

DCMA Improves Guidance for Purchasing System Reviews

November 2017

Government Contracts Issue Update

Earlier this month, the Defense Contract Management Agency (DCMA) issued its latest update to the Contractor Purchasing System Review (CPSR) Guidebook. The Guidebook is intended to provide guidance and procedures to government personnel for evaluating contractor purchasing systems and preparing CPSR reports. These updates help fill important gaps in DCMA purchasing system guidance, but other ambiguities remain.

What is the CPSR Guidebook?

Large defense contractors often have a requirement for their purchasing and similar business systems that other contractors and businesses do not: satisfying obligations imposed by the Department of Defense (DOD) business-systems rules. For purchasing systems, DCMA assesses compliance with those obligations through CPSRs. DCMA has long published the CPSR Guidebook to both standardize and explain how it assesses compliance with the DOD purchasing systems requirements. The Guidebook serves as a roadmap not only for DCMA's CPSR Group and Administrative Contracting Officers who conduct and assess the CPSRs, but also for contractors to build and tailor their purchasing systems and prepare them for CPSRs. Over the past two years, DCMA issued rolling updates to expand the Guidebook's discussion of substantive assessments; the most recent updates were issued on October 2, 2017.

Guidebook Expansions Clarify Practices

Authors

Tracye Winfrey Howard
Partner
202.719.7452
twhoward@wiley.law

Craig Smith
Partner
202.719.7297
csmith@wiley.law

Practice Areas

Government Contracts

Experience suggests the latest CPSR Guidebook updates will be positive developments for covered contractors because they reduce some of the mystery, if not the burden, of maintaining a DOD-compliant purchasing system. Collectively, the Guidebook expansions comprise 30 appendices covering the topical areas that DCMA reviews during CPSRs. Each appendix cites the relevant statutory and regulatory obligations, followed by DCMA's criteria for compliant policies and "practices."

These policy and practice reviews are at the heart of each CPSR, and the Guidebook updates fill a major gap in prior versions, which listed the topical areas DCMA reviews but did not describe how DCMA assessed compliance in those areas. CPSR results often surprised contractors under the old Guidebook because DCMA imposed compliance obligations not found in the text of the relevant statutes and regulations. Now, with the updated Guidebook, contractors are at least on notice of DCMA's interpretive positions and can prepare their purchasing systems accordingly.

The most recent Guidebook update also includes updated appendices covering requirements for negotiating with subcontractors, documenting compliance with purchasing obligations, counterfeit parts mitigation and surveillance, and a broad class of domestic-preference requirements under the "Buy American" umbrella.

Supply-chain professionals in large defense contractors should consider these appendices valuable tools for developing purchasing system policies and procedures, as well preparing for CPSRs. At a minimum, they should be consulted as a baseline for updating policies and revising workflows. They also provide an objective measure for testing the system by outside professionals familiar with CPSRs.

No Path to Perfection

Of course, mock audits based on the updated Guidebook appendices will also highlight some of the CPSR Guidebook's continued limitations. Even after the most recent updates, the scope and boundary of some areas of DCMA's review can be hard to discern. For example, the new "Buy American" appendix (#25) broadly discusses not just the Buy American Act, but also the Berry Amendment, Executive Order 13788 (Buy American, Hire American), and other topics. Yet under the headers for compliant policies and practices, the Guidebook focuses mostly on flowdown of FAR and DFARS clauses and on reporting required by DFARS 252.225-7004, Report of Intended Performance Outside of the United States and Canada. These disconnects contribute to ambiguity in how DCMA will assess "Buy American" compliance (narrowly or broadly) in a CPSR.

The updated Guidebook also failed to correct other shortcomings in predecessor versions. For example, Appendix 21 covers a contractor's commercial-item *determinations*. But the appendix includes directions to check during a CPSR that the contractor has documented price reasonableness analyses to support its commercial-item determinations. Price *reasonableness* is, of course, a separate assessment that is often (improperly) conflated with a determination of whether a product or service meets the criteria for a commercial item. Earlier this year, DOD confirmed the distinction through draft updates to its Commercial Item Guidebook. In contrast, DCMA's CPSR Guidebook continues to conflate the two concepts/analyses, at least in part—a practice that experience suggests is consistent with the view of DCMA auditors. Setting aside disagreement about the policy and approach, however, the updated Guidebook appendices at least

forewarn contractors on how they should anticipate and prepare for CPSR audits until the Guidebook is further refined.

Overall, these appendices updating CPSR practices are positive additions to the CPSR Guidebook. We have found the appendices helpful in preparing for CPSRs and responding to CPSR audit reports. We recommend that contractors review these documents, then consult within and outside their supply-chain organization to assess how ready their purchasing system is for the next DCMA review.