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January 10, 2011

Defense Acquisition Regulations System
Attn: Mr. Mark Gomersall
OUSD (AT&L), DPAP (DARS)
Room 3B855
3060 Defense Pentagon
Washington, D.C. 20301-3060

Via email: dfars@osd.mil

Re: DFARS Case 2009-D038
CODSIA Case 01-11

Dear Mr. Gomersall:

On behalf of CODSIA¹, we are pleased to submit the following comments on the second proposed rule titled "Business Systems – Definitions and Administration" (DFARS Case 2009-D038) that was published in the Federal Register on December 3, 2010. An initial (first) proposed rule was published in the Federal Register on January 15, 2010.

Introduction

We strongly criticized the first proposed rule on two primary bases. First, that rule did not fully describe the attributes of each of the six business systems that a contractor would have to comply with in order to have an "approved" system. Second, the enforcement and penalties were disproportionate to the deficiencies identified and the risk to the government from one or more of those deficiencies. We appreciate the action to publish a second proposed rule for public comment.

While this second rule does a better job than the first proposed rule of identifying those system attributes and linking system deficiencies to elements of risk to the government, there are still significant concerns with the attributes of the individual business systems and the withhold process that

¹ CODSIA was formed in 1964 by industry associations with common interests in federal procurement policy issues at the suggestion of the Department of Defense. CODSIA consists of seven associations – the Aerospace Industries Association (AIA), the American Council of Engineering Companies (ACEC), the Association of General Contractors (AGC), the National Defense Industrial Association (NDIA), the Professional Services Council (PSC), TechAmerica, and the Chamber of Commerce of the United States. CODSIA's member associations represent thousands of government contractors nationwide. The Council acts as an institutional focal point for coordination of its members' positions regarding policies, regulations, directives, and procedures that affect them. A decision by any member association to abstain from participation in a particular case is not necessarily an indication of dissent.

must be addressed. As requested in the background section of the December 3 Federal Register notice, we have identified some of those gaps in the detailed comments below

Consistency in Procedures

We appreciate that an effort was made to provide virtually identical procedures in each of the six business system segments for identifying attributes and providing for the disposition of findings. While core procedures are included in each of the six segments, they are not identical and that is a potential source of confusion. There is also an overlap between the procedures in each of the six business system segments and the procedures established in new Subpart 242.70 and the new clause at 252.242-7XXX – Business system deficiencies. Those differences can lead to misinterpretation and misapplication in implementation. The proposed rule conflicts with and duplicates existing FAR 30.605 relating to processing non-compliances or deficiencies. These differences, and our recommendations for corrections, are highlighted in the analysis of the coverage of each of the business systems below and must be corrected in any subsequent rule.

Assignment of Organizational Responsibilities

We appreciate that an effort was made to provide clarity around roles and responsibilities of various defense organizations for each of the six business system segments in the proposed rule. While this was accomplished in several of the business system segments, it was not covered clearly in all of them. We highlight those gaps in assigning responsibilities in the appropriate coverage of each of the business systems below and recommend that it be corrected in any subsequent rule. . There are also gaps in process that we recommend be addressed in the “revised policy” referred to in Mr. Shay Assad’s January 4, 2011 memorandum on “Better Buying Power”. One such gap is created by the absence of a procedure for resolving different judgments regarding a deficiency made by different ACOs. We recommend that DCMA address this gap when aligning their processes with DCAA.

Cost Impact of Deficiency

Neither the original nor the current version of the proposed business systems rule contain a requirement that DCAA identify evidence of the actual or potential cost impact of the system deficiencies it has identified prior to the imposition of a payment withhold. Our comments on the business systems rule as initially proposed identified this absence as a major flaw in the proposed regulation because, without evidence of a causal nexus between the deficiency identified and the likely magnitude of unallowable costs billed as a result, the amount withheld may be grossly disproportionate to the actual impact. (See CODSIA’s March 16, 2010 letter to Mr. Gomersall at pg. 5.)

