

Think You Can Avoid the Feds? Think Again....

by John Stunson

On December 3, 2010 the Defense Acquisition and Procurement Policy (DPAP) office issued another version of the Defense Federal Acquisition Regulation Supplement (DFARS) Business Systems rule (DFARS Case No. 2009-D038) for public comment. This should put to rest the argument between government and industry regarding the meaning of "... special requirements of government contracting..." contained in FAR 52.203-13.

As proposed, the rule requires government contractors to have an internal control system with over one hundred control objectives for six key business systems: Purchasing, Accounting, Estimating, Earned Value Management System (EVMS), Government Property, and Material Management Accounting Systems (MMAS). Should a "deficiency" occur (failure to meet one "Key Internal Control"), the government can withhold 5 percent of contract payments, to a maximum of 20 percent for multiple deficiencies.

Often, contractors don't realize they've signed up for these requirements, because the implementing contract clause is normally included by "reference" (i.e., just the clause number and title are shown). Additionally, they often feel they won't qualify for "large company" regulatory requirements. Common thoughts include:

- **"I don't qualify, I do hard bid fixed price jobs!"**
Fixed price contracts receiving progress payments qualify, as do cost reimbursable, incentive, and time and materials contracts.
- **"My contracts are too small to be covered!"**
Clauses are applied per key system. FAR 52.203-13 is usually applied for contracts over \$5 million.
- **"My internal control system is already strong!"**
The internal control system must adhere to "special requirements of government contracting." Auditors have been known to cite deficiencies for even minor mistakes. For example, an Accounting System was deemed inadequate because the accounting manual had too many spelling and grammatical errors!
- **"We only do state government jobs, not Federal!"**
Many state contracts receive Federal funding and incorporate Federal "flow-down" contract provisions.

- **"I won't get audited!"** The Defense Contract Audit Agency (DCAA) has informally committed to prioritizing business system audits and taken steps to address staffing challenges.
- **"I won't do anything until the regulation is finalized!"** The regulation is projected to be final in early to mid 2011. Establishing a compliance system can take months, and once the regulation is passed, new qualifying contracts will require compliance within a very short window. Therefore, severe penalties may apply to companies willing to procrastinate and roll the dice.

Will you let your company be caught non-compliant? ■

John Stunson leads the Government Contract Services Practice of Auxis, Inc., a Management Consulting and Outsourcing Firm. He has extensive experience working with government contractors to assist their compliance needs, from gap identification to system implementation. Contact him at 954-224-0674.

Should You Outsource HR?

If your firm has downsized substantially as a result of the economy, it may be time to consider outsourcing your Human Resources functions. Like any major business decision, there are advantages and disadvantages. Consider these aspects when evaluating your options:

Outsourcing Advantages

- **Your business can focus its energy and resources on its core competencies**
- **HR specialists are available to provide a high level of expertise on a wide range of issues without you having to pay for this expertise when it isn't needed, lowering your costs**
- **Choosing a Professional Employment Organization (PEO) can often enable small firms to economically provide their employees with benefits equivalent to larger firms as a result of pooling personnel**

Outsourcing Disadvantages

- **Employees may perceive that your company is focused more on the bottom line than employee welfare**
- **The chosen outsource firm may not perform up to expectations, necessitating another change**
- **Outsourcing will eliminate jobs at your firm ■**