil\)](#)
- Incurred Cost Submission Adequacy Checklist, [10100 - OAG - GUIDE FOR DETERMINING ADEQUACY OF CONTRACTOR INCURRED COST PROPOSAL \(dcaa.mil\)](#)

# Polling Question 1

What agency is primarily responsible for contract audits?

- a. DCMA
- b. DCAA
- c. GAO
- d. GSA

# 242 – Contract Administration and Audit Services

- Interagency Agreements – DoD requires reimbursement for contract administration and audit services from non-DoD activities with limited exceptions
- DoD contract administration is assigned to DCMA with limited exceptions
- DCMA will perform preaward surveys with limited exceptions
- DCMA will review
  - Earned Value Management System plans
  - Synchronized Predeployment and Operational Tracker (SPOT)
  - Trafficking in persons compliance
  - Contractor Business Systems
  - Contractor systems for managing source of electronic parts
- DCMA will issue, negotiate and execute orders under BOAs for overhaul, maintenance and repair



## 242 – Contract Administration and Audit Services

- Post Award conferences for contracts w/ the Cost and Software Data Reporting clause DFARS 252.234-7004 shall include a discussion of the contractor's standard cost and software data reporting (CDR) process
- Class Deviation 2012-O0013 DCAA Policy and Procedure for Sampling Low-Risk Incurred Cost Proposals is still current – not incorporated in the DFARS yet.
- DCAA will issue DCAA Form 1, Notice of Contract Costs Suspended and/or Disapproved when agreement can't be reached with the contractor
- Contractors are encouraged to engage in IR&D/B&P of interest to DoD
  - The ACO will determine allowability
  - Whether the project is of interest of DoD
  - Notify contractor immediately when not
- DCAA submits annual report on IR&D/B&P to DPAP
- OASD R&E establishes a method for commo between contractors and DoD concerning DoD future needs and technical descriptions of IR&D projects

# 242 – Contract Administration and Audit Services

- Contract Auditors
  - Receive vouchers from contractors
  - Approve Interim vouchers
  - Review completion/final vouchers
- ACOs
  - Approve all completion/final vouchers and sends to disbursing officer
  - May issue or direct issuance of DCAA Form 1 on any cost when there is reason to believe it should be suspended or disallowed
- The cognizant contract administration office
  - Performs production surveillance w/ contracts w/ Criticality Designators A or B
  - Conduct periodic risk assessment of contractor
  - Develop production surveillance plan based on risk level
  - Modify plan as appropriate
  - Monitor contract progress and identify potential delinquencies

## 242 – Contract Administration and Audit Services

- Contracting Officers shall assign Criticality Designators to contracts IAW DoD Manual 4140.01
- Novation Agreements
  - Shall include specific DFARS 242.1204(i) language in lieu of FAR 42.1204(i)(b)(7)
  - Restructuring costs are only allowable if the acquisition or merger in the government's best interest.
    - Must have an audit of restructuring cost proposal
    - Contracting Officer determination that there is an overall reduced cost to DoD/NASA
    - Advanced Agreement w/ cumulative cost ceiling and the period for which the costs are assigned
- Contractor Performance Assessment Reporting System (CPARS) shall include assessment of Small Business Subcontracting plan goal achievement
- Class Deviation 2013-O0018 governing Past Performance Evaluation Thresholds is still in effect, it has not been incorporated into the DFARS

# 242 – Contract Administration and Audit Services

- Contractor Business Systems
  - “Significant deficiency,” means a shortcoming in the system that materially affects the ability of officials of the DoD to rely upon information produced by the system that is needed for management purposes.
  - Withholds are determined by the contracting officer and may not exceed 10% of the covered contract(s)
  - Contracting officer prepares and sends a written determination to contractor
  - Decisions to decrease or increase withholds will be made in writing and sent to contractor immediately
  - Contractor notifies contracting officer that deficiencies have been corrected
  - Upon verification the contracting officer will discontinue withholds, release payments previously withheld and approve the system
  - The contracting officer may reduce withholds based on the contractor’s representation that corrections are being made and verification that corrections are in progress
  - Withholds may be reinstated if it is determined that the significant deficiencies have not been corrected

## 242 – Contract Administration and Audit Services

- Voluntary refunds is a payment or credit to the Government from a contractor or subcontractor that is not required by contractual or legal obligation
- Contractor Material Management and Accounting System (MMAS)
  - Doesn't apply to small businesses, commercial items or contracts under the SAT
  - Must conform to DFARS 252.242.7004(d)
  - Reviews conducted when contractor has \$40M in qualifying sales to the government in the preceding FY
  - Qualifying sales are contracts
    - Requiring certified cost or pricing data
    - Other than Firm-fixed-price or fixed-price w/ economic price adjustment
  - Significant deficiencies shall result in disapproval of the system and withholds

