

THE VALUE OF PERFORMANCE.
NORTHROP GRUMMAN

DCMA Subcontract CAR Policy

David Ricci
Corporate Director, Pricing, Estimating
and Program Control

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Topics

- DCMA Presentation to Industry Associations on April 25th
- Industry Suggestions
- Discussion



DCMA

Discussion of Industry Concerns with DCMA Corrective Action Policy

Apr 25, 2013

Objective

- Discussion of industry concerns with DCMA Corrective Action process
 - NDIA letter, AIA letter and other inputs
- Candid discussion with open exchange of perspectives

Corrective Action (CA) Process Instruction

- DCMA and predecessor Contract Administration Services organizations have utilized structured CA Processes
 - Structured CA Process provides consistent engagement with industry
- CA Process Instruction prescribes internal DCMA process for correction of supplier contract non-compliances
- CA Requests (CARs) issued against valid contractual requirements; the CAR describes a clear departure from the contract requirement

Corrective Action Request Levels

- Corrective Action Request (CAR) level based upon severity and scope of noncompliance
 - Level I – Noncompliance “corrected on the spot” and Root Cause CA response not requested.
 - Level II – Issued to functional manager; Root Cause CA response requested.
 - Level III – Issued to business segment senior leadership; Root Cause CA response requested.
 - Level IV – Issued to business segment senior leadership; Root Cause CA response requested; mandatory review by ACO of all contract remedies to include suspension of inspection and acceptance.

Acquisition Environment

- Industry's supply chain management is a recurring concern of DoD acquisition leaders
 - Primes have increased system integration role and reliance on supply chain
 - Lower tier supplier performance is a recurring constraint on program execution
- DCMA issues supporting contract administration delegations when in best interest of Government

Why did we change CA Process Instruction?

*Extract from
2010 briefing
on CA
Process*



DEFENSE CONTRACT MANAGEMENT AGENCY

Problem Statement

- There is no holistic Agency Corrective Action Process
 - The “standard” Corrective Action Report (CAR) process is delineated in the QA guidance
 - EV SSOM prescribes process for EV CAR (to include Center review)
 - Some functions issue letters outside the CAR process
- There is no standardized, automated agency tool for tracking deficiencies through closure
 - Impacts effectiveness of DCMA oversight and ability to address overarching performance challenges
- Inconsistent DCMA management engagement with suppliers on Corrective Action
 - Some locations have regularly scheduled meetings with contractor counterparts; other sites engage on an ad hoc basis

DCMA currently has limited ability to bring together a holistic picture of performance for major, multi-segment contractors



Corrective Action (CA) Process Revision

- Requires the use of the agency CAR eTool
- Requires Level II or higher CARs be issued to the prime
- Directs that the ACO issues Level III and Level IV CARs
- Requires escalation of CARs when a contractor is unwilling or unable to effect corrective action
- Incorporates DFARS 242.70, Contractor Business Systems Rules
 - “Significant” Business System deficiencies are to be documented in Level III or higher CAR

Corrective Action Process Instruction revision based on FAR 42.202 requirements – prime is responsible for managing subcontracts.

Contractor Business Systems

- 34 CBS Review Panels conducted (since 21 Sept 2011)
 - 14 Accounting, 5 Estimating, 5 EVMS, 6 Property, 4 Purchasing
 - 6 Non-concurrences for system Disapproval
 - 28 Concurrences for system Disapproval
 - 7 Systems subsequently Approved based upon successful Corrective Action
 - 21 Systems currently Disapproved
 - 6 Accounting, 2 Estimating, 4 EVMS, 5 Property, and 4 Purchasing

Industry Concerns

DCMA has reviewed the industry concerns and annotated comments for discussion

DCMA Comments on Industry Concerns

Industry Concern

Industry recommends that DCMA internal policies including those that contain “shall” statements for contractors impact the cost of doing business with the Government should:

- Be coordinated with stakeholders, and
- Follow the public rule making process.

DCMA Comments

- *The CA Process Instruction is directed to DCMA employees to provide consistent DCMA mission execution.*
- *The CA Process Instruction does not contain “shall” statements for contractors.*
- *The public rule making process does not apply to internal procedures.*
- *CA Requests are issued against contractual requirements and the noncompliance description must show a clear departure from the contractual requirement.*
- *Agree with the value of open communication with stakeholders.*

DCMA Comments on Industry Concerns

Industry Concerns

In response to the new CAR process, industry has witnessed DCMA issuing CARs to the prime contractor based on DCMA's surveillance activities at the subcontractor's facility. Per the established practice regarding on-site DCMA presence, and in accordance with the prime-subcontractor contractual relationship, DCMA is better positioned to possess the requisite knowledge of the subcontractor's non-compliance than a prime, absent the prime setting up a DCMA-like surveillance presence at the subcontractor's site.

