

Famous Last Words – “That Rule Doesn’t Apply To Us!”

by John Stunson

On May 18, 2011, The Department of Defense (DOD) issued the Business Systems-Definition and Administration Interim Rule. After extensive back and forth between government and industry, the issued interim rule is now able to be enforced and withholdings may be applied to contract payments for “Significant Deficiencies” found!

Because this is a highly controversial proposition, the industry issued extensive commentary addressing multiple aspects of the two previously issued proposed rules. Though minor industry wins were made, the government generally dismissed many of these comments and held their original position in the Interim Rule. These updates and changes further cloud an already complicated regulation for government contractors. The following Q&A is designed to help clear things up:

- **Who qualifies for the rule?** Contractors that are “CAS covered” contractors (Cost Accounting Standards) and / or when specific contract clauses are included in the Contract.
- **What does the rule require?** The rule requires Government Contractors to have an internal control system that addresses over 100 control objectives for the following six key business systems:
 - **Accounting** (*labor, billing, budgeting, compensation, indirect costs, EDP controls*)
 - **Purchasing**
 - **Estimating**
 - **Earned value management system (EVMS)**
 - **Government property**
 - **Material management accounting system (MMAS)**
- **What else did the Interim Rule change from the previous proposed rule?** Among other changes, withholdings for “Significant Deficiencies” are now 5% per deficiency and up to 10% for significant deficiencies across multiple systems.
- **When is the rule able to be enforced?** The Interim Rule applies and is able to be enforced for solicitations issued on or after May 18, 2011 and contracts awarded on or after August 16, 2011.
- **How will this rule be enforced?** The cognizant government audit agency [the Defense Contract Audit Agency (DCAA), one of the larger government audit agencies] will conduct audits of government contractors. Their findings will be communicated to contract administrators who will determine next actions (i.e., apply withholdings, other “remedies”). The DCAA has begun their new fiscal year and we anticipate “mini-audits” will be conducted to provide more breadth in audit coverage.

• **For what contract types does this rule apply?** Fixed Price contracts receiving progress payments or milestone payments qualify! Also, cost reimbursable, incentive, and time and materials and construction contracts.

• **What industries are affected?** Architecture, engineering, construction, and professional services firms are severely impacted by this regulation, since many have previously avoided “infrastructure” by performing fixed price jobs.

While many companies are scrambling to get compliant, other companies have chosen to ignore this regulation. In fact, many companies may already be required to adhere to this regulation and not even know it!

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

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