Stating that "the importance of this causal nexus cannot be overemphasized," our letter cited Section 5-109(e) of the DCAA audit manual's advocacy for linking "estimating system deficiencies to questioned costs on proposal audits or positive findings on post award audits..." so that "the importance of correcting the deficiency is more apparent." We also noted that the Commission on Wartime Contracting (CWC), whose Special Report #1 provided the rationale for the proposed rule, explicitly called for "audit opinions with clear and quantifiable risk information," noting that "cost-impact information provided by DCAA could help the contracting officer determine withhold amounts when necessary" but that, while "DCAA has increased the number of its recommendations to withhold payment, it does not always estimate a cost impact for the deficiencies it has identified." The CWC's concluding recommendations provided that "whenever possible, audit reports should include an

assessment of audit risk and cost impact associated with reported deficiencies."² Our March 16 letter also noted that relevant case law requires that, prior to imposing preemptive withholdings or disallowances, the government must show a connection between deficiencies and billed unallowable costs. Thus, CODSIA recommends that the proposed rule be revised to incorporate the following language, based on the CWC recommendations:

"DCAA audit reports are to include an assessment of audit risk and cost impact associated with reported business system deficiencies or to explain why it was not possible to include such an assessment."

Standard of "Materiality"

In our comments on the first proposed rule, we criticized the proposal because it failed to link any contractor deficiency in meeting one or more attributes of a business system segment to any "material" harm to the government as a result of such deficiency and lacked any proportionality to the risk to the overall compliance regime. While we appreciate that an effort was made in this second proposed rule to provide that element of "risk" to the government in the evaluation and disposition of findings, the rule uses separate tests at various review phases in the each of the business system segments, although the rule does attempt to use those differing tests consistently across all of the business system segments. For example, in each of the segments, the auditor is to report to the contracting officer in "sufficient detail to allow the contracting officer to understand the deficiencies and the potential adverse impact to the Government." Yet the contracting officer's initial determination must be either (1) that there are "no deficiencies that affect the system" (without regard to any risk of harm to the government) or (2) on the basis that one or more deficiencies will "lead to a potential risk of harm to the Government." Then, after that initial determination, the contracting officer must notify the contractor in sufficient detail to allow the contractor to understand the deficiency and the "potential harm to the Government."

Similarly, in the provisions in these subparagraphs dealing with the contracting officer's final determinations, none of the business system segments link the finding of system deficiencies to any standard of risk to the government. While these may appear to be seemingly minor irregularities in the application of a standard of risk, there, in fact, are substantive differences among them that establish different thresholds that could lead to very different standards when there is no evident reason for differentiation among the standards. While we recognize the variations in impact and risk to the government that may arise from an identified deficiency in any of the attributes within each of the six business systems, we strongly recommend that any final rule establish a clear, simple and uniform standard of risk to the government in the procedures that are applicable across all of the business systems.

The definition of deficiency in the revised rule provides that any deficiency could result in a withholding. We strongly believe that deficiencies should be characterized as significant and material before withholding is deemed appropriate. For publicly traded companies, the Public Company Accounting Oversight Board (PCAOB) defines the terms "deficiency," "significant deficiency" and "material weakness" that apply to publicly traded corporations.³ OMB has also adopted these terms in OMB Circular A-123, Management's Responsibility for Internal Control. Under the OMB approach, identified control deficiencies are not a reportable condition and are to be addressed by management. In both the

² See Commission on Wartime Contracting in Iraq and Afghanistan Special Report on Contractor Business Systems, September 21, 2009, at pp. 5, 9.

³ See http://pcaobus.org/Standards/Auditing/Pages/Auditing_Standard_5_Appendix_A.aspx#a1

PCAOB and OMB approaches. Not all deficiencies are material or significant. Thus, redefining common financial terms for purposes of an audit context is out of step with the PCAOB and OMB approaches and is harmful to the government, the public, and the contractor as there will be constant confusion as to the significance of reported deficiencies. Non-significant and non-material deficiencies that have little likelihood of occurring or have little impact should they occur should not trigger this level of onerous actions. We recommend that an unambiguous and clear-cut standard of materiality and risk be adopted. Further, we recommend that all government identified deficiencies in a contractor's business system include a reasonable estimate of the probable undue or material harm to the government to show that the deficiency is material.

