



DEFENSE CONTRACT AUDIT AGENCY
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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.