DCAA Access Rights to Your Internal Audit Reports and Workpapers:

Legal and Regulatory Update

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DCAA and Contractor Internal Audits: 
Topics

- Subpoenas and Internal Audits
- Congress and DCAA's Access to Internal Audits
- 2013 NDAA § 832 and DCAA Access
DCAA's subpoena authority under Newport News Decisions

- DCAA's audit power tied to purpose of verifying costs
- Internal audits:
  - Are not related to a particular contract
  - Contain subjective evaluation
  - Not within DCAA's subpoena power
Internal Audits - Cautions

- Even if DCAA can't subpoena internal audit, DoD IG has authority
- Caution regarding privilege claims for internal audits
  - No privilege for "consultation lite" with counsel for internal audits  See *U.S. v. ISS Marine Services, Inc.*, 2012 WL 5873682 (D.D.C. Nov. 21, 2012)
Congressional Interest in DCAA Access to Internal Audits

- Business Systems – 2011 NDAA
- Asked GAO to assess the role of defense company internal audit
- Case-by-case DCAA Access
- "DCAA is not making full use of internal audits to accomplish its critical oversight role"
- DCAA access to internal audits "could improve DCAA's efficiency"
Subjects of Business System Internal Audit Reports

2.4% Property management system

4.1% Earned value management system

6.5% Material management and accounting system

11.2% Purchasing system

13.3% Estimating system

62.4% Accounting system
GAO Recommendations

- DCAA Central Point of Contact coordinate audit issues
- Periodically assess access and engage with or subpoena companies
- Reaffirm with DCAA staff how internal audits can be accessed
Subsequent DCAA Actions

- DCAA "needs statutory authority to access ... internal audits ... and ... internal control documentation"
  (DCAA Annual Report, March 2012)

- Audit Guidance – Denial of Access due to contractor assertion of privilege
  (Memo 12-PPS-018(R), July 2012)

- Audit Guidance on Access to Contractor Internal Audit Reports
  (Memo 12-PPS-019(R), August 2012)
Senate Proposal – But Not Implemented

- "Clarify" statute to broaden DCAA access authority
- Contractor business systems could be disapproved from denial of access to internal reports
- But would this shutdown internal audits?
2013 NDAA § 832 Provisions

- DCAA to issue revised guidance on
  - Documentation Requirements
  - "Safeguards and Protections"
    - Use only to evaluate/test internal controls/business systems
- "Risk-Based Auditing"
  - Sound contractor internal controls = increased reliance or reduced testing
  - Internal audits may be considered in determining "soundness"
- Terms of 10 U.S. Code 2313(a)(Agency authority) and (b)(Subpoena authority) unchanged
CAM 4-202 Access to Contractor Internal and External Audits

- Central points of contact
  - Obtain a semi-annual summary listing of all internal reports sufficient to identify whether Government contract-related
  - Request and document
- If access denied, implement access to records procedures DCAM 1-504
Conclusions

- Congress sees qualified advantage to accessing internal audits
- Congressional attempt to creative incentive for providing internal audit reports
- Contractors need to prepare for increased requests and document their responses
- Assure appropriate policies for privileged matters
- Evaluation of audit processes relating to internal audits will continue
Questions or comments?

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