Payment Withholdings

We appreciate the significant changes made to the first proposed rule relating to payment withholdings, including the level of withholdings on any particular system, establishing a lower overall cap on total withholdings, and in establishing different thresholds to be applied to small businesses. Within the constraint noted above relating to consistent identification of risk, we also strongly support the formulation in both the policy prescription in 242.70X1(b) (with respect to withholding) and in the clause at 252.242(c) (relating to system deficiencies) that appropriately requires a linkage between the system deficiency and the risk of harm to the government.

However, CODSIA recommends that the rule must exempt from withholdings fixed-price and performance-based contracts since payments under these contracts are based on contract terms not on the basis of costs incurred.

In addition, we appreciate the new authority provided to the contracting officer to discontinue the withholds prior to audit verification if the contractor submits evidence that the deficiencies have been corrected. Also noted below in the discussion with DCAA, too often contractors have raised concerns about untimely or no reviews by DCAA to verify contractor-taken corrective actions. To further this important policy of focusing on prompt correction of deficiencies, contracting officers should be authorized to provide up to a 90-day transition period, when requested by contractor, for the contractor to take corrective action without the assessment of any payment withholding.

Finally, we recommend that the rule include a process that includes the government PM, PEO and SAE in a review with DCMA and DCAA when withhold and/or system withdrawals are contemplated. This will ensure that all stakeholders are in agreement when the "risk of harm" to the government has been identified; one potential framework for incrementally enforcing this rule is through changes to the existing DCMA CAR process.

With the new coverage applicable only to contracts exceeding \$50 million before the Business System clause is included, we believe this threshold will further minimize small and mid-tier business exposure. Nevertheless, all contractors and government program and pay offices will have a particular challenge in tracking and accounting for withholds on each invoice. We encourage the DAR Council to consider simplifying the administrative burden for the accounting for withholdings against numerous invoices.

FY 2011 National Defense Authorization Act

Section 893 of the Ike Skelton National Defense Authorization Act for Fiscal Year 2011, enacted on January 7, 2011 addresses the requirement for the department to develop a program for the improvement of contractor business systems within 270 days after enactment.

Significantly, Section 893(b)(3) specifically requires the department to identify the DoD officials who are responsible for the approval or disapproval of contractor business systems. As we noted above under the heading "Assignment of Organizational Responsibilities," this is an important component of any appropriate business system and was noticeably lacking in the first proposed rule. While efforts have been made to clarify those roles and responsibilities in this second proposed rule, more can and should be done to establish clear accountability.

Section 893(b)(4) provides that any program must provide for the approval of a contractor business system "that does not have a significant deficiency." Similarly, Section 893(b)(5) provides for the disapproval of a business system that has a "significant" deficiency. Section 893(f)(4) defines the term "significant deficiency" to mean a shortcoming in the system that "materially affects" DoD's and the contractor's ability to "rely upon the information produced by the system that is needed for management purposes." We support this formulation, as well, and note that the identification of a "significant" deficiency does not automatically assume that the government is at risk from such deficiency. For both the approval and disapproval of one or more business systems, the standard for these rules should not be procedural perfection with the business system's attributes.

Section 893(c)(1) establishes a key component of the remedial actions. As Congress directed, where a contractor has a business system that is disapproved, appropriate DoD officials are to be made available to work with the contractor to develop the corrective action plan and a schedule for implementation. We strongly support this requirement. One of the more common complaints our member companies have had with the DCAA over the past two years is that they have fully disengaged from every interaction with contractors at every phase of their audit process, with an adverse impact on both government contracting officials and on contractors. While the second proposed rule tries to identify key decision-makers for each business system segment, nowhere in this second proposed rule are the requirements of this section of the Act addressed. We strongly encourage the department to build on the government-industry communications initiatives already mandated by the Deputy Secretary of Defense in his June 2010 memo and build into each business system segment an opportunity for timely and meaningful exchanges between cognizant federal officials and contractors regarding the findings and corrective actions to be taken.

