

Frustration with Delays in DCAA Assist Audits for Subcontractor Cost and Pricing Data Prompts Outside the Box Solutions

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Audit delays are a constant source of frustration for the entire government contracts community – within both private industry and the Government. Although the Defense Contract Audit Agency (DCAA) has had some success in recent years winnowing its enormous backlog, audits can still take years to complete, substantially delaying contract close-outs. Delays in price proposal audits lead to delays in contract price negotiations, award, and eventual performance. The frustration with these delays has prompted congressional oversight and legislation, as well as counter-responses from DCAA.

DCAA's September 2017 Guidance

One such counter-response from DCAA is a September 2017 Memorandum for Regional Directors (MRD), titled "Audit Alert on Requirement for Prime Contractor Cost and Price Analysis." In this MRD, DCAA issued guidance meant to address questions related to price proposal audits, particularly situations where DCAA is asked to assist the contracting officer in establishing the reasonableness of proposed subcontractor prices. These price proposal audits generally arise on sole source awards or modifications to existing contracts, where lengthy price negotiations between the contractor and contracting officer are necessary.

The MRD advises DCAA auditors not to delay auditing subcontractor proposed prices, even if the prime contractor's own analysis of the subcontractor's prices is not yet complete. This approach is intended to mitigate delays in audits of the prime contractor's proposed price

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to the Government by having DCAA proceed based on all available information rather than waiting until the prime contractor has assembled its complete price proposal. The MRD emphasizes early engagement by DCAA with the contracting officer and the prime contractor to facilitate price proposal audits in the most efficient manner possible.

The MRD is presented in a question-and-answer format, which answers questions such as:

- Can DCAA audit a subcontract proposal prior to the prime contractor's submission of its management-approved proposal?
- Does an audit of a subcontract proposal relieve the prime contractor from its responsibility to perform cost or price analyses of the subcontract proposal?
- If the DCAA team auditing the prime contract proposal has requested a DCAA assist audit of a subcontract proposal, but the prime contractor has NOT performed the FAR 15.404-3(b)-required cost or price analyses to establish the reasonableness of the proposed subcontract price before DCAA completes its fieldwork on the prime contract proposal, should the prime audit team classify the proposed subcontract costs as unresolved or unsupported?

Per FAR 15.404-3(b), prime contractors or subcontractors must establish the reasonableness of subcontractor prices, and must provide support for the cost or price analyses in their proposals. Often, however, proposal deadlines make it impossible for prime contractors to complete the required analyses of their subcontractors' proposals before submission of the prime contract proposal, especially if the prime does not yet have full price proposals from its subcontractors. Instead, prime contractors will often include with their proposal a timeline for the receipt of subcontractor proposals, and work to complete the required analysis post-submission. Even if prime contractors do not have access to subcontractor cost data, the MRD makes clear that FAR 15.404-3 still requires some level of price analysis. The MRD puts the onus on the prime contractor to seek help from the contracting officer and to document its efforts to obtain the relevant data.

In the past, DCAA has refused to conduct any portion of the audit until the prime contractor's analysis of the subcontractor proposal is completed, merely finding the entire proposal "inadequate." The MRD ends that practice and states that contracting officers may request an audit of subcontractor proposals even before the prime contractor has completed its analysis, but that DCAA should mark the prime contractor's proposal as including inadequate cost or pricing data. As a result, DCAA auditors should now accept and begin work on prime contract audit engagements rather than refuse to audit an entire proposal submission based on the prime contractor's failure to include its analysis of subcontractor prices.

Practicalities and Potential Solutions

Despite this guidance, prime contractors should still ensure that their purchasing systems and personnel are up-to-date and equipped to handle the required analyses quickly and efficiently, whether that is a more limited price analysis or a complex cost analysis. Under the MRD, there is now a risk that if DCAA finishes its fieldwork before the prime contractor completes its review of the subcontractor proposal, DCAA will find the subcontractor proposal "unsupported" rather than merely "unresolved," indicating that DCAA's assist audit

report has not been received.

This guidance was prompted, in part, by Congress's recent expressions of dissatisfaction (on behalf of contractor constituents) with delays in DCAA's assist audits. For example, in Section 820 of the National Defense Authorization Act (NDAA) for Fiscal Year 2017 (Pub. L. No. 114-328), Congress authorized outside audits of indirect costs under certain circumstances. Specifically, defense contractors may present their outside auditors' indirect cost findings to DCAA – and avoid any additional DCAA audit – as long as the auditors performed the audit in accordance with Generally Accepted Auditor Principles (GAAP) standards. Additionally, this past summer, the House Armed Services Committee's proposed acquisition reform bill included a provision that would revise the Fiscal Year 2017 NDAA provision to broaden acceptance of private audits even further by allowing Pentagon officials greater authority to circumvent DCAA and select a private auditor to perform incurred cost audits. Although some within and without the Government strongly object to the transfer of these services, which some view as "inherently governmental functions," to private parties, expansion of the role outside auditors play in government contracts is likely inevitable given DCAA's persistent, significant backlogs and their potential effects on the DOD mission.

Conclusion

The new guidance from DCAA is unlikely to assuage contractor and congressional concerns with DCAA's audit delays. Nevertheless, the guidance is a welcome step, and should alleviate some of the burdens prime contractors currently face in getting price proposal audits completed in a timely manner.