



DEFENSE CONTRACT AUDIT AGENCY
DEPARTMENT OF DEFENSE
8725 JOHN J. KINGMAN ROAD, SUITE 2135
FORT BELVOIR, VA 22060-6219

IN REPLY REFER TO

PAS 730.4.A.9

December 19, 2008
08-PAS-042(R)

MEMORANDUM FOR REGIONAL DIRECTORS, DCAA
DIRECTOR, FIELD DETACHMENT, DCAA
HEADS OF PRINCIPAL STAFF ELEMENTS, DCAA

SUBJECT: Audit Guidance on Denial of Access to Records Due to Contractor Delays

FAO Managers are required to brief the FAO staff on this revised guidance by January 30, 2009.

SUMMARY

If the contractor does not provide documentation in support of an audit in a timely manner, the auditor should (1) follow the procedures for denial of access to records, (2) take appropriate actions to effect a suspension or withhold of any unsupported costs billed to the Government until the data is received and a determination is made regarding the allowability of the costs, and (3) question the unsupported costs in the audit report if the supporting documentation is not received prior to completion of fieldwork. These procedures should be followed even if the contractor concurs to the questioned costs based on the lack of support. In cases where the records are alleged to have been destroyed, lost, or stolen, auditors should obtain a written statement from appropriate high-level contractor management (i.e., at a level no lower than the business segment vice president or chief financial officer) to that effect with a detailed explanation of the circumstances. This guidance has been communicated to DCMA Headquarters.

GUIDANCE

Expectations

When an auditor requests supporting documentation from a contractor (either verbally or in writing), the request should clearly state what support is needed and when it should be provided. The contractor should be provided a reasonable time period to provide the data given the specific circumstances. Generally, documentation supporting the contractor's assertion (e.g., the contractor's proposal or other submission) should be readily available. Therefore, unless the request requires analysis by the contractor or there are extenuating circumstances (e.g., the request is for a voluminous amount of data or for data stored at an off-site location), the contractor should provide the documentation upon request. For example, support for proposed labor hours should be provided the same day requested, given the information would have been generated by the contractor prior to submitting the bid proposal. If the request requires analysis or if extenuating circumstances exist, auditors should allow the contractor additional time deemed necessary to provide the requested documentation.

SUBJECT: Audit Guidance on Denial of Access to Records Due to Contractor Delays

Support includes access to personnel, in addition to the documentation/data supporting the contractor's assertion (e.g., cost records, policies and procedures, management reports). Auditors should generally obtain supporting documentation directly from the person responsible for the information. The contractor's use of a liaison for requests from DCAA should not result in delays in providing requested documentation or inhibit the auditor's access to contractor personnel needed to conduct the audit. Such delays and/or restrictions should be addressed in writing to senior management of the company.

Denial of Access to Records Process

If the contractor does not provide the requested information by the requested due date, and the contractor has not provided an appropriate explanation for the delay, the FAO should prepare a formal written request to the appropriate high-level contractor management (i.e., at a level no lower than the business segment vice president or chief financial officer) stating that the information must be provided by a specific date (not to exceed one week) with a copy to the contracting officer. This written request should be initiated as soon as the due date is missed and no later than five days after the due date. If the information, or an appropriate explanation for the delay, is not provided within one week, the FAO should notify the contractor (via a letter signed by the FAO manager) that a formal denial of access to records exists and is being reported to appropriate Government personnel. The FAO should also request, in writing, assistance from the ACO and, if applicable, the Contract Audit Coordinator in resolving the access to records matter and submit a Denial of Access to Contractor Records form to the regional office (see Enclosure 1, DCAAI 7640.17). The region should forward a copy to DCAA, Headquarters, ATTN: PAS, once its review is complete. **Instances where the ACO does not agree with DCAA's request for data should be referred promptly to the regional office for resolution.**

If the efforts of the FAO, ACO, and regional office prove unsuccessful, the Regional Director should review the matter to determine if a subpoena should be requested. This review may include consultations with the Assistant Director, Policy and Plans, and the General Counsel, DCAA. If it is determined that a subpoena is the appropriate means to obtain the necessary data, the FAO should prepare and submit to the regional office a request for a subpoena of the required records in accordance with DCAA Regulation 5500.5. If the documents necessary for audit cannot be obtained using DCAA's subpoena authority (10 U.S.C. 2313(b)), DCAA will work with the DoDIG to issue an IG subpoena using their broad subpoena authority.