DCMA Comments

- *DCMA engages with only a limited subset of sub-tier suppliers via issuance of supporting contract administration delegations.*
- *CARs previously issued directly to the subcontractor (prime occasionally involved).*
- *Level II and higher CARs now issued to the prime contractor when non-compliances are observed at the subcontract level.*
- *In the case of the EVMS Business System, the DCMA EVMS process relative to Corrective Actions is supported by current DFARS requirements and DoD policy.*

DCMA Comments on Industry Concerns

Industry Concerns

It is reasonable to conclude that creating such a multi-tiered oversight process with a DCMA and/or prime contractor presence at subcontractor sites to prevent subcontractor non-compliances would simply be unaffordable and, since many subcontractors serve multiple primes, would result in redundant oversight and greatly increased costs to the Defense Department.

DCMA Comments

- *Supporting contract administration delegations are not intended to substitute for prime contractor oversight responsibility.*
- *In the case of product inspected at sub-tier levels, the prime frequently inspects prior to DCMA verification.*

DCMA Comments on Industry Concerns

Industry Concerns

Furthermore, it is fundamentally difficult, if not impossible, for prime contractors to manage the CAR process resulting from a business system deficiency when the root cause exists at the supplier level. In most cases, prime contractors lack the legal or contractual right or ability to inspect and monitor the corrective action plan instituted at the supplier level, yet it would be held directly accountable to the Government for the deficiency.

DCMA Comments

- *The prime has responsibility for contract compliance and should normally have the ability and right to correct sub-tier non-compliances.*
- *EVMS compliance determinations are made for prime contractors and subcontractors as highlighted on Chart 17.*

DCMA Comments on Industry Concerns

Industry Concerns

The new DCMA CAR instruction, in its current state, would force prime contractors to add new enforcement clauses into their subcontracts to assure sufficient oversight, visibility, and leverage to successfully remediate any subcontractor CARs. Any new enforcement clauses will also drive cost increases to the subcontractors, the prime contractors, and ultimately to the government.

DCMA Comments

- *The CA Process does not require the prime contractor to do any thing other than complying with their contract.*
- *Prime contractors have discretion as to how they manage their supply chain.*
- *Many prime contractors already have corrective action mechanisms for addressing subcontractor non-compliances.*

