September 15, 2014

VIA REGULATORY PORTAL AND ELECTRONIC MAIL

Mr. Mark Gomersall  
OUSD (AT&L), DPAP(DARS), Room 3B941  
3060 Defense Pentagon  
Washington, DC 20301-3060


Dear Mr. Gomersall:

On behalf of the Section of Public Contract Law of the American Bar Association (“Section”), I am submitting comments on the above Department of Defense (“DoD”) Proposed Rule: Defense Federal Acquisition Regulation Supplement; Business Systems Compliance (“Proposed Rule”). The Section consists of attorneys and associated professionals in private practice, industry, and government service. The Section’s governing Council and substantive committees have members representing these three segments, to ensure that various points of view are considered. By presenting their consensus view, the Section seeks to improve the process of public contracting for needed supplies, services, and public works.¹

The Section is authorized to submit comments on acquisition regulations under special authority granted by the American Bar Association’s Board of Governors. The views expressed herein have not been approved by the House of Delegates or the Board of Governors of the American Bar Association and, therefore, should not be construed as representing the policy of the American Bar Association.²

¹ Mary Ellen Coster Williams, Section Delegate to the ABA House of Delegates, did not participate in the Section’s consideration of these comments and abstained from the voting to approve and send this letter.

² This letter is available in pdf format under the topic “Cost Allowability and Cost Accounting” at: http://apps.americanbar.org/contract/federal/regscomm/home.html.
I. Introduction

On July 15, 2014, DoD issued the Proposed Rule, which would fundamentally shift primary (but not exclusive) responsibility for auditing contractor accounting systems, estimating systems, and material management and accounting systems (“MMAS”) from the Defense Contract Audit Agency (“DCAA”) to contractors and contractor-sponsored certified public accountant (“CPA”) auditors. The stated purpose of the Proposed Rule is “[t]o improve the efficiency and effectiveness of auditing contractor business systems.”

According to the preamble, the Proposed Rule was drafted in response to Government Accountability Office (“GAO”) report GAO-12-83, Defense Contract Management Agency: Amid Ongoing Efforts to Rebuild Capacity, Several Factors Present Challenges in Meeting Its Missions, issued on November 3, 2011 (the “GAO Report”). The GAO Report concluded, among other things, that a “key external risk to [the Defense Contract Management Agency’s (“DCMA”)] ability to effectively carry out its responsibility to determine the adequacy of defense contractor business systems comes from delays in obtaining audits from DCAA.” GAO found “a substantial number of systems that had not been audited within the DCAA time frames [of three or four years],” including a number of systems that had not been audited at all, despite contracting officer requests for such audits. GAO reported that “[m]any contracting officers expressed frustration at the lack of timely DCAA audit support,” and that “most noted that their DCAA counterparts were unable to provide clear and firm time frames for when the next audits would take place,” often resulting in the delay or cancellation of expected audits that had been planned by DCAA for a given fiscal year.

The GAO Report stated further that the Director of DCAA acknowledged that the agency has been behind on business system audits and that these had not been a top priority, as the agency has been trying to focus on addressing other, higher priority audit activities. In addition to GAO’s concerns, there is a practical impact on contractors who, through no fault of their own, cannot get audits of business systems or even Cost Accounting Standards disclosure statements. Yet government agencies, especially DoD, continue to condition eligibility for award upon having such approvals. This phenomenon of the government rejecting otherwise responsible contractors solely because a government audit has not been completed leads directly to reduced competition.

4 Id. at 41173.
6 Id. at 28.
7 Id.
8 Id.
The GAO Report concluded that DCAA’s “initiatives to address contractor business systems will take several years,” and recommended that the “Secretary of Defense work with DCMA and DCAA to identify and execute options, such as hiring external auditors, to assist in conducting audits of contractor business systems as an interim step until DCAA can build its workforce enough to fulfill this responsibility.” The GAO Report noted that although “DCMA contracting officers can use DCAA audits to assist in determining whether a contractor’s business systems are adequate, . . . adequate audit opinions can also be rendered by a licensed certified public accountant or persons working for a licensed certified public accounting firm or a government auditing organization.”

The Section thanks the FAR Council for providing it the opportunity to submit comments on this significant rule. The Section appreciates DoD’s consideration of an alternate approach that could be taken to address the significant delays in the conduct of business system audits that require support from DCAA and to mitigate the risk to the government of outdated or missing business system audits. The Section also recognizes and appreciates the potential opportunities for contractors and the government by proposing an alternate path for timely business system approvals. For example, an alternate path potentially would allow contractors and the government to complete the business system approval process for a contractor’s accounting, estimating, and MMAS systems without having to wait for a DCAA audit. An alternate path also could allow contractors to leverage existing self-assessment efforts.