Withholding of Costs Due to Contractor Delays

In conjunction with initiating the denial of access to records process, the FAO should follow the procedures in MRD 07-PPD-031(R), Subject: Audit Guidance Alert on the Use of DCAA Form 1 to Suspend Costs on Reimbursement Contracts, dated September 7, 2007, and CAM 6-900, *Notices of Cost Suspensions and Disapprovals under Cost-Reimbursement Contracts*, to effect a suspension and/or withhold of unsupported costs due to the contractor's denial of access to records.

SUBJECT: Audit Guidance on Denial of Access to Records Due to Contractor Delays

Issuance of Audit Report

Costs that the auditor is not able to evaluate due to denial of access to records/data should be questioned in the audit report. Depending on the significance and pervasiveness of the unsupported costs, the auditor should issue either a qualified or an adverse opinion, identify the specific records/data denied, and describe the resulting restriction or limitation on the scope of audit (CAM 10-210.4).

In some cases, the contractor will provide the necessary records/data during negotiations. To ensure that the audit process is not circumvented in such circumstances, the audit report should include a statement recommending that DCAA be given the opportunity to audit the contractor records/data provided during negotiations.

Contractor Concurrence of Questioned Costs Due to Lack of Support

In some instances the contractor may concur with questioned costs based on the lack of adequate support. In such cases, the Government may still be at risk. Without examining the documentation for the claimed costs, the auditor cannot determine if there are additional related or directly associated costs that should also be questioned or if the questioned costs are subject to penalties for unallowable costs (FAR 52.242-3). Therefore, even if the contractor concurs with the questioned costs, it is important to pursue access to appropriate records so that the costs can be evaluated using applicable regulatory requirements.

Destroyed, Lost, or Stolen Records

In cases where the records are alleged to have been destroyed, lost, or stolen, auditors should obtain a written statement from appropriate high-level contractor management (i.e., at a level no lower than the business segment vice president or chief financial officer) to that effect with a detailed explanation of the circumstances. The FAO should also immediately notify the contracting officer of the extent to which an audit can be performed. If an audit is performed with the records that are available, the audit report should include appropriate comments on all the facts, and any necessary disclaimer, adverse opinion, qualification and/or explanation of questioned costs. Under these circumstances, denial of access to records should not be pursued.

Internal Control Deficiencies

If the contractor cannot support its assertion on a timely basis, in addition to the actions discussed above, the FAO should consider whether an internal control deficiency exists. For example, if a contractor cannot provide the support for its cost transfers/adjusting entries, this condition should be cited as a significant deficiency/material weakness in the contractor's accounting system.

SUBJECT: Audit Guidance on Denial of Access to Records Due to Contractor Delays

CLOSING REMARKS

Enclosed is the revised DCAA Instruction 7640.17 (Enclosure 1). FAO Managers are required to brief the FAO staff members on this revised guidance by January 30, 2009. In order to facilitate discussion, a PowerPoint briefing is attached (Enclosure 2). Field audit office personnel should direct questions regarding this memorandum to their regional office. Regional offices should direct their questions to Policy Auditing Standards Division, at (703)-767-3274 or DCAA-PAS@dcaa.mil.

/Signed/
Kenneth J. Saccoccia
Assistant Director
Policy and Plans

Enclosures: a/s

DISTRIBUTION: C



DEFENSE CONTRACT AUDIT AGENCY
8725 JOHN J. KINGMAN ROAD, SUITE 2135
FORT BELVOIR, VA 22060-6219

PAS

December 19, 2008

DCAA INSTRUCTION
NO. 7640.17

**FORMAL REPORTING PROCEDURES FOR
DENIAL OF ACCESS TO CONTRACTOR'S RECORDS
(RCS: PAS AR/SA - 188)**

References: (a) DCAA Regulation 5500.5, Subpoenas of Defense Contractor Records (Available on DCAA's Intranet Site)
(b) CAM 1-504, Access to Records of Contractor (Available on DCAA's Intranet Site)

1. REISSUANCE AND PURPOSE. To establish the procedure for formal reporting to Headquarters, Policy and Plans, of contractor denial of access to records. This reporting procedure precedes the subpoena procedures that are cited in DCAA Regulation 5500.5, referenced above and supplements the referenced CAM guidance.

2. CANCELLATION. DCAAI 7640.17, "Formal Reporting Procedures for Denial of Access to Contractor's Records," dated February 10, 2006 is cancelled.

