




Program Management Systems Committee (PMSC) Contract / Subcontract Issues Working Group

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Industry Issues and Position Summary

30 January 2008

Issues List

- The following issues have been addressed by the Contracts Working Group and consensus has been reached among industry participants concerning recommended solutions:
 - A. Issues addressed by the Working Group and should be raised to DCMA
 - 1) Contract vs. EVM system order of precedence.
 - 2) Subcontractor compliance, validation and surveillance.
 - 3) Knowledge gap between EVM and contracting communities.
 - B. Issues already being addressed by NDIA PMSC
 - 4) Integrated and virtual team (badge less) subcontracting teaming arrangements.
 - 5) DCMA EV Standard Surveillance Plan (SSP).

Order of Precedence

Issue

- In addition to including FAR or DFARS EVMS clauses on contracts, contracting officers frequently include other provisions that often require suppliers to modify or depart from their standard, validated EVM Systems to manage their contracts and meet the requirements of their contracts. These provisions may be found in sections of the contract that take precedence over Section I, where the EVMS clauses are contained, e.g.,
 - Section H – Special Provisions
 - Section C – Statement of Work requirements
- DCMA's stated policy is to issue Corrective Action Request (s) against the contractor for following contract direction.

Industry Position

- Industry is bound to follow contract direction.
- Issuing DCMA Corrective Action Requests to the Contractor will not resolve the matter because the contractor cannot unilaterally modify the contract to remove the conflicting provisions.
- In the spirit of cooperation the Contractor and the cognizant CMO should notify the PCO of the conflicting requirements.
- The DCMA CMO and the PCO should reach a solution with the government PM which precludes ANSI noncompliance.
- If no solution can be found and a CAR is issued, contractors may be forced to appeal any actions taken by the government to suspend and/or withdraw system validation.

Subcontractor Compliance, Validation and Surveillance

Issue

- Previously a subcontractor had the ability to request one of three options when required to have a validated EVMS; the EVMIG and other guidance documents vested primary responsibility in the prime contractor.
 - 1) Prime Contractor Review Only
 - 2) DCMA Review Only
 - 3) DCMA and Prime Contractor Review
- October 2006, DCMA revised the EVMIG to make option 2 the sole available option
- The EVMIG now conflicts with FAR / OMB Policy since it appears to categorically eliminate the consideration of other agencies acceptance.
- Failure to achieve closure with OMB will result in dual industry processes for subcontractor validation and the potential for the same at a single contractor facility.

Industry Position

- The EVMIG is in conflict with current FAR/OMB policy.
 - FAR 52.234-2, and -3 sub-paragraph (b)(1)(v) allows contractors to submit documentation describing the process and results of any third-party or self-evaluation of the system's compliance with the EVMS guidelines.
 - FAR 52.234-4, subparagraph (a) says: The Contractor shall use an EVMS that has been determined by the Cognizant Federal Agency to be compliant with the guidelines in ANSI/EIA Standard -748 (current version at the time of award) to manage this contract.
 - OMB policy allows prime contractor certifications of subcontractors if done IAW NDIA Acceptance Guide.
- DCMA should consider the following actions:
 - Communicate with OFPP and reconcile differences with FAR/OMB policy.
 - Communicate this change to all major buying commands via correspondence from OUSD.
 - Revise EVMIG for consistency with current policy.
 - Review acceptance by other agencies. Either accept or reject with a proposed solution set for compliance.

EVM Knowledge Gap in the Contracting Communities

Issue

- There is a widespread EVM knowledge gap among the contracting communities
- Evidence that EVM and Contracting experts are not collaborating, via IPTs, on the contractual application and use of EVMS during acquisition planning
- Evidence of this is as follows:
 - Incorrect flow down and/or omission of EVM contractual requirements.
 - Improper contract direction forcing the contractor or subcontractor to violate their approved system.
 - Over application of EVM requirements
 - Improper application of requirements for follow on options
 - Improper use of Management Reserve (MR)
 - Integrated Baseline Review (IBR) timing

Industry Position

- NDIA PMSC should establish an Industry / Government team to generate a briefing and communication/training package which can be delivered to all federal agencies and contractor organizations.
- The briefing should address mandatory requirements and impacts of improper direction.
- Execute delivery of the package by 07/08.
- Complete communication of the package by 12/08.

Integrated Subcontract EVMS Implementations

Issue

- The use of a single EVMS by all program participants to manage large programs involving major subcontractors is viewed as non-compliant to the DFARS EVMS clause by DCMA.
 - This approach also referred to as badgeless, virtual, or gray badge.
 - Characterized by adoption of a single validated system to manage the effort (typically the prime's EVMS), use of a common tool set, integrated schedules and performance reporting.

Industry Position

- As an interim solution:
 - Contractors will adapt local system description to accommodate unique aspects.
 - DCMA EV Center, CMO and Contractor will work as a team to ensure acceptability of each system. May include acceptance review.
- NDIA PMSC will conduct a targeted survey to establish the business case for this change to current contracts.
- Should the survey reveal significant cost increases and the DCMA position remains the same, contractors should consider the following since it will represent a constructive change to existing contracts.
 - Submit proposal / claim to each government program office requesting an equitable adjustment in the contract.
 - Appeal the rejection of claims.

Standard Surveillance Plan

Issue

- DCMA EV Standard Surveillance Plan (SSP) will be implemented throughout the agency without being distributed for comment.
- Issues include but are not limited to:
 - Existing AA provisions allowing change implementation after ACO notification.
 - Review and adjudication of all CARs by the EV Center.
 - Risk Based Surveillance approach appears to eliminate contractor input.
 - Level of detail and amount of data requests to support surveillance will increase.
 - Training and Implementation - Demonstrated DCMA response time for final reports and system description changes is unacceptable.

Industry Position

- Request DCMA EV Center to distribute the plan for comment through NDIA PMSC.
- NDIA PMSC will work with DCMA to achieve a timely review and closure on any areas of concern.
- The surveillance plan represents a significant change to previous practice and will impact contractor staffing and costs associated with the overall surveillance activity.