Section 893(c)(2) caps at 10 percent the amount of payments that may be withheld from a covered contractor to protect the government's interests and to ensure compliance. Section 893(c)(3) requires the withholding to be reduced if a contractor adopts an effective corrective action plan and is effectively implementing such plan. As noted above, we appreciate that this second proposed rule significantly modifies the withholdings that may be imposed against any individual business system or against multiple business systems, including a smaller differential for small businesses and a further reduction of the withholding when an acceptable corrective action plan is submitted, including a smaller differential for small business. Section 252.242-7XXX(d)(3) of the Business Systems clause, relating to withholding of payments, caps the total percentage of payment withholds on one or more business systems at 20 percent for large business and 10 percent for small business. In light of the statutory cap, and direction to further reduce withholdings during corrective action, we recommend that the maximum cap in this

clause be reduced to 10 percent and that, while the contractor is effectively implementing a corrective action plan, the cap be further reduced to 7 percent for other than small businesses and to 5 percent for small businesses.

Role of DCAA

While not addressed in the rule specifically, there are significant interdependencies with the actions (or inactions) that DCAA may take to ensure that this rule and the entire defense contracting system, works as intended. Over the past months, there have been numerous examples where DCAA's audit rules and processes conflict with the department's procurement objectives. Firms that "fail" the current binary adequate/inadequate regime are increasingly unable to get DCAA to conduct the necessary follow-up audits to validate that the company's fixes have been made. While we appreciate the change made in this second proposed rule that provides authority for the contracting officer to reduce the ongoing withholds after a contractor has submitted a corrective action plan, existing withholdings are not released because DCAA is unable to conduct a timely follow-up audit. To address this workload issue, we recommend that DCAA provide an in-process identification of areas requiring remediation and that contractors be encouraged to implement corrections to preliminary audit findings before the audit is complete. We also encourage the department to consider permitting contractors to use qualified third party auditors to provide various accreditations and audits as is already the case with ISO standards or CMMI approvals, expanding the opportunity for companies to qualify to bid on government business.

We also recommend that the department replace the existing binary "adequate/inadequate" regime with a graduated rating scale, based, for example, on the Public Company Accounting Oversight Board (PCAOB) standards discussed above.

In addition, DCAA may have to make further revisions to its audit programs. For example, while the second proposed rule addresses the attributes for a contractor to maintain an acceptable accounting systems, DCAA currently audits for "adequacy" of the contractor's control environment and overall accounting system controls, and might find a contractor "inadequate" if policies and procedures are not in place for each of the enumerated controls, even though maintenance of such policies and procedures are not system criterion.

Estimating Systems

New paragraphs 215.407-5-70(c)(2) and (3) provide for the respective roles and responsibilities of the cognizant contracting officer and the auditor relating to estimating system reviews. We appreciate the overall policy thrust in the rule to identify the organizational responsibilities of offices in addressing each of the business system rules. While we concur that the auditor conducts estimating systems reviews, we believe that the language in current 215.407-5-70(c)(3), which states that the "the cognizant auditor, on behalf of the ACO, serves as the team leader in conducting estimating system reviews," more properly establishes the relationship between the contracting officer and the auditor such that the auditor is not an independent decision-maker. We recommend revising new subparagraph (c)(3) to provide "(3) The auditor, on behalf of the cognizant contracting officer, conducts estimating system reviews" or otherwise clearly establish the lead federal official.

In paragraph (e)(2)(ii)(c)(B), the rule requires the contracting officer to promptly evaluate the contractor's response, and consult with "the auditor or functional specialist" and make a final

determination. In this segment, nowhere else is there any identification of the role of a “functional specialist.” We recommend this phrase be deleted to avoid any confusion.

In the new clause at 252.215-7002, the lead-in reference to the prescription should be to 215.407-5-70.

In the new clause at 252.215-7002(e), relating to system deficiencies, the phrase “in writing on any system deficiency” should be revised to provide “in writing of any system deficiency.”