The Section is concerned, however, that unless substantially revised, the Proposed Rule will likely not accomplish its stated purpose and will instead result in increased costs and continued delays in business system approvals. In particular, although GAO recommended that DCMA temporarily engage external auditors to assist with business system audits until DCAA can build its workforce enough to fulfill this responsibility, the Proposed Rule would require contractors to hire external auditors to fulfill this role but would also retain DCAA in an audit oversight and approval capacity, even though according to DCAA’s own most recent report to Congress, it still lacks sufficient audit resources and business system audits are not among the agency’s top priorities. Thus, unless the Proposed Rule is revised to eliminate (or significantly limit) the requirement for DCAA’s involvement in the proposed contractor-sponsored audits, there is every indication that business system approvals will continue to be hampered by the same

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9 Id. at 31, 36.
10 Id. at 4.
11 Id. at 36.
conditions that inspired the Proposed Rule, with contractors made responsible for paying for additional audits that would then still need to be “audited” by DCAA.

To the extent DoD believes that DCAA involvement is necessary, the Section encourages DoD to provide additional guidance and clarification in any final rulemaking to ensure that the audit requirements are administered effectively, efficiently, and consistently.

II. Comments

These comments address the Section’s major areas of concern with the Proposed Rule’s approach and identify five areas intended to improve the final rule: (1) the addition of specific timelines for the cognizant official to review, evaluate, and respond to contractor self-assessments, CPA audit plans, and independent audit reports; (2) the addition of specific procedures for DCAA and independent auditors to resolve differences in professional judgment; (3) affirmative acknowledgement that contractor audit costs are expressly allowable and allocable; (4) improvements to the framework and structure of the Proposed Rule and the current business system rules and clauses; and (5) the addition of more precise definitions and the establishment of a working group with industry to promote consistent application of business system rules and clauses. Because of the issues highlighted in these comments, the Section also recommends that DoD consider withdrawing the Proposed Rule and establishing processes for DoD to hire private CPA firms directly to augment DCAA’s audit capacity, as GAO recommended.

A. The Proposed Rule Will Result in Increased Audit Costs.

The Proposed Rule will result in increased audit costs for several reasons. First, even though DCAA’s audit guidance establishes four years (accounting and MMAS) and three years (estimating) as the time frame for these business system audits, the Proposed Rule would require contractors to conduct comprehensive internal audits of each applicable system on an annual basis in order to provide a report and associated documentation to the government regarding the systems’ compliance with applicable business system requirements. Although many contractors already conduct some level of internal review of business systems as part of their on-going operations, the Proposed Rule’s requirement for a formal evaluation and associated documentation will likely increase both the frequency and scope of these reviews, thereby increasing audit costs. Moreover, some contractors have multiple business systems that perform the same function (e.g., accounting) across different business units, further increasing audit costs.

Second, in addition to the requirement for comprehensive, annual internal audits and reports, the Proposed Rule would require contractors to hire and support external CPA audits on a triennial basis. As GAO observed in its report, although
DCAA’s audit guidance provides for business system audits on a quadrennial or triennial basis depending on the system, in actual practice these audits have occurred much less frequently than every three or four years. Thus, in addition to the added expense of hiring an independent CPA firm (or perhaps multiple firms) to conduct these audits, requiring triennial audits would pose additional cost impacts associated with providing more frequent contractor support to the external business system auditors.

Third, to the extent that DCAA performs an “audit of the audit” instead of relying on the results of the annual contractor internal reviews and triennial CPA audits, audit costs will increase. As noted above and discussed further below, although the Proposed Rule shifts primary responsibility for business system audits to contractors and contractor-sponsored CPAs, the Proposed Rule would require the annual and triennial reports to be provided to both DCAA and the cognizant contracting officer. Although the cognizant contracting officer retains ultimate authority to determine whether a system contains any significant deficiencies and to approve the system, the Proposed Rule states that “Government auditors will perform overviews of the results of the contractor self-evaluations and CPA audits.” Given DCAA’s role as the government auditor and its lack of familiarity with reviewing the work of others, there is significant risk that these “overviews” will entail substantial “audits of the audits,” transforming the annual internal reviews and triennial CPA audits into intermediate steps in the review and approval process, resulting in further additional costs, redundancies, inefficiencies, and continued delay in system approvals, contrary to the Proposed Rule’s stated purpose.