## 242 – Contract Administration and Audit Services

- Contractor Insurance/Pension Review (CIPR)
  - Conducted jointly by DCMA & DCAA
  - Evaluates
    - Insurance programs
    - Pension plans
    - Other deferred compensation plans
    - Related policies, procedures, practices and costs
  - Only for contractors w/ \$50M in qualifying sales to gov't in preceding FY
  - Qualifying sales are those where certified cost or pricing data was required and other than firm-fixed-price or fixed-price w/ economic price adjustment
  - May be conducted when there is reason to believe there is a problem with contractor's insurance/pension program

## 242 – Contract Administration and Audit Services

- Technical Representation at Contractor Facilities
  - Program decide they need technical representation
  - Technical representative does not perform contract administration duties/functions
- Accounting Systems
  - Contractors receiving cost-reimbursement, incentive type, time-and-materials, or labor-hour contracts, or contracts which provide for progress payments based on costs or on a percentage or stage of completion, shall maintain an accounting system
  - Contracting officer determines acceptability of system
  - Systems determined to have significant deficiencies shall be disapproved and withholds initiated



## Polling Question 2

When can a contracting officer disallow costs?

- a. Only before the costs have been incurred
- b. Only after the costs have been incurred
- c. The CO can disallow costs either before or after they are incurred
- d. The CO can't disallow costs at all



## 243 – Contract Modifications

- Contractors required to notify its employees, subcontractors, State and Local officials when a contract modification has a substantial impact on employment
- Follow PGI 243.170 when modifications add FMS requirements
- Follow PGI 243.171 when modifications involve either the obligation or the deobligation of funds
- Modifications will be applied in the following order—
  - (1) Modifications will be applied in order of the effective date on the modification;
  - (2) In the event of two or more modifications with the same effective date, modifications will be applied in signature date order; and
  - (3) In the event of two or more modifications with the same effective date and the same signature date, procuring contracting office modifications will be applied in numeric order, followed by contract administration office modifications in numeric order.

# 243 – Contract Modifications

- Change Orders
  - Unpriced change orders shall include a not-to-exceed price
  - Definitization w/in
    - 180 days but in no event later than 180 days after qualifying proposal
    - Obligated funds is equal to 50% of the not-to-exceed price
    - Failure to submit a qualifying proposal contracting officer may suspend or reduce progress payments or other appropriate action
  - Contracting officer shall not obligate more than 50% of the not-to-exceed price
  - Initial spares, ship construction, ship repairs, contingency operation and humanitarian or peacekeeping operations excepted.
  - Allowable profit in the price negotiation memorandum shall reflect the reduced cost risk based on costs incurred
  - For each unpriced change order  $\geq \$5M$  Include in the Consolidated UCA Management Report actions planned and taken to definitize
  - Requests for equitable adjustments > the SAT shall be certified IAW DFARS 252.243-7002
  - 3 unique DFARS Prescriptions/Clauses
    - DFARS 252.243-7001, Pricing of contract modifications
    - DFARS 252.243-7002, Requests for Equitable Adjustment
    - DFARS 217.7406, Unpriced Change Orders

# Polling Question 3

When is a contractor held liable for damage to Government property?

- a. When the damage occurs due to contractor negligence
- b. When the damage is due to normal wear and tear
- c. Contractors are ALWAYS liable for damage to Government property
- d. Contractors are NEVER liable for damage to Government property

## 245 – Government Property

- PGI 245.103-70 sets forth the procedures for furnishing gov't property to contractors
- Mapping, charting, and geodesy property. All Government-furnished mapping, charting, and geodesy (MC&G) property is under the control of the Director, National Geospatial Intelligence Agency.
- The contracting officer will direct the contractor on how to dispose furnished material at contract completion
- When contractors are authorized to use gov't sources of supply contracting officers will provide contractors with the contractor with DoD 4000.25-1-M, Military Standard Requisitioning and Issue Procedures (MILSTRIP)

# 245 – Government Property

- Gov't furnished property is required to be tagged, labeled or marked IAW MIL Standard 130, except:
  - Property is already marked
  - Items used in contingency operations or defense against NBC events
  - Where a D&F finds it is more economical for items from small business or commercial items to be marked by gov't
- Use the fillable electronic "Requisitioned Government Furnished Property or Scheduled Government Furnished Property" in solicitations and award documents
- Contractors are not responsible for loss of GFP under negotiated fixed-price contracts awarded w/o certified cost or pricing data
- Contractor Property Management Systems
  - Contracting officer will approve or disapprove of property systems
  - Systems w/ significant deficiencies will be disapproved and withholds applied

