

CHAPTER 1

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CHAPTER 1

1-000 Introduction To Contract Audit

1-001 Scope of Chapter

This chapter introduces the chapters and appendixes which follow. It provides information on the contract audit mission; responsibilities of DCAA and the contract auditor; and the relationships of DCAA to other Department of Defense components, other Government agencies, and contractors.

1-100 Section 1 --- Establishment and Responsibilities of DCAA

1-101 Introduction

This section describes the establishment, responsibilities, and inter-organizational relationship of DCAA.

1-102 Establishment and Responsibilities

a. The Defense Contract Audit Agency was established by a directive of the Department of Defense for the purpose of performing all contract auditing for the Department of Defense (DoD) and providing accounting and financial advisory services, in connection with the negotiation, administration and settlement of contracts and subcontracts, to all DoD procurement and contract administration activities. DCAA also furnishes contract audit service to other Government agencies (see 1-302b.).

b. The role of the auditor is advisory, except that on cost-type contracts the auditor is required to comply with specific contract provisions. Procedures for such compliance are discussed in Chapter 6.

c. Although the detection of fraud or similar unlawful activity is not the primary function of contract audit, the auditor has a responsibility to plan and perform the audit to obtain reasonable assurance about whether the contractor submissions and supporting data are free of material misstatement, whether caused by error or by fraud. When fraud or similar unlawful activity is suspected, the auditor shall be guided by 4-700.

1-103 Relationship --- DCAA and the Office of the Secretary of Defense

DCAA is a separate agency of the Department of Defense under the direction, authority, and control of the Under Secretary of Defense (Comptroller). Supplement 1-1S1 contains the Agency charter, DoD Directive 5105.36.

1-104 Nature of Contract Auditing

1-104.1 Introduction

The following paragraphs state the objective of contract auditing and in broad terms how the objective is accomplished.

1-104.2 Contract Audit Objective

a. The purpose of contract auditing is to assist in achieving prudent contracting by providing those responsible for Government procurement with financial information and advice relating to contractual matters and the effectiveness, efficiency, and economy of contractors' operations. Contract audit activities include providing professional advice on accounting and financial matters to assist in the negotiation, award, administration, repricing and settlement of contracts. Audit interest encompasses the totality of the contractor's operations. Audits are performed to assure the existence of adequate controls which will prevent or avoid wasteful, careless, and inefficient practices by contractors. These audits include the evaluation of a contractor's policies, procedures, controls and actual performance, identifying and evaluating all activities which contribute to, or have an impact on, proposed or incurred costs of Government contracts. Areas of concern to the auditor include the adequacy of contractor's policies, procedures, practices, and internal controls relating to accounting, estimating, and procurement; the evaluation of contractors' management policies and decisions affecting costs; the accuracy and reasonableness of contractors' cost representations; the adequacy and reliability of contractors' records for Government-owned property; the financial capabilities of the contractor; and the appropriateness of contractual provisions having accounting or financial significance. Contract auditors perform evaluations of contractors' statements of costs to be incurred (cost estimates) or statements of cost actually incurred to the extent deemed appropriate by the auditors in the light of their experience with the contractors and relying upon their appraisals of the effectiveness of the contractors' policies, procedures, controls, and practices. Such evaluations may consist of test checks of a limited number of transactions or in-depth examinations at the discretion of the auditor.

b. To accomplish the objective of contract auditing, the auditor must examine or develop sufficient evidence to support a valid opinion of the extent to which costs or estimates contained in a contractor's claim or proposal are:

- (1) reasonable as to nature and amount,
- (2) allocable, and measurable by the application of duly promulgated cost accounting standards,
- (3) generally accepted accounting principles and practices appropriate to the particular circumstances; and
- (4) in accordance with applicable cost limitations or exclusions as stated in the contract or in FAR.