For these reasons, the Section recommends that the Proposed Rule be revised to eliminate the annual reporting requirement, which imposes an unnecessary cost burden in light of the requirement for a triennial external audit. To the extent DoD determines an annual contractor report is necessary, we recommend that the report be limited to any material changes to the contractor’s business system during the preceding year. In addition, to avoid inefficiencies and additional delays arising from “audits of the audits,” we recommend eliminating DCAA’s “oversight” function, which we discuss further in Section B.

**B. The Proposed Rule Will Result in Significant Redundancies and Unnecessary Duplication.**

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14 79 Fed. Reg. at 41173.
15 DCAA’s “oversight” role also calls into question the external CPA firm’s independence in accordance with the requirements of the Generally Accepted Government Auditing Standards (GAGAS) and American Institute of CPAs (AICPA).
The Proposed Rule’s new audit requirements and system evaluation procedures undercut the Proposed Rule’s intended purpose of “improving the efficiency and effectiveness of auditing contractor business systems” and will result in significant redundancies and unnecessary duplication instead.\textsuperscript{16}

\textit{First}, the Proposed Rule’s audit requirement provides no assurance that CPAs will be pursuing the “audit strategy, risk assessment, and audit plan (program)” necessary to address the contracting officer’s requirements on the covered systems.\textsuperscript{17} Although the Proposed Rule allows the contracting officer to request DCAA to review the CPA’s proposed audit program, the Proposed Rule does not establish any specific time frame for this DCAA review, nor does it establish a time by which the contracting officer must notify the contractor/CPA of any concerns regarding the proposed audit program. Moreover, the Proposed Rule asserts that the contracting officer’s review “does not constitute the contracting officer’s approval.”\textsuperscript{18} The absence of agreed-upon audit procedures prior to the commencement of the CPA audit activity increases the potential for supplemental or repeated audits as CPAs attempt to identify and address issues of interest to the contracting officer, or that may be subsequently identified by DCAA.

\textit{Second}, the procedures for evaluating the acceptability of the contractor’s systems under the Proposed Rule do not require the government to actually rely on the CPA audit findings, thereby undermining the stated purpose of the rule. The Proposed Rule merely requires the contracting officer to “consider” the contractor’s disclosure, annual report, and “audit report by the contractor’s CPA.”\textsuperscript{19} As noted above, the evaluation procedures put DCAA in the position of being able to second-guess the contractor’s submissions, including the CPA report, by allowing the contracting officer to also consider DCAA’s “assessment of the contractor’s CPA audit report and related documentation.”\textsuperscript{20} Absent specific guidance regarding the scope of any DCAA review in the process, or the elimination of DCAA’s role altogether, there is strong potential for significant redundancy, duplication, and increased and potentially wasteful expenditures of both government and contractor resources.

Given the Proposed Rule’s requirement that the contractor retain an independent, objective, and qualified CPA firm, DCAA’s review and oversight of the CPA’s work is duplicative and unnecessary. It is also contrary to the practice

\begin{itemize}
\item \textsuperscript{16} 79 Fed. Reg. at 41173.
\item \textsuperscript{17} Id. at 41178. References in this section relate to the Proposed Rule’s provisions regarding demonstration of an acceptable accounting system as one example from the covered systems.
\item \textsuperscript{18} Id.
\item \textsuperscript{19} Id. (proposed Defense Federal Acquisition Regulation Supplement (“DFARS”) 242.7503(c)).
\item \textsuperscript{20} Id.
\end{itemize}
of other government agencies in similar situations, such as the Securities and Exchange Commission (“SEC”). Under Sarbanes-Oxley rules governing companies regulated by the SEC, the SEC relies upon CPA determinations regarding internal controls without significant agency oversight. The Section therefore recommends that the Proposed Rule be revised to eliminate DCAA’s “oversight” function. At a minimum, the Proposed Rule should be revised to require DCAA to rely upon the independent CPA findings and determinations.


The Proposed Rule unnecessarily expands the government’s access to contractor records.21 Specifically, the rule requires contractors to “[m]ake available to the Government, upon request, the results of internal or external reviews or monitoring that have been conducted to ensure compliance” with relevant system criteria and contractor policies and procedures.22 The Proposed Rule does not include any exceptions, even for privileged material.