# 245 – Government Property

## Contracts w/ foreign governments or international organizations

- Must have written approval from contracting officer with cognizance over property
  - Doesn't interfere w/ US requirements
  - It's part of a DoD FMS
  - For direct commercial sales, foreign country must be authorized under Arms Export Control Act
  - Use charges are applicable to direct commercial sales
  - When foreign government or international org has funded the acquisition no rental charges or nonrecurring recoupments
- Rental charges are waived for US production and research property on commercial sales transactions
  - Contracting officer may approve waiver for foreign governments and international organizations
- Support for Government Property Administration
  - All storage contracts or agreements shall be separately priced and shall include all costs associated with the storage

# 245 – Government Property

- Reporting, Reutilization, and Disposal
  - Termination inventory will be verified by plant clearance officers
    - Appropriate for use under contract
    - Excess to needs of contract
    - Recent purchases of similar material
    - Planned for current or scheduled production
    - Stock record entries
    - Bills of material for similar items
  - Disposal of surplus property plant clearance officer
    - Decide best value approach to sale
    - May direct use of informal bid procedures
    - Approve award to responsible bidder
    - Notify contractor of winning bidder w/in 5 days
    - Noncompetitive sales by contractor
      - Plant clearance officer approves when its essential to expeditious plant clearance
  - There are a host of plant clearance forms at DFARS Subpart 245.70

# Polling Question 4

Where can the Government perform quality assurance?

- a. At the prime contractor's warehouse
- b. At the subcontractor's warehouse
- c. At the Government's warehouse
- d. At any of the above



# 246 – Quality Assurance

- The contracting officer must coordinate w/ the quality assurance activity before changing any quality requirements in the contract
- Requiring activity may prepare quality instructions unique to their requirement.
- Pre-occupancy safety and habitability inspections are required IAW the inspections clause
  - Must comply w/ Unified Facilities Criteria (UFC) 1-200-01 for
    - Fire protection
    - Structural integrity
    - Electrical systems
    - Plumbing
    - Water treatment
    - Waste disposal
    - Telecommunication networks
  - Combatant commander may waiver compliance requirements
- Unique DFARS Clauses DFARS 252.246-7003 Notification of Potential Safety Issues

# 246 – Quality Assurance

- Quality assurance surveillance plan required for each contract & must be placed in contract file
- No quality assurance at source for contracts <\$350K unless
  - Mandated by DoD regulation
  - Required by MoA
  - Contracting officer determines
    - Technical requirements are significant
    - Product has critical characteristics
    - Specific features requiring quality assurance at source
  - Contract is awarded to the manufacturers or nonmanufacturers which can perform the function
- There are separate rules for performing quality assurance on behalf of NATO member nation or for NATO

## 246 – Quality Assurance

- Nonconforming supplies or services post delivery, outside warranty and no other contractual remedies
  - Notify contractor in writing
  - Request contractor to repair or replace or reperform
  - May accept consideration if offered
- Subsistence
  - Surgeons General responsible for
    - Acceptance criteria
    - Technical requirements
    - Inspection procedures
  - Contracting officer may designate function
    - To medical service personnel on a reimbursable basis

# 246 – Quality Assurance

- Aircraft
  - FAA has responsibility for commercial aircraft, equipment and accessories
  - FAA evaluations do not replace normal DoD evaluations
  - The contract administration office (CAO) will ensure the contractor possesses any required FAA certificates prior to acceptance
- Additional inspections
  - Contracting officer notifies contractor
  - Demand payment of the costs
  - Costs may include
    - Frequency of delays
    - Causes of delay, reinspection or retest
    - Expenses for recovering additional costs
- Authorizing shipment of Supplies
  - CAO approves release for shipment for source inspected supplies
  - Prime contractor at subcontractor's facility
  - FMS contracts do not use alternative procedures
- Inspection stamping
  - DoD quality inspection approval marking designs (stamps) may be used for both prime and subcontracts
  - Use NASA stamps and guidance when requested by NASA centers

# 246 – Quality Assurance

- Certificate of conformance
  - Aviation or ship critical safety items – obtain the concurrence of the head of the design control activity
- Warranties
  - Use of warranties must be approved by chief of contracting office only when the benefits are expected to outweigh costs except
    - Commercial items
    - Technical data, unless warrant provides for extended liability
    - Supplies and services fixed-price contracts w/ quality assurance provisions that reference higher-level contract quality requirements
    - Supplies and services in construction contracts when using the warranties contained in Federal, military or construction guide specifications
  - Consider use of DFARS 252.246-7001 in cost-reimbursement contracts
  - For non-commercial items use MIL-STD-129 and MIL-STD-130
  - Obtain warranties on technical data when practicable and cost-effective