With respect to the subjectivity of the attributes, we believe the following are two examples of subjective or overly broad criteria in the system criteria for evaluating an estimating system’s acceptability. New 215.407-5-70(c)(4) restates the current characteristics of an acceptable estimating system contained in DFARS 215.407-5-70(d)(1) but changes the lead-in phrase “an acceptable system should provide” to “an acceptable system shall provide.” In doing so, the repetition of the criterion to “utilize sound estimating techniques and good judgment” becomes a mandate and is thus highly subjective. In addition, in a highly convoluted construct, the clause at 252.215.7002 defines an acceptable estimating system in the context of an acceptable disclosure system provided to the ACO that “provides sufficient detail for the government to make an informed judgment regarding the acceptability of the contractor’s practices.”

Earned Value Management Systems

In the clause at 252.234-7002, the definitions create challenging logic. For example, the definition of an earned value management system in subparagraph (a) appears to require compliance with all of the ANSI/EIA standard while the definition of “system criteria” in subparagraph (b)(1) establishes a contractual requirement to comply with those same standards. Similarly, the definition of an “acceptable” EVMS means a system that “generally complies with system criteria” while the definition of a “deficiency” means the failure to meet one or more system criteria, without regard to any risk to the government from the failure to meet one or more system criteria. Finally, subparagraph (c) requires a contract over the threshold to use a system “acceptable to the cognizant federal agency.” These inconsistencies must be clarified and rationalized for these standards to be understandable and applicable.

In new section 234.201(7)(ii)(B)(3), relating to initial determinations where the contracting officer determines there are system deficiencies, other parallel business system sections require the contracting officer to “promptly evaluate” the contractor’s response. To ensure consistency across each of the business systems, we recommend adding the phrase “promptly” before “evaluate” in this section.

The proposed rule requires the Contracting Officer to disapprove a supplier’s Earned Value Management System (EVMS) when the initial validation is not complete within a 16-month period from contract award (252.234-7002 paragraph (j)(1), System Disapproval). However, the DCMA Earned Value Management Center, which is responsible for EVMS validation, has not demonstrated an ability to complete a system validation within this timeframe.

With respect to the subjectivity of the attributes, we believe the following is an example of subjective or overly broad criteria in the system criteria for evaluating an EVMS system’s acceptability in the clause at 252.234-7002. Based on -7002(i), the contracting officer is to determine a contractor’s system in “non-compliance” if the EVMS contains one or more deficiencies in any of the 32 foundational guidelines –

but approval of a system for compliance with all 32 guidelines is only required if the value of the contract exceeds \$50 million.

We also endorse the extensive additional comments on EVMS submitted on January 3, 2011 by the National Defense Industrial Association (NDIA), a CODSIA member association.

Business Systems

In the policy prescription added by proposed 242.70X1(b)(1)(i), withholdings are directed to continue until the contracting officer determines that “all system deficiencies have been corrected.” Here, again, the proposal establishes a “rule of perfection” rather than a rule of risk to the government. This same formulation exists in the payment withholding provisions in the proposed clause at 252.242-7XXX(e). We recommend that these provisions be modified to require business system corrections as necessary to address the risk to the government.

Material Management and Accounting Systems (MMAS)

The introductory phrase in revised section 242.7202(b) (Policy) requires the cognizant contracting officer, in consultation with the auditor and functional specialist (emphasis added), to take certain actions. Similarly, in evaluating the acceptability of an MMAS, section 242.7202(c) requires consultation with the auditor and functional specialist (emphasis added). But 242.7203(c), relating to review procedures, requires documentation from the auditor or the functional specialist (emphasis added). Since the auditor is already considered an “appropriate functional specialist,” (see existing 242.7203(c)(1)(i)(B)), we recommend the use of the conjunctive in proposed 242.7203(c). In published section 242.7203(c)(2), the contracting officer is directed to review “findings and recommendations.” Other comparable business system provisions include the modifier “all” before the phrase “findings and recommendations.” To ensure consistency across all of the business systems requirements, we recommend adding the word “all” before the phrase “findings and recommendations.”