The Proposed Rule’s broad disclosure requirements circumvent existing decisional law and statutory authority regarding DCAA access to contractor internal audit reports. In United States v. Newport News Shipbuilding and Dry Dock Co., the Court of Appeals for the Fourth Circuit found that DCAA does not have the right to demand access to or subpoena contractor internal audit material.23 By requiring contractors to disclose all documentation related to their internal system assessments, including the results of internal “reviews” or “monitoring,” the Proposed Rule could be construed to permit the government to require the disclosure of all of a contractor’s internal audit material, even if the review is unrelated to the contractor’s annual report, contrary to existing law.

The Proposed Rule’s unfettered disclosure requirements are also inconsistent with the intent of the National Defense Authorization Act for Fiscal Year 2013 (“2013 NDAA”), which specifically considered, but did not include, a requirement for contractors to disclose internal audit reports as a condition of contractor business system approval. The Senate version of the 2013 NDAA included a provision giving DoD the authority to access contractor internal audit reports and supporting materials in order to evaluate and test the efficacy of

21 In addition to issues related to government access to contractor records, the Proposed Rule presents issues related to government access to CPA auditor records. Among other things, it is unclear whether DCAA would be able to “approve” CPA auditor findings without access to auditor working papers and, if DCAA was provided access to auditor working papers, whether such access would be considered to impair the independence of the CPA auditor and/or DCAA.
22 79 Fed. Reg. at 41183 (proposed DFARS 5252.242-7006(b)(2)).
23 837 F.2d 162, 170 (4th Cir. 1988).
contractor internal controls and the reliability of associated contractor business systems. The Senate version further provided that a contractor’s refusal to permit access to internal audit reports and supporting materials would be a basis for disapproving the contractor’s business system.

The Senate’s language was significantly limited in the as-enacted version of the 2013 NDAA, Pub. L. No. 112–239, however. Section 832 of the NDAA provides instead that requests for access to contractor internal audit reports must be appropriately documented. Moreover, unlike its Senate precursor, Section 832 does not grant DoD the express right to internal audit reports in connection with business system reviews or authorize DoD to disapprove a system based on a contractor’s refusal to provide that information. Given the proposed requirement for the contractor’s annual compliance report to be signed by an individual of the contractor’s organization at a level no lower than a vice president or chief financial officer of the reporting business unit, there is no reasonable basis to also require contractors to be subject to the potential disclosure of all underlying documentation in support of the annual report.

Thus, to ensure the Proposed Rule’s disclosure requirements do not exceed the scope of the 2013 NDAA or existing case law by encompassing internal audit reports and related work papers and other underlying documentation, the Section recommends that the Proposed Rule be amended to eliminate these disclosure requirements. At a minimum, we recommend revising the Proposed Rule to clarify that it does not require disclosure of any information protected by the attorney-client privilege.

D. The Section Recommends Establishing Specific Timelines for the Cognizant Official to Review, Evaluate, and Respond to Contractor Self-Assessments, CPA Audit Plans, and Independent Audit Reports.

The Proposed Rule, as it currently stands, requires the contracting officer to request that DCAA review the CPA’s audit strategy, risk assessment, and audit plan and notify the contractor of any potential issues, but does not require approval prior to their implementation or establish any time frame for feedback to be provided by the contracting officer or DCAA. The Proposed Rule specifically states that the “review of the contractor’s CPA’s audit strategy, risk assessment and audit plan does not constitute the contracting officer’s approval.” (Emphasis added).

Without specific timelines it is unclear how the Proposed Rule will result in more timely review and approval of the covered business systems. Contractors could therefore be in a position where they are unduly delayed in performing the

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25 Id.
required audits while waiting for acknowledgement that the government does or does not have any concerns with the contractor’s CPA’s audit strategy, risk assessment, or audit plan. Conversely, if the contractor moves forward with the CPA audit the contractor runs the very real risk that the government will have concerns that do not surface until after the work has been performed, leading to additional time required to reach resolution.

The Proposed Rule is also silent regarding when the government will notify the contractor of its determination that the results of the contractor’s self-assessment or CPA audit are acceptable or, alternatively, that there have been deficiencies identified by the government. Without a reasonable time limit imposed upon both the contracting officer and DCAA to respond to the contractor self-assessment/CPA audit, there is a significant risk that the Proposed Rule will not achieve its stated purpose to accelerate business system approvals. Different contractors also could be subject to different review timelines, creating potential unfairness and inequities in the review process.