DCMA Comments on Industry Concerns

Industry Concerns

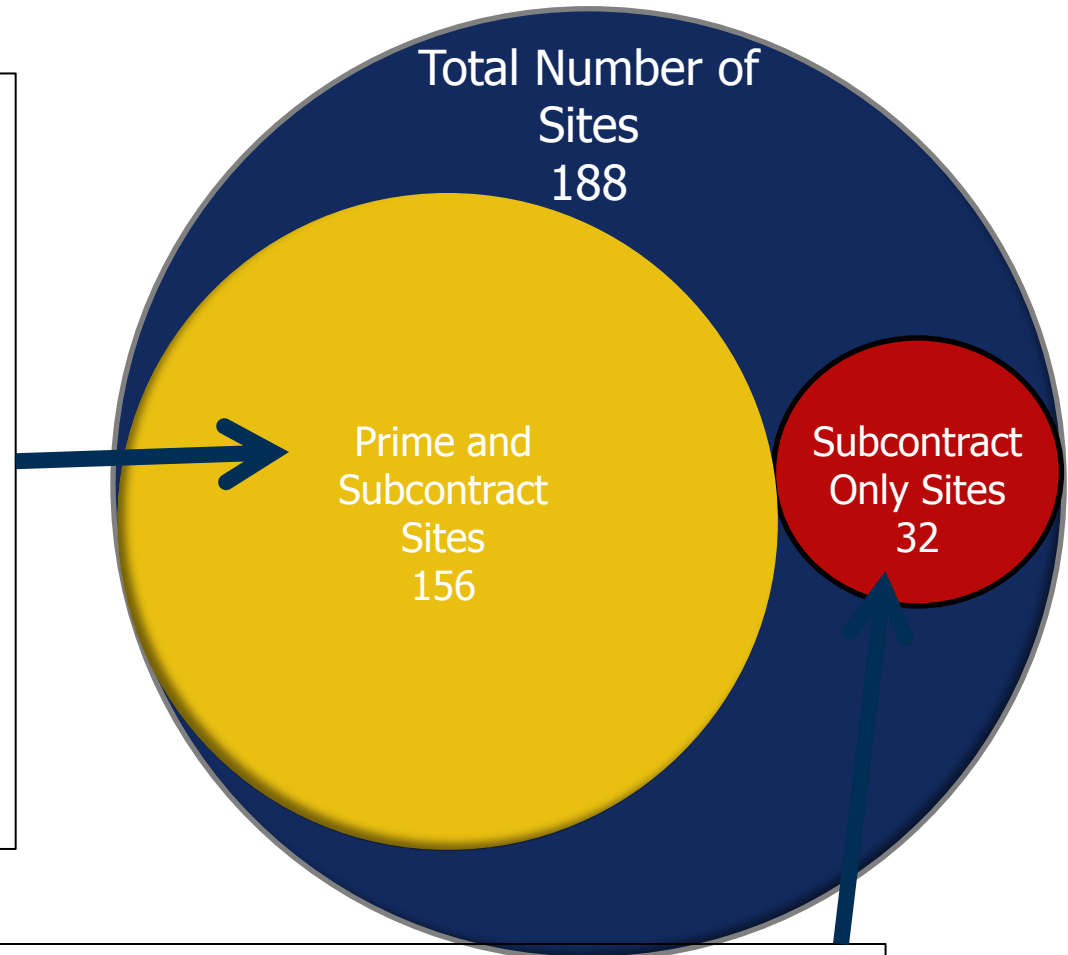
Thus, although prime contractors are responsible for managing their supply chain, DCMA should not issue a CAR to a prime contractor as a result of actions or inactions of a subcontractor, unless there is incontrovertible evidence that the prime has failed to manage this supplier. We note specifically that for the systems covered by the DFARS Business Systems rule that are subject to DCMA review and approval, prime contractors are at a distinct disadvantage with respect to subcontractor oversight. Subcontractors (particularly large subcontractors) do not permit prime contractors (often their competitors) to perform the type of invasive audits of proprietary systems that would be necessary to review and approve, such as the EVMS system.

DCMA Comments

- *Industry has the primary responsibility for managing their supply chain – not DCMA. See FAR 42.202.*
- *DCMA does not have privity of contract with subcontractors and thus is instructing Contract Management Offices to address CARs to the prime contractor.*
- *DCMA concurs that EVMS reviews involve access to contractor proprietary data that may not be available to the prime contractor.*

EVM Systems under DCMA Cognizance

- CA Process Instruction directs Corrective Action Requests (CAR) be issued against prime contract when contractor has both prime and subcontracts with EVMS requirements
 - If applicable to a subcontract, a redacted copy of CAR will be shared with the prime contractor



- If subcontract only supplier, the (redacted) CAR will be issued to prime contractor

DCMA Comments on Industry Concerns

Industry Concerns

We respectfully request DCMA rescind the current CAR instruction until an instruction may be issued that acknowledges the constraints of a prime contractor's managerial, contractual, and legal authority over our subcontractors. We are enclosing for your consideration the recommendations we made to your team in November of 2011 and hope you will reconsider them as you review the subject DCMA instruction.

DCMA Comments

- *The CA Process Instruction will remain in effect subject to revision.*
- *DCMA will take industry inputs regarding the CA Process Instruction under consideration.*

Summary

DCMA appreciates the dialog with industry and supports collaboration to ensure effective interaction in executing its contract management mission.

Industry Questions/Suggestions

- Can Prime rely on a Government Review of Subcontractors' systems?
- Will Government conduct a review if Subcontractor does not allow access (or limits access) to their system (analogous to pricing assist audits)?
- This instruction requires DCMA to issue CARs to primes when deficiencies are found at subcontractors. This is a change from prior practice and runs into some practical implementation problems. Would it be more reasonable to issue the CARs to the subs, and then if repetitive issues are found, subsequently issue a CAR to the prime as the repetitive nature of like CARs indicates the need for improved oversight?

Industry Questions/Suggestions

- The Subcontractor will need to correct its system. While that is being accomplished Prime can take its own actions to preclude adverse effects on Government. (For example, if Subcontractor has a labor charging deficiency in its accounting system, Prime can disallow labor costs to be included in its progress payment requests thus obviating any potential harm to Government.) Would this action be sufficient to avoid a CAR being presented to Prime?
- Will DCMA allow Industry the opportunity to comment on next version of policy given the multitude of issues surrounding this new, somewhat unique approach?

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