3. APPLICABILITY AND SCOPE. This instruction applies to all DCAA organizational elements.

4. POLICY.

4.1. DCAA auditors must adhere to generally accepted government auditing standards in determining what comprises competent, relevant, and sufficient evidential matter to form and express an audit opinion on a contractor's proposed or incurred costs. A contractor's refusal to provide all records required to audit in accordance with these standards will formally be reported as a denial of access to records.

4.2. This instruction provides the procedure for formally reporting denials of access to records.

5. RESPONSIBILITIES.

5.1. The Assistant Director, Policy and Plans, is responsible for:

5.1.1. Monitoring formal denial of access to records issues received from the regional offices, and taking appropriate follow-up action to ensure timely pursuit of access.

5.1.2. Providing guidance to the field as required to resolve denial of access to records.

5.1.3. Providing semiannual status reports to the Director on access to records activity reported by the regions.

5.1.4. Processing subpoena requests in accordance with DCAA Regulation 5500.5.

5.2. Regional Directors are responsible for:

5.2.1. Making every possible effort to resolve denial of access to records issues with contractors' top management, concurrently with efforts taken by the FAO, RAM, RSPM, ACO/PCO, and CAC.

5.2.2. Monitoring FAO reported denials of access to contractor records (Enclosure 1).

5.2.3. Submitting semiannual reports (Enclosure 2) to Headquarters that summarize denials of access to records reported to the region by FAOs. The reports are due on the 15th of April and October each year. This reporting requirement is assigned reports control symbol RCS: PAS AR/SA - 188.

5.2.4. Coordinating, processing, and forwarding FAOs' subpoena requests to Headquarters, Policy and Plans (Attn: PAS) in accordance with DCAA Regulation 5500.5.

5.2.5. Withdrawing requests for subpoenas when records are received or no longer required.

5.3. FAO Managers and Supervisory Auditors are responsible for:

5.3.1. Assuring that auditors are knowledgeable of their rights and responsibilities concerning access to contractor records.

5.3.2. Maintaining close coordination with the contractor, ACO, PCO, and CAC, and keeping the regional office currently informed on the status of reported denial of access to records.

5.3.3. Submitting to the regional office the initial and, thereafter as applicable, calendar quarterly reports (Enclosure 1) that summarize the status of reported denials of access to contractor records.

5.4. CAC/CHOA Auditor. If the contractor's denial of access to records is based on corporate policy, the CAC or CHOA should take action to resolve the issue. The results of these efforts must be submitted to each affected FAO, with copies to the appropriate regional offices.

6. PROCEDURES.

6.1. When an auditor requests supporting data/documentation from a contractor (either verbally or informally in writing), the request should clearly state what support is needed and when it should be provided. The contractor should be provided a reasonable time period to provide the data given the specific circumstances. Generally, data/documentation supporting the contractor's assertion should be readily available. Therefore, unless the request requires analysis by the contractor, or there are extenuating circumstances (e.g., the request is for a voluminous amount of data or for data stored at an off-site location), the contractor should provide the data upon request. If the request does require analysis or if extenuating circumstances exist, auditors should allow the contractor additional time deemed necessary to provide the requested documentation.

6.2. If the contractor does not provide the requested information by the requested due date, and the contractor has not provided an appropriate explanation for the delay, the FAO should prepare a formal written request to the contractor stating that the information must be provided by a specific date (not to exceed one week). This written request should be initiated as soon as the due date is missed, and no later than five days after the due date. (See 6.7 for accelerated procedures for price proposal reviews.)

6.3. Written requests should be addressed to the appropriate high-level contractor management (i.e., at a level no lower than the business segment vice president or chief financial officer) with a copy to the contracting officer.

6.4. When the auditor is convinced that the requested data will not be provided based on (1) a categorical denial reply from the contractor (oral or written), or (2) the contractor's failure to provide the data or an appropriate explanation within the one-week period specified in paragraph 6.2. above, the following steps should be taken simultaneously:

6.4.1. Notify the contractor (via a letter signed by the FAO manager) that a formal denial to records exists and is being reported to appropriate government personnel.

6.4.2. Write to the ACO and CAC to request their assistance in resolving the access problem. The request should include a description of the denied data, why the data are needed, the cost impact related to the denial of access, if known, and the actions taken by DCAA to gain access. A copy of the notification to the contractor should be attached.