The Section therefore recommends that any final rule contain specific timelines for actions by the contracting officer and DCAA auditor such as those imposed upon the contractor in Part 242.7503(e)(2)(ii)(B) of the Proposed Rule (i.e., the contracting officer should request that the contractor respond to an initial significant deficiency determination within 30 days).

E. The Section Recommends Establishing Specific Procedures for DCAA and Independent Auditors to Resolve Differences in Professional Judgment.

As discussed in Section D, the Proposed Rule requires the contracting officer and DCAA to review the external CPA’s audit strategy, risk assessment, and audit plan, but it does not establish any procedures for resolving disagreements if the DCAA identifies any issues or questions the plans. The scope of an audit in accordance with GAGAS is determined by many factors, including professional judgment, yet the Proposed Rule does not address how differences in professional judgment between DCAA and independent CPA auditors will be resolved.

For example, will contractors’ independent CPA firms be allowed to contact DCAA directly to resolve these differences, or will this be considered to impair the independence of the audit process by both DCAA and the independent auditors? Without a process to resolve differences in professional judgment in advance of a determination of system acceptance, the likelihood of an “audit of the audit” discussed above is easily foreseeable, thus further transforming the triennial CPA audits into intermediate steps in the review and approval process and resulting in further additional costs, redundancies, inefficiencies, and continued delay in system approvals.
The Section therefore recommends that any final rule contain specific procedures to guide DCAA and the independent CPA auditor in resolving differences in professional judgment, including an explicit acknowledgement that such resolutions will not be considered to impair the independence of either the CPA auditor or DCAA.

F. The Section Recommends Revising the Proposed Rule to Expressly Acknowledge that the Audit Costs are Allowable and Allocable.

As discussed in Section D, the Proposed Rule requires the contracting officer and DCAA to review the external CPA’s audit strategy, risk assessment, and audit plan and notify the contractor of any potential issues, but does not require approval prior to their implementation or establish any time frame for contractor feedback, although it encourages “early notification” of any potential issues to “decrease the likelihood of the contractor incurring unreasonable costs.” The Proposed Rule, therefore, implies that the audit costs could subsequently be deemed “unreasonable,” even though the contracting officer had an opportunity to review and provide “early notification” to the contractor regarding the audit plan prior to its implementation. It is not reasonable for contractors to be required to incur significant additional audit costs to comply with the Proposed Rule’s requirements and to also bear the risk that the costs could later be disallowed as “unreasonable.”

The Section recommends that any final rule state that the reasonable costs incurred to comply with the rule shall be allowable and allocable for government contract reimbursement. To the extent that DoD declines to include such language, the Section recommends, at a minimum, that the final rule require contracting officer approval of the CPA’s audit strategy, risk assessment, and audit plan prior to CPA implementation to mitigate the risk that the CPA costs incurred to implement the audit plan would later be disallowed as “unreasonable” because of “potential issues” with the CPA plan.

G. DoD Should Take This Opportunity to Improve Organization of Current Business System Rules and Clauses.

The Proposed Rule reflects a major revision to the current business system rules and clauses. As DoD considers revising the Proposed Rule, it should also ensure that current business system rules and clauses are easily understood. The Section recommends that DoD consider organizational changes to improve the clarity of these rules and clauses. First, the Section recommends that DoD ensure

26 79 Fed. Reg. at 41178.
27 DoD also should consider allowing modifications to existing fixed-price contracts to recognize increased contractor audit costs resulting from any final rule.
that each business system clause includes a defined “applicability” provision, ideally in a common location such as before or after definitions, that is labeled as such. For example, DFARS 252.234-7002 (earned value management systems) has applicability-type language in paragraphs (c) and (d), but it is not labeled as such. Similarly, with respect to MMAS, applicability-type language is included in DFARS 242.7202(b) as “criteria for conducting reviews” but it is not labeled “applicability” and there is not an “applicability” provision in the DFARS clause 252.242-7004. Proposed DFARS 215.407-5-70 includes “applicability” paragraph (b) with regards to estimating systems. This language, however, is different from the “applicability” text in DFARS clause 252.215-7002(c). DFARS clause 252.242-7006 (accounting systems) includes its “applicability” provision in paragraph (d). The Section recommends that all business system clauses include a provision labeled “applicability,” that all definitions of “applicability” in regulations and implementing clauses for a particular business system be consistent, and that the “applicability” provisions be located in a common location within the clauses.