# 246 – Quality Assurance

- Contractor's Counterfeit Electronic Part Detection and Avoidance
  - Obtain electronic parts from OEM or authorized aftermarket manufacturer or currently available stock or contractor-approved suppliers
  - Contractor assumes responsibility for authenticity of parts provided
    - Subject to review, audit and approval through CPS review
    - Must comply with DFARS 252.246-7006 Sources of Electronic Parts
    - Including purchases made through FSS
    - Government supply sources DFARS 252.251-7000
      - Costs of inspection, testing and authentication may be charged as a direct cost
      - Government is responsible for authenticity
        - If counterfeit Government will replace at no charge and adjust schedule to accommodate delay
  - If subject to CAS – establish counterfeit part detection and avoidance system
    - System criteria delineated at DFARS 246.870-2(b)(2)

# Polling Question 5

To what type of transportation does DFARS Part 247 apply?

- a. Transportation of personnel
- b. Transportation of goods
- c. Neither
- d. Both

# 247 – Transportation

- Definitions
  - Civil Reserve Air Fleet (CRAF): A program in which the Department of Defense contracts for the services of specific aircraft, owned by a United States entity or citizen, during national emergencies and defense-oriented situations when expanded civil augmentation of military airlift activity is required. Also called CRAF.
  - Voluntary Intermodal Sealift Agreement (VISA): An agreement that provides the Department of Defense with assured access to United States flag assets, both vessel capacity and intermodal systems, to meet Department of Defense contingency requirements.
- Bills of lading
  - Procedures for contractors to obtain bills of lading are located in DFARS 252.247-7028
  - “Commercial bills of lading” includes the use of any commercial for mor procedure
- Transportation or Transportation Related Services
  - Evaluation factors
    - Record of claims involving loss or damage
    - Commitment of transportation assets to readiness support (CRAF and VISA)



# 247 – Transportation

- Stevedoring contracts
  - Loading of cargo from an agreed point of rest on a pier or lighter and its storage aboard a vessel; or breaking out and discharging of cargo from any space in the vessel to an agreed point of rest dockside or in a lighter.
  - Include the following as separate items of work
    - “Loading” or “Unloading”
      - Rail car
      - Truck
      - Intermodal equipment
    - Dock work
    - Terminal work
- Personal property
  - Use requirements contracts
  - Use for shipment or storage
  - Award on calendar year basis
  - Provide for option years
  - Make awards or exercise options before 1 OCT of each year
  - Establish geographic areas using political boundaries, streets or other features
  - Establish realistic quantities on the Estimated Quantities Report

# 247 – Transportation

- Transportation in Supply Contracts
  - Evaluation factors/subfactors – For transportation outside the contiguous US, favor contractors which commit to using carriers in CRAF or VISA
- Ocean Transportation by US Flag Vessels
  - Contractors exclusively use US Flag vessels unless
    - Unavailable
    - Charges to the Government are higher than charges to private persons
    - Proposed freight charges are excessive or unreasonable
  - Contracts must provide for use of government-owned vessels when security classifications use of other than government-owned vessels
  - Vessels under charter must have reflagging or repair work in US if vessel was part of offer and prior to acceptance of the vessel by the government
    - SECDEF may waive requirement if critical to national security

# Polling Question 6

How much experience do you have with contractor use of Government supply sources?

- a. I coordinate such use regularly
- b. I've dealt with this several times
- c. I know basically what this means
- d. Wait, contractors can use Government supply sources?

# 251 – Use of Government Sources of Supply

- Notwithstanding FAR 51.101(a)(1) contracting officers may authorize contractors to use DLA Energy as a source of fuel in performance of **other than a cost reimbursement** contract when fuel is funded by the Defense Working Capital Fund.
- Contracting officer may authorize contractor to use DD Form 1155 when requisitioning from the VA
- Must consider whether DoD supply sources may refuse requests from contractors who are indebted to DoD and have failed to pay proper invoices timely
- Use DFARS 252.251-7000 Ordering from Government Supply Sources in solicitations and contracts which include FAR 52.251-1 Government Sources of Supply.
- Use DFARS 252.251-7001, Use of Interagency Fleet Management System (IFMS) Vehicles and Related Services in solicitations and contracts which include FAR 252.251-2

See you all again on November 15th . . .

Same Bat Time . . .

Same Bat Channel . . .

THANKS!!!!!!