6.4.3. Prepare and forward to the regional office a Denial of Access to Contractor Records (see Enclosure 1). At the completion of the regional review, the form should be forwarded to DCAA, Headquarters ATTN: PAS. This submission is controlled as RCS:PAS AR/SA - 188.

6.4.4. Thoroughly document the file. Documentation may consist of a contractor letter to the auditor or a copy of a letter from the auditor to the contractor. Although a statement signed by the authorized contractor official is preferable, this must not impede the other needed actions. Therefore, the auditor may document the contractor's position in a letter to the contractor.

6.5. If the efforts of the FAO, ACO, CAC and regional office prove unsuccessful, the Regional Director should review the matter to determine if a subpoena should be requested. This review may include informal consultations with the Assistant Director, Policy and Plans, and the General Counsel, DCAA.. If it is resolved in these discussions that a subpoena is the appropriate means to comply with the Agency policy cited in paragraph 4. above, then the FAO should prepare and submit to the regional office a request for a subpoena of the required records in accordance with DCAA Regulation 5500.5. If the documents necessary for audit cannot be obtained using DCAA's subpoena authority (10 U.S.C. 2313(b)), DCAA should work with the DoDIG to issue an IG subpoena using their broad subpoena authority.

6.6. If the auditor either obtains access to the records in question or determines that further action is not warranted, he or she must advise all officials previously contacted in the preceding steps.

6.7. Accelerated Procedures in Price Proposal Reviews:

6.7.1. The most effective means of obtaining access to records needed for the review of price proposals is to promptly refer the matter to the PCO for action as stipulated by FAR 15.404-2 (d).

6.7.2. Frequently, when auditing a price proposal, time does not permit accomplishing all the steps exactly as set forth above. In these cases the formal request may only provide the contractor 1 to 3 days to respond and the other parties affected can be contacted by telephone or e-mail.

6.7.3. If the accelerated procedures are unsuccessful, the matter may be referred to the regional director by telephone or e-mail. Similarly, the regional director's efforts, including notification of Headquarters, may be accomplished by telephone or e-mail.

6.7.4. All actions accomplished by telephone should be confirmed in writing.

6.7.5. Forward pricing audit reports issued prior to satisfactory resolution of a denial of access to records should follow CAM 10-304.4 guidance.

7. EFFECTIVE DATE. This instruction is effective immediately.

FOR THE DIRECTOR:

/Signed/
Kenneth J. Saccoccia
Assistant Director
Policy and Plans

Enclosures - 2

1. Denial of Access to Contractor Records (Data Sheet)
2. Denial of Access to Records Status Report

DENIAL OF ACCESS TO CONTRACTOR RECORDS
(DATA SHEET)
RCS: PAS AR/SA - 188

TO: Regional Office, ATTN: Special Programs

FAO: _____

RORG CODE: _____

CONTRACTOR: _____

_____ INITIAL REPORT _____ INTERIM REPORT _____ DISPOSITION REPORT

DATE OF DENIAL: _____

DISPOSITION DATE: _____

AUDIT BEING PERFORMED/ASSN NO: _____

RECORD SOUGHT: _____

AUDITOR RATIONALE FOR REQUESTING ACCESS: _____

CONTRACTOR RATIONALE FOR DENIAL: _____

FAO MANAGER _____ DATE: _____

ATTACHMENTS:

- _____ Original written request
- _____ Contractor's written denial
- _____ Letter to ACO, PCO
- _____ CAC correspondence
- _____ Correspondence with contractor
- _____ Other - Identify

DISTRIBUTION:

- Original - Regional Office, SP
- Copy 1 - RAM
- Copy 2 - W/P File
- Copy 3 - CAC (if necessary)

DENIAL OF ACCESS TO RECORDS STATUS REPORT
AS OF _____
RCS: PAS AR/SA - 188

TO: HEADQUARTERS, PAS

FROM: _____ REGION

FAO & RORG CODE: _____

CHECK STATUS: NEW (), UPDATE (), RESOLVED (A ^{1/} ____, C ____, DATE _____)

AUDIT ASSN. NO. AND DESCRIPTION: _____

RECORD SOUGHT: _____

DATE OF DENIAL: _____

CONTRACTOR & CONTRACTOR ID: _____

CONTRACTOR LOCATIONS INVOLVED: _____

AUDITOR RATIONALE FOR REQUESTING ACCESS: _____

CONTRACTOR RATIONALE FOR DENIAL: _____

CHRONOLOGY OF DATES AND EVENTS: ^{2/} _____

^{1/} A-Accessed, C-Resolved w/o access

^{2/} Synopsise all communication between the contractor and
Government representatives, and the status for resolution.