The proposed rule intends to add new paragraphs (d) and (e) to revised 242.7203 but the text of the additional paragraphs denominates them at paragraphs (c) and (d).

In the new clause at 252.242-7004(e), relating to system deficiencies, the phrase “in writing on any system deficiency” should be revised to provide “in writing of any system deficiency.”

Accounting Systems

In published section 242.7502(d)(2)(i), the contracting officer is directed to review “findings and recommendations.” Other comparable provisions include the modified “all” before the phrase “findings and recommendations.” To ensure consistency across all of the business systems requirements, we recommend adding the word “all” before the phrase “findings and recommendations.”

In new section 242.7502(d)(2)(ii)(A), relating to the contracting officer’s initial determination that there are system deficiencies, other parallel business system sections require that the contracting officer’s written notification to the contractor must include “sufficient detail to allow the contractor to understand the deficiencies and the potential impact to the government.” We recommend that this modifier be added to this paragraph.

In new section 242.7502(d)(2)(ii)(C), relating to the contracting officer's initial determination that there are system deficiencies, other parallel business system sections require the contracting officer to "promptly evaluate" the contractor's response. To ensure consistency across each of the business systems, we recommend adding the phrase "promptly" before "evaluate" in this section.

In new section 242.7203(d)(2)(ii)(C), relating to the contracting officer's initial determination that there are system deficiencies, the reference to the "functional specialist" is used here exclusively and in no other place in this business system. We recommend deleting the phrase "or functional specialist."

In new section 242.7203(d)(3)(i)(B)(1), relating to the contracting officer's final determination that there are system deficiencies, the proposed rule requires the contractor to act within 45 days of receipt. Current 242.7502(a)(2) provides the contractor with 60 days from the date of the initial notification to correct any deficiencies or submit a corrective action plan. We recommend that the time period in this proposed section be extended to 60 days as in the current rule.

In the new clause at 252.242-7YYY(d), relating to system deficiencies, the phrase "in writing on any system deficiency" should be revised to provide "in writing of any system deficiency."

With respect to the subjectivity of the attributes, we believe the following are examples of subjective or overly broad criteria of the 18 attributes for evaluating an accounting system's acceptability in proposed clause 252.242-7YYY(c):

- Provides for a sound internal control environment and accounting framework and organizational structure;
- Provides for a logical and consistent method for the accumulation and allocation of indirect costs to intermediate and final cost objectives; and
- Provides for accounting practices in accordance with standards promulgated by the CAS Board. This "single" criterion actually represents 19 individual cost accounting standards as well as a CAS Disclosure Statement. FAR Part 30 already addresses Cost Accounting Standards Administration, inclusive of provisions which adequately protect the government's interest for CAS noncompliance. Including CAS within the business systems rule could result in redundant DCAA audit reports where an identical set of facts and circumstances will generate multiple audit reports and multiple contract administration actions.

Purchasing Systems

In new section 244.305-70(b)(2)(ii)(C), relating to the contracting officer's initial determination that there are system deficiencies, other parallel business system sections require the contracting officer to "promptly evaluate" the contractor's response. To ensure consistency across each of the business systems, we recommend adding the phrase "promptly" before "evaluate" in this section.

Item (c)(1) of 252.244-7XXX, contractor purchasing system administration clause, requires purchasing policies that "comply with the Federal Acquisition Regulations (FAR) and the Defense FAR Supplement (DFARS)". The FAR and DFARS are usually interpreted as instructions to agencies with requirements being imposed on contractors via contract clauses. The rule should provide this clarification.

Items (c)(2) and (c)(19) of 252.244-7XXX require policies and procedures to ensure purchase orders and subcontracts contain mandatory and applicable flow-down clauses as required by the FAR and DFARS.

The definitions of Subcontracts and Purchase Orders should be clarified to exclude agreements with vendors that would normally be applied to a contractor's general and administrative expenses or indirect cost. Also, items (c)(2) and (c)(19) appear redundant.

Item (c)(4) of 252.244-7XXX requires ALL purchase orders subject to government review to be documented. The rule should require documentation above some minimum threshold, e.g., \$3,000.