Second, the Section recommends that DoD revise the Proposed Rule at DFARS clause 252.242-7004(d) in two respects: (1) DoD should revise the title to “Triennial CPA audit requirement” consistent with the titles of similar paragraphs relating to accounting and estimating systems; and (2) we note that DFARS clause 252.242-7004(d) appears to address “triennial” CPA reporting and audit requirements based on its title, but it does not reference CPA audits on a three-year cycle.

Finally, the Section urges DoD to look for other ways to drive consistency between the various business system clauses and rules – such as by addressing similar topics in either numbered or lettered paragraphs, but not both – and ensuring consistency between organization, titles, and wording of paragraphs addressing similar topics.


DFARS 252.242-7005(b) broadly defines a “significant deficiency” in a business system as one that “materially affects the ability of officials of [DoD] to rely upon information produced by the system that is needed for their management purposes.” Neither clause 252.242-7005 nor the specific business system clauses, however, define “materially” or what might affect the ability of DoD officials to rely upon the information a business system produces.

While a general, non-specific definition may have been preferable when the business system rules were originally established and administered by DCAA and DoD alone, the lack of a more specific definition may lead to inconsistent
application when applied by DoD, contractors, and independent CPAs. DCAA, for example, would be guided by its Contract Audit Manual; contractors and independent CPAs, by contrast, are not and may not follow standards consistent with DCAA or each other. Likewise, while DCAA and DoD may have formed opinions on what information DoD officials may need to rely upon a particular system, that information may not be readily apparent to contractors and their CPAs.

The Section recognizes that a “one-size-fits-all” definition may not be feasible. Nonetheless, we believe that the efficiencies sought to be gained by the Proposed Rule may be lost without additional guidance and coordination. Accordingly, to promote consistent business system reviews, facilitate DCAA and contracting officer review of business system reviews, and foster consistent determinations, the Section recommends that DoD establish a working group or other mechanism with industry and DCAA to promote best practices and establish guidelines to ensure that contractors, independent CPAs, DCAA, and contracting officers are sharing best practices and applying the same standards and interpretations of the rules. It should be noted that ultimately the contracting officer is the person with the responsibility to determine whether the facts create a deficiency – significant or not. And, the courts and boards will adjudicate whether these are proper decisions. Thus, audits that are factual, not evaluative, and guidance that promotes consistent audit fact development and timing would be beneficial.

I. The Section Recommends DoD Consider Contracting Directly with Private CPA Firms to Augment DCAA’s Audit Capacity, as GAO Recommended.

The Section recommends that, consistent with the GAO Report, DoD consider withdrawing the Proposed Rule and establishing processes to contract directly with private CPA firms to augment DCAA’s business system audit capacity. As noted above, the GAO Report recommended that the “Secretary of Defense work with DCMA and DCAA to identify and execute options, such as hiring external auditors, to assist in conducting audits of contractor business systems as an interim step until DCAA can build its workforce enough to fulfill this responsibility.” The GAO Report seems to have anticipated that DoD would engage external auditors (CPA firms) directly, rather than through its contractors.

If we assume that DCAA’s audit backlog is caused solely by a lack of auditors, then by engaging CPA firms directly for business system reviews DoD

28 For example, without additional guidance, DCAA and independent CPAs may employ different standards for distinguishing between/harmonizing a “significant deficiency” under the business system rules and clauses and a material weakness under GAGAS.
29 GAO Report at 36.
might avoid the contractor-related concerns discussed above. DoD also could
directly manage the work performed by CPA firms rather than having to coordinate
through contractors, thus better ensuring that DoD has the audit work product DoD
needs to make business system determinations. DoD contracting directly with CPA
firms also would seem to be a more efficient method to achieve the “interim step”
recommmended by GAO as DCAA builds its workforce—rather than promulgating a
final rule and then having to rescind the rule once DCAA has “buil[t] its workforce
enough to fulfill this responsibility.”

III. Conclusion

The Section applauds DoD’s use of the notice-and-comment process and its
efforts to consider alternate approaches to ensure the timely review and approval of
contractor business systems. These comments are intended to suggest
improvements to DoD’s implementation effort and to encourage DoD to continue
seeking assistance from other agencies and the public while refining its regulations.
The Section respectfully requests that DoD consider the issues identified in these
comments in developing any final rule to implement GAO’s recommendations.
The Section is available and willing to provide any additional information and
assistance as DoD may require.

Sincerely,

Stuart B. Nibley
Chair, Section of Public Contract Law

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