

## AMC LEGAL NEWSLETTER

The TACOM-ARDEC Legal Office recently had occasion to advise a contracting officer on the impact of a recent Defense Contract Management Command (DCMC) Acquisition Reform initiative, the Contractor Self-Oversight Program (CSO). This article summarizes the program and its impact on contract administration.

One of the key goals of Acquisition Reform was to improve contract administration within the DOD. The CSO program allows "quality contractors" the opportunity to have their personnel perform surveillance functions in lieu of DOD personnel. Under CSO, routine manufacturing and product assurance surveillance is provided by contractor personnel, in lieu of direct DCMC in-plant surveillance. This is accomplished by empowering contractor personnel to perform the majority of Government Source Inspection (GSI) activities thereby eliminating the time DCMC personnel spend on processes with good performance history and allowing the refocusing of DCMC resources into areas requiring more intensive oversight

Designated contractor personnel serving in this capacity are referred to as Technical Compliance Designees (TCDs). CSO is only used when the DCMC Contract Administration Office (CAO) and the customer(s) have confidence in the contractor's ability to provide the necessary surveillance and when it will not result in additional cost to the Government.

The scope of the CSO agreement is dependent upon the concurrence of the contractor, the responsible DCMC Commander, and the affected customers. Specific facilities, programs, processes, product lines and/or test and development processes covered under the CSO agreement are defined in the applicable CSO Memorandum of Agreement (MOA). Adoption of CSO always requires the agreement of customers, the contractor, and DCMC. CSO does not reduce any contractual obligations of the contractor, nor does it reduce the rights of the Government under the inspection, property, or other clauses of the contract. CSO cannot be used for formal acceptance of the DD250, nor surveillance of flight critical/safety of flight characteristics.

DCMC technical specialists (QARs) retain the following Quality Assurance activities:

- Modification of the DCMC Product and Manufacturing Surveillance Plan to indicate which processes, surveillance tasks, or functions will be subject to CSO. The DCMC Surveillance Plan must specify how DCMC will monitor contractor activities to ensure they are providing the necessary assurance of contract compliance, for example, periodic reviews of TCD work products, analysis of contractor audits, and so forth.

- Final sign-off of DD250. This activity is withheld to assure proper processing of deliveries for payment.
- Ammunition Data Card sign-off
- Post-review sampling of Material Review Board activities
- First Article Tests
- Flight critical, safety of flight products
- Naval Nuclear products
- Level 1 subsafe products
- Life support equipment

The TCD is responsible for implementing a process-based oversight evaluation plan and serves as a Government designee and Quality Assurance Technical Specialist at a defense contractor facility. The TCD is an employee of the respective contractor and performs certain tasks related to the production verification area. The TCD is assigned to work on all contracts currently active and future awards as agreed to in the MOA. Using established DCMC contract administration procedures, the TCD is expected to be capable of understanding, identifying, proofing, measuring, and analyzing contractor processes in relation to contractual requirements to determine adequacy and to promote continuous quality improvement.

The TCD's may conduct a variety of roles previously performed by DCMC personnel. These include, but are not limited to: process audits, witnessing of tests, production reliability acceptance test sample selection, Product Quality Deficiency Report (PQDR) tracking and corrective action follow-up, special test equipment certification, Government Industry Data Exchange Alert Program (GIDEP) tracking and reporting, Class II engineering change proposal review (for concurrence only), DD250 review, ammunition data card review, Government-furnished property quality activities, purchase order review and identification of Government Source Inspection (GSI) needs, schedule tracking as applied to shipment signoffs, and review of test equipment software change authorization. A major benefit of the CSO Program is the elimination of duplications in oversight which is currently conducted by both the contractor and DCMC.

Mandatory inspections (sometimes referred to as Quality Assurance Letters of Instruction (QALIs)) are specific quality assurance activities required by the customer. Also, instructions can be contained in contractual Statements of Work (SOWs), performance specifications, or other contractual documentation directing the technical specialist to perform specific tasks. When QALIs or other mentioned instructions are received, the tasks must be diligently performed by the TCD until relief is provided by the agency requiring the mandatory task.

Initial confidence in the Contractor's ability to provide self-oversight is established by the signing of a CSO Memorandum of Agreement. Continued confidence is maintained by periodic DCMC evaluations and by contractor, customer, and DCMC communications in Management Councils and PROCAS meetings. Continuation of a CSO program is accomplished by the signing of CSO MOA extensions.

TCD personnel may not certify material offered by the contractor as meeting contact requirements unless there is a basis for confidence in conformance to those contract requirements; where no such confidence exists and it cannot be derived from credible data, TCDs must escalate the issue to the DCMC QAR for resolution with the contractor or customer.

When the DCMC specialist has confidence that the TCD has properly determined the product and packaging are in compliance with contractual requirements, the DCMC specialist will sign and stamp the DD250 or other necessary shipping documents when specifically required by contract, inspection instructions, or letters of delegation. Where appropriate, the DCMC technical specialist may be authorized to release deliverables using Alternate Release Procedures (ARP) or Certificate of Conformance (CoC).

The DD250 form must be completed in accordance with DFARS Appendix F. The TCD will review the DD250 or acceptance document for compliance with the contract. The intensity of this review will be based on the level of risk associated with the processing of a DD250 or acceptance document containing errors and the contractor's demonstrated past performance. After review and any necessary corrections, the DD250 or acceptance document will be made available for DCMC specialist signature. The DCMC specialist will sign and return the signed/dated DD250 or acceptance document certifying inspection and/or acceptance to the contractor for distribution.

Each deliverable will be accepted based on each individual certification which will include the following certifying statements contained in the DD250:

Block 21A, "Contractor Self-Oversight Plan"

Block 23, "Release of this material was accomplished via the Contractor Self-Oversight Plan dated \_\_\_\_\_. Deliverable items conform to all contract requirements, including required supporting documentation."

To meet the requirements of DCMC Memorandum No. 98-05, Contractor Self Oversight (CSO) in Product and Manufacturing Assurance and Property Management (POLICY) dated Oct. 22, 1997, the following statement shall be included in all CSO MOAs:

"The parties acknowledge and understand that this CSO agreement does not modify or change the terms and conditions of any contract(s). This CSO agreement shall not be used to alter, supplement, or deviate from the

terms and conditions of the contract(s) and the legal rights and obligations of the parties set forth in those contracts. Any changes in the contract(s) must be executed in writing by the Government Contracting Officer."

In summary, it is clear from the above description of the CSO Program above, that acceptance by the government, by virtue of signing a DD250, remains with a government employee (i.e. the QAR). The provisions of FAR 46.502, which places responsibility for acceptance with the contracting officer, as well as DFARs Appendix F, have not been changed or modified by the CSO, and their provisions remain binding.

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