National Defense Industrial Association

PROMOTING NATIONAL SECURITY SINCE 1919

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February 27, 2013

Mr. Charlie Williams, Jr.
Director, Defense Contract Management Agency
Building 10500
3901 A Avenue
Fort Lee, VA 23801

Subject: DCMA-INST 1201 December 4, 2012; Section 3.6, Subcontract Level Non-Compliances Corrective Action Process (CAR)

Dear Mr. Williams:

The National Defense Industrial Association (NDIA) is America's leading Defense Industry association promoting national security by providing a legal and ethical forum for the exchange of information between Industry and Government on National Security issues. Our members foster the development of the most innovative and superior equipment, training and support for our warfighters and first responders through our divisions, local chapters, affiliated associations and events. NDIA currently represents over 1,700 corporate members and approximately 95,500 individual members. On behalf of our members, we are writing to you today to express our concerns with the subject instruction and industry's ability to execute the corrective action process as written.

As a threshold matter, DCMA's new CAR process represents a significant departure from past practices for hardware and business systems. Furthermore, the instruction has been implemented without any apparent consideration of the changes it drives to prime and subcontractor industry processes and procedures, the costs associated with these changes, or the impacts to lower tier suppliers in the defense industrial base that serve multiple primes.

In response to the new CAR process, industry has witnessed DCMA issuing CARs to the prime contractor based on DCMA's surveillance activities at the subcontractor's facility. Per the established practice regarding on-site DCMA presence, and in accordance with the prime-subcontractor contractual relationship, DCMA is better positioned to possess the requisite knowledge of the subcontractor's non-compliance than a prime, absent the prime setting up a DCMA-like surveillance presence at the subcontractor's site. It is reasonable to conclude that creating such a multi-tiered oversight process with a DCMA and/or prime contractor presence at subcontractor sites to prevent subcontractor non-compliances would simply be unaffordable and, since many subcontractors serve multiple primes, would result in redundant oversight and greatly increased costs to the Defense Department.

Furthermore, it is fundamentally difficult, if not impossible, for prime contractors to manage the CAR process resulting from a business system deficiency when the root cause exists at the supplier level. In most

cases, prime contractors lack the legal or contractual right or ability to inspect and monitor the corrective action plan instituted at the supplier level, yet it would be held directly accountable to the Government for the deficiency. Thus, any financial penalties levied against a prime contractor as a result of a deficiency caused by a subcontractor's process are flawed as a deterrent because they unfairly shift the CAR enforcement burden to the prime contractor while failing to reflect that corrective actions must be carried out by the subcontractor.

The new DCMA CAR instruction, in its current state, would force prime contractors to add new enforcement clauses into their subcontracts to assure sufficient oversight, visibility, and leverage to successfully remediate any subcontractor CARs. Any new enforcement clauses will also drive cost increases to the subcontractors, the prime contractors, and ultimately to the government.

Thus, although prime contractors are responsible for managing their supply chain, DCMA should not issue a CAR to a prime contractor as a result of actions or inactions of a subcontractor, unless there is incontrovertible evidence that the prime has failed to manage this supplier. We note specifically that for the systems covered by the DFARS Business Systems rule that are subject to DCMA review and approval, prime contractors are at a distinct disadvantage with respect to subcontractor oversight. Subcontractors (particularly large subcontractors) do not permit prime contractors (often their competitors) to perform the type of invasive audits of proprietary systems that would be necessary to review and approve, such as the EVMS system. This is why prime contractors rely upon DCMA to conduct such audits and independently approve or disapprove subcontractor systems. Finally, as stated above, the implication of this new CAR process puts prime contractors in a position of potentially having to duplicate the oversight and surveillance conducted by DCMA in order to ensure subcontract CARs are appropriately issued, addressed, and closed.

We respectfully request DCMA rescind the current CAR instruction until an instruction may be issued that acknowledges the constraints of a prime contractor's managerial, contractual, and legal authority over our subcontractors. We are enclosing for your consideration the recommendations we made to your team in November of 2011 and hope you will reconsider them as you review the subject DCMA instruction.

We would appreciate an opportunity to discuss these serious concerns with you. Please contact Ms. Tracie Thompson, Chair of the NDIA Program Management Systems Committee at 727-573-2512 or by e-mail at Tracie.Thompson@atk.com at your convenience to discuss further.

Respectfully,

Lawrence P. Farrell, Jr.
Lt. Gen., USAF (ret.)
President and CEO