

Business Systems Rule issued as an Interim Rule

Will the Auditors come knocking?

On May 18th, 2011, the Department of Defense (DoD) issued the Business Systems-Definition and Administration; Interim Rule. After two proposed rules previously issued, this Interim Rule changed, in part:

1. Adjusts penalties for "significant deficiencies" (from 5% a deficiency, cap of 20% for multiple deficiencies to 5% a deficiency, cap of 10%).
2. Provides an exemption for federally designated Small Businesses.
3. Eliminates the \$50 Million dollar threshold for qualification and applies the Business Systems rule to Contractors that are "CAS covered" or "Modified CAS Covered" (Cost Accounting Standards) and when specific contract clauses are included in the contract. (A contract of \$7.5 Million may be Modified CAS covered.)

It is very important to note that the Interim Rule applies to solicitations issued on or after May 18, 2011 and Contracts awarded after August 18, 2011. Contracting officers are encouraged, to the extent feasible, to amend existing and new solicitations to include the Contractor Business Systems clause (DFARS 252.242-7005). ***This means that the rule now is able to be enforced and penalties may apply.***

For this edition of our newsletter, we will concentrate on the potential Government strategies to enforce the Business Systems rule and how it applies to the Engineering and Construction industry.

There is much speculation in the industry as to

how the Government will look to enforce the Business Systems Rule. One thing is clear, they mean business. On May 31st the DoD, GSA, and NASA issued a final rule amending the Federal Acquisition Regulation (FAR) to add to the list of contract administration functions of a contract officer (CO), the function to ensure that contractors have implemented the mandatory contractor business ethics program requirements. ***Essentially, they've incorporated Business Systems Rule enforcement into the CO's job description!***

With that, how will the rule be enforced? The DCAA has put together their budget for their forthcoming fiscal year, which will begin October 1, 2011. Whatever efforts DCAA will lead to ensure compliance of the Interim Rule, "Business System" audits will most likely begin at this point in time.

At a recent Government Contracting conference, industry leaders gave their thoughts on how they expected the DCAA to audit contractors on the Rule. They shared the following:

1. **The Perpetual Audit** – A Large construction and engineering contractor voiced concern that the DCAA will perform perpetual "system" audits. There would be no real reports issued, just a constant, in-depth DCAA review of the six key business systems.
2. **Targeted Audits, based on Volume (Materiality)** – A Government Contracting Attorney espoused that audits would be based on Government Contractor size, working through the bigger contractors first.

3. **The "Mini-Audit"** – Sources within the DCAA have represented that the DCAA will conduct "Mini-Audits" for many "New" Government contractors, to maximize their coverage. Since there will be a number of new contractors who qualify, namely Engineering and Construction firms who are awarded fixed price jobs and billed off a schedule of values, maximizing coverage will be a key objective to enforce this rule.

These "Mini-audits" could be for as short as one hour to a number of weeks in duration, whereby an auditor will focus on the contractor's system documentation (such as policies and procedures). If there are no system documentation or policies and procedures, then the DCAA can wrap up the audit and the Contractor will be found to have "Inadequate Systems."

No one can speak with absolute certainty as to how the DCAA will enforce this rule. However, given the information obtained, and the number of new contractors qualifying for this rule, it appears likely that "Mini-Audits" will be conducted at a pervasive level. Certainly some of the larger, more-established Government contractors will have an increased focus, with more in-depth review procedures. But we do not feel that DCAA will focus solely on the larger contractors, based on materiality. As we've often been reminded, materiality is not necessarily the primary focus for Government audit agencies.

Given this, time is drawing near for contractors. CFOs, Program Managers, and other Executive / Division management need consider an effective evaluation of their six key business systems and the internal controls that govern them. Many contractors are ill-prepared for the consequences of non-compliance (such as 5-10% withholdings of government contract payments).

Auxis and RB Simmons can help! We have developed an effective, efficient methodology to move contractors towards compliance. We provide a detailed compliance gap analysis with recommendations towards remediation along with a comprehensive set of customized policies / procedures. Auxis / RB Simmons has performed these projects for a number of the leading Engineering and Construction firms in the industry.

How Auxis / RB Simmons can Help:

Teamed with industry leader RB Simmons, Auxis has developed a flexible, practical approach for companies working to comply with this regulation.

Brian Simmons of RB Simmons is recognized as an Industry Leader in Federal Government Contracting Compliance, specifically for this "Business Systems Rule" (Experience includes numerous Architecture, Engineering, and Construction companies.)

Auxis has 14 year track record of helping companies improve internal controls, information systems and business processes.

Auxis outsourcing capabilities provides a cost effective alternative for achieving compliance with IT control requirements (i.e. SAS 70)

Strong Value proposition - Better bang for buck, favorable rates and greater value over competition.

Ability to assess and implement, without independence issues of an attestation firm (i.e. one stop shop)

About Auxis, Inc.

Auxis, Inc. is a management consulting and outsourcing firm that specializes in improving business performance and creating profitable business growth strategies to help companies prosper. The firm's proprietary Growth Strategy, Business Transformation, and Outsourcing solutions help identify and implement specific, immediate, and practical solutions for cost savings and growth. Auxis clients benefit from working with a multi-disciplined team of professionals with years of in-the-trenches experience and a proven track record of results.

Founded in 1997, Auxis is headquartered in South Florida with offices in Tallahassee, Fla., Washington, D.C. and San Jose, Costa Rica.