

**PART 1**

# Thought Leadership SERIES



# REGULATORY COMPLIANCE

## **Insights from Our Recent CPSR Experiences**

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The Defense Contract Management Agency's (DCMA) Contractor Purchasing System Review (CPSR) Group continues to remain highly active in their ongoing pursuit of evaluating the efficiency and effectiveness of contractors' purchasing practices, and compliance with applicable laws, regulations and contract requirements. According to DCMA, the CPSR Group scheduled 134 CPSRs in the government fiscal year 2015 (ending September 30) and completed 121.

In October 2016, DCMA released the following list of the most common areas of purchasing system deficiencies (based on DCMA-issued CPSR Reports) from fiscal year 2015:

- Debarment
- Payments to Influence
- Price Analysis
- Defense Priority and Allocation System (DPAS)
- Flow Downs
- Sole Source Selection Justification
- Policy and Procedure Manual
- Documentation
- Truthful Cost or Pricing Data (formerly known as TINA)
- Negotiations
- Cost Accounting Standards
- Internal Reviews

In government fiscal year 2016 (just ended on September 30), DCMA scheduled 133 CPSRs and completed 126. Although DCMA has not published the most common purchasing system areas of deficiencies from fiscal year 2016, this article summarizes many of our experiences in working with our clients over the past year. In Part Two of this series, we will explore some recent noteworthy changes concerning the CPSR Group and our observations about the current CPSR environment.

## Recent (Calendar Year 2016) Trends from the Trenches

- Non-compliance with federal requirements regarding Debarment, Payments to Influence and DPAS continue to be a recurring issue for many contractors. Specifically, it seems that securing the timely written disclosure regarding Debarment, the written certification required of Payments to Influence, and documented acceptance of DPAS rated orders, continue to generate the majority of contractors' noncompliance with these three public laws. We recommend inserting a signature-block certification into your procurement-instrument templates addressing these public laws and then ensuring subcontractors return a signed copy within the regulatory-required timeframe.
- The Federal Funding Accountability and Transparency Act (FFATA) requirements are still causing trouble for many contractors. Beyond the policy and procedure requirement, the most critical step to compliance with this public law is to ensure you have reported the appropriate information into the Government's database ([fsrs.gov](http://fsrs.gov)) within the regulatory-required time period and that you can demonstrate that timely reporting when the CPSR team visits. We recommend retaining FFATA reports in the procurement file and including a screenshot containing the date of report submission or other date-and-time stamped record to demonstrate compliance with the timing element of this public law.
- Higher rates of competition improve the likelihood of CPSR success. We see a direct correlation between a contractor with a high competition metric (e.g. 50-75%+ of the procurements in the DCMA-selected purchase order sample) and fewer deficiencies in a CPSR. It makes sense – competition neutralizes applicability of several CPSR requirements (e.g. TINA) and also enables more streamlined compliance with several other CPSR requirements (e.g. price analysis, source selection, etc.).

- Like competition, a strong internal review program pays major dividends in your purchasing system compliance efforts. A thorough pre-award review program should detect potential non-compliances with CPSR requirements before the non-compliance occurs. This affords the contractor the opportunity to immediately correct the issue prior to award of the subcontract. Further, a post-award review program is also valuable to the contractor in that systemic non-compliances can be identified and prospectively addressed. In such event, the contractor should plan and undertake corrective action – this may include file remediation/enrichment, targeted training, forms and checklist development, and policy and procedure enhancement to mitigate the risk of continuation of the recurring shortcoming identified via post-award review.
- The DCMA CPSR teams continue to closely scrutinize contractors' commercial item determinations (CID) with specific emphasis on the adequacy of the supporting documentation used to make the determination. This level of scrutiny is expected since commercial item procurements may be exempt from several CPSR requirements (e.g. TINA, CAS, etc.) and, typically, reduce flow down requirements. As a result, DCMA is committed to ensuring that contractor commerciality determinations, within the DCMA-selected purchase order sample, are in fact commercial items as defined at FAR 2.101. The CPSR teams expect each procurement file associated with commercial item(s) purchases to contain a well-supported CID to include the supporting market research or other detail and data used in making the determination.

Additionally, DCMA is in the process of updating its procedures and practices related to contractors' CIDs to include the following:

- o The CPSR Group just recently (November 30, 2016) updated the CPSR Guidebook Job Aid to enhance the procedures applicable to CID requirements, the supporting market research and content, and to support price reasonableness determinations.
- o The Commercial Items Group within the DCMA Pricing Center is expected to augment the CPSR teams in fiscal year 2017. In fact, DCMA's Commercial Item Group provided onsite support during a December 2016 DCMA CPSR with one of our clients.

In summary, the DCMA CPSR Group remains heavily focused on the adequacy of procurement file documentation and compliance with public laws. When determining steps to take to ensure a successful CPSR experience, we recommend targeting documentation of compliance with public laws, including any exemptions (e.g. competition, commercial item, etc.), first and foremost. Public law noncompliance will lead to a painful CPSR experience, but it is also critically important to properly document your evaluation and source selection decisions (e.g. price analysis, non-competitive justifications, trade-off analysis, etc.).

Stay tuned for the next segment of this CPSR 360 series where we will explore the latest from DCMA's CPSR Group, including the current CPSR policy and procedure requirements, DCMA's change to the CPSR corrective action request process, and the government's progress in revising the FAR Part 44 CPSR dollar threshold, among several other timely and relevant realities contractors are facing.

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