Item (c)(8) of 252.244-7XXX requires a contractor to evaluate price, quality, delivery, technical capabilities and financial capabilities of competing vendors. This requirement should be revised to be consistent with FAR Part 15 where price, quality, past performance are the mandatory criteria. On procurements using the Lowest Price Technically Acceptable approach technical capabilities, these criteria might not be used as evaluation factors.

Items (c)(10) and (c)(22) of 252.244-7XXX appear redundant.

Item (c)(13) of 252.244-7XXX should clarify the definitions of subcontracts to exclude agreements with vendors that would normally be applied to a contractor's general and administrative expenses or indirect cost.

Item (c)(16) of 252.244-7XXX requires the notification of the government of subcontract awards that contain the FAR and DFARS clauses that allow for government audits. As these clauses are required flow-downs on all direct funded subcontracts, notification should not be required.

Item (c)(23) of 252.244-7XXX should be clarified that the requirements are applicable to first tier subcontractors.

With respect to the subjectivity of the attributes, we believe the following are examples of subjective or overly broad criteria in the 23 separate system criteria for evaluating a purchasing system's acceptability as provided for in the clause at 252.244-7XXX(c):

- Have policies, procedures and purchasing practices that comply with the FAR and DFARS;
- Apply a consistent make-or-buy policy that is in the best interest of the government; and
- Enforce adequate policies on conflicts of interest, gifts and gratuities.

Property Systems

In new section 245.105(d)(2)(i), the contracting officer is directed to review "findings and recommendations." Other comparable provisions include the modified "all" before the phrase "findings and recommendations." To ensure consistency across all of the business systems requirements, we recommend adding the word "all" before the phrase "findings and recommendations."

In new section 245.105(d)(2)(ii)(C), relating to the contracting officer's initial determination that there are system deficiencies, other parallel business system sections require the contracting officer to "promptly evaluate" the contractor's response. To ensure consistency across each of the business systems, we recommend adding the phrase "promptly" before "evaluate" in this section. We also recommend adding a comma after the phrase "consultation with the property administrator."

In new section 245.105(e), relating to system approvals, the text uses the phrase “previously unapproved” property management system. We recommend replacing the work “unapproved” with the phrase “disapproved” as used elsewhere in this section and in other business system segments.

Application to Commercial Contracts

We agree with the decision to exempt commercial contracts from these clauses and we strongly recommend that the clauses clearly state that commercial contracts are not covered.

Conclusion

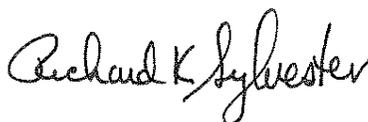
We appreciate the publication of this second proposed rule to obtain further public comments and the significant improvements made in this second proposed rule over the first proposed rule. However, significant changes still need to be made in the coverage of the six business systems and the overall business system clause before the rule can be effectively finalized or implemented. While not part of this proposed rule, there are also a significant number of collateral actions, including changes in DCAA policies and training for both contracting officers and other defense officials, that are needed before this rule is implemented. Consistent with the department’s efforts at increasing communications with industry, we strongly encourage the department to conduct discussions with CODSIA representatives regarding our comments on this second proposed rule.

Thank you for your consideration of these views. If you have any questions or need any additional information, please do not hesitate to contact Alan Chvotkin, Executive Vice President and Counsel of the Professional Services Council, who serves as our project officer on this case. He can be reached at (703) 875-8059 or at chvotkin@pscouncil.org.

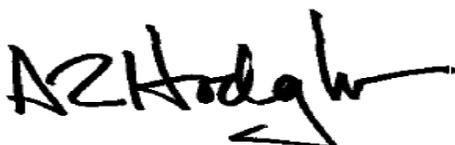
Sincerely,



Alan Chvotkin
Executive Vice President & Counsel
Professional Services Council



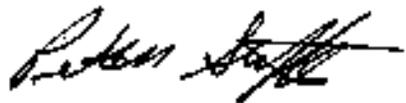
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