Defense Contract Audit Agency

Revision to Audit Guidance on Access to Contractor Records



Purpose of Revision to Audit Guidance

- Quality and effective audits require timely access to records.
- Prior guidance only stated that support should be provided within a reasonable time period, but gives no guidelines on how much time that is.
- This clarifying guidance is intended to begin the denial of access to records process as soon as it is apparent the contractor is delaying access to records and eliminate the “slow roll” experienced at some locations.



Revision to Audit Guidance Requests for Contractor Support

- Requests (either verbal or written) should clearly state what support is needed, and when it should be provided.
- Generally, supporting documentation should be readily available and provided upon request.
- Allow additional time for extenuating circumstances (e.g., data is stored offsite, or is voluminous) or if contractor analysis is required.



Revision to Audit Guidance Contractor Liaisons

- Supporting documentation includes **access to personnel** and documentation/data supporting the contractor's assertion (e.g., cost records, policies and procedures, management reports).
- Contractors use of liaisons should not delay or inhibit auditor's access to contractor personnel.
- Auditors should generally obtain support directly from the person responsible for the information.
- If use of liaisons results in delays, auditor should address delays, in writing, to senior management of the company.



Revision to Audit Guidance

Initiating Access to Records Process

- If support or an appropriate explanation for delay is not provided by the requested due date, the auditor should:
 - ➔ prepare a formal written request to the appropriate high-level contractor management (no lower than segment VP or CFO) stating that the data must be provided by a certain date (**not to exceed one week**), and
 - ➔ provide a copy of the request to the Contracting Officer.
- The auditor should initiate the letter as soon as the due date is missed, and no later than five days after the due date.



Revision to Audit Guidance

Formal Denial of Access to Records

If the data, or an appropriate explanation, is not received within one week, the FAO should:

- ➔ notify the contractor that a formal denial of access to records exists;
- ➔ request assistance in writing from ACO and CAC (if applicable); and
- ➔ submit a Denial of Access to Contractor Records Form to the regional office (Enclosure 1 of DCAAI 7640.17). Region will forward copy to Policy and Plans.



Revision to Audit Guidance

Request for Subpoena

- If FAO, ACO, and regional efforts are unsuccessful, the RD should review the matter to determine if a subpoena should be requested.
- The RD's review may include informal consultations with Policy and DL.
- If it is determined that a subpoena is appropriate, the FAO should submit a request for subpoena to the Region per DCAA Regulation 5500.5.



Revision to Audit Guidance Withholding Contractor Costs

The FAO should also effect a suspension and/or withhold of the unsupported costs.

- ➔ MRD 07-PPD-031(R), Audit Guidance Alert on the Use of DCAA Form 1 to Suspend Costs on Reimbursement Contracts
- ➔ CAM 6-900, Notices of Cost Suspensions and Disapprovals under Cost-Reimbursement Contracts



Revision to Audit Guidance

Audit Report

- Costs that the auditor is unable to evaluate due to denial of access to records should be questioned.
- Depending on the significance and pervasiveness of the questioned cost, issue either a qualified or adverse opinion, identify specific cost records/data denied, and describe resulting restriction or limitation on the scope of audit (CAM 10-210.4).
- Report should recommend that support provided during negotiations be audited by DCAA.
- If a contractor cannot support its assertion on a timely basis, FAOs should consider whether an internal control deficiency exists.



Revision to Audit Guidance

Contractor Concurrence of Questioned Costs

- When the contractor concurs with questioned costs based on lack of adequate support, denial of access to records should still be pursued.
- Without examining documentation, the auditor cannot determine if there are additional directly associated costs or if penalties apply.



Revision to Audit Guidance Lost, Stolen or Destroyed Records

- If the contractor alleges the records have been destroyed, lost, or stolen, auditors should obtain a written statement from the appropriate high-level contractor management.
- The FAO should notify the Contracting Officer of the extent that an audit can be done.
- If an audit is done, the report should include appropriate comments on all the facts, any necessary disclaimer, adverse opinion, qualification, and/or explanation of questioned costs.
- Denial of access to records should not be pursued.



Defense Contract Audit Agency

Questions?