The auditor will find it extremely useful at the onset of the examination, in planning the audit program and approach to review the contractor's accounting nomenclature, chart of accounts, accounting manuals and financial statements. It should, however, be recognized that professional opinions and conclusions on the acceptability of contract costs must be based on the auditor's knowledge of the contractor's classification practices and the actual nature of the expenditures charged to the various accounts and classifications. This knowledge is best gained by selective testing of transactions recorded in the various accounts.

c. The auditor should at all times be alert to any matters that may affect the Government's prudent and efficient management of its procurement program. When the auditor becomes aware of the need for improved Government practices, the appropriate office should be advised and, to the maximum extent feasible, the corrective measures should be recommended in the audit report.

d. In performing normal auditing procedures in connection with an examination, auditors should be alert for indications of excessive contract prices or profits and for evidence of overcharges or inadequate compensation to the Government. If the auditor finds an indication of such a condition, he or she should discuss it with the supervisor to decide whether further evaluation is warranted and whether the condition is properly reportable as one involving:

- (1) suspected fraud or other similar irregularities (4-700);
- (2) defective pricing (14-100); or
- (3) solicitation of a voluntary refund (4-800).

Guidance for determining which of the above reporting procedures should be used is contained in the referenced paragraphs. If the condition is not reportable under the foregoing guidance, a report stating the pertinent facts should nevertheless be submitted to Headquarters, DCAA, Attention: Deputy Assistant Director, Operations.

e. FAR 15.408(b) prescribes the insertion of a "defective pricing" clause (FAR 52.215-10) which accords the Government a contractual basis for reducing the contract price under certain conditions. When, after contract execution, it is learned that the contract price was negotiated on the basis of certified cost or pricing data furnished by the contractor that was incomplete, inaccurate or not current, the contracting officer may reduce the contract price. Guidance concerning the auditor's role in this area is stated in Chapter 14.

f. FAR 52.230-2 prescribes the insertion into contracts and subcontracts of a "cost accounting standards" clause which requires certain contractors or subcontractors to disclose in writing their cost accounting practices, to follow the disclosed practices consistently, to comply with duly promulgated cost accounting standards, and to agree to contract price adjustment for any increased cost to the Government as a result of the contractor's failure to comply with applicable cost accounting standards. Guidance concerning the auditor's role with respect to cost accounting standards is stated in Chapter 8.

g. FAR 16.102(c) provides that the cost-plus-a-percentage-of-cost system of contracting shall not be used by the Government for any prime contract; or allowed to be used in any chain of cost or redeterminable subcontracts, unbroken by a firm-fixed-price subcontract. If such a contract or subcontract is encountered, the entire cost, including the amount representing the percentage added, will be disapproved under cost-type contracts and recommended for nonacceptance under fixed-price redeterminable contracts.

1-1S1 Supplement --- DoD Directive 5105.36 --- Defense Contract Audit
Agency Charter



Department of Defense
DIRECTIVE

NUMBER 5105.36
January 4, 2010

DA&M

SUBJECT: Defense Contract Audit Agency (DCAA)

References: See Enclosure 1

1. **PURPOSE.** Under the authority vested in the Secretary of Defense by sections 113, 191, and 192 of title 10, United States Code (U.S.C.) (Reference (a)), this Directive reissues DoD Directive (DoDD) 5105.36 (Reference (b)) to update the mission, organization and management, responsibilities and functions, relationships, and authorities of the DCAA.

2. **APPLICABILITY.** This Directive applies to OSD, the Military Departments, the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities within the Department of Defense (hereafter referred to collectively as the "DoD Components").

3. **MISSION.** The DCAA, while serving the public interest as its primary customer, shall perform all necessary contract audits for the Department of Defense and provide accounting and financial advisory services regarding contracts and subcontracts to all DoD Components responsible for procurement and contract administration. These services shall be provided in connection with negotiation, administration, and settlement of contracts and subcontracts to ensure taxpayer dollars are spent on fair and reasonable contract prices. DCAA shall provide contract audit services to other Federal agencies, as appropriate.

4. ORGANIZATION AND MANAGEMENT

a. DCAA is a Defense Agency under the authority, direction, and control of the Under Secretary of Defense (Comptroller) (USD(C))/Chief Financial Officer (CFO), Department of Defense, consistent with DoDD 5118.03 (Reference (c)).

b. DCAA shall consist of a Director and such subordinate organizational elements as are established by the Director within resources assigned by the Secretary of Defense.

c. No separate contract audit organization independent of the DCAA shall be established in the Department of Defense.

5. RESPONSIBILITIES AND FUNCTIONS. The Director, DCAA, shall:

a. Organize, direct, and manage DCAA and all assigned resources.

b. Assist in achieving the objective of prudent contracting, by providing DoD officials responsible for procurement and contract administration with financial information and advice on proposed or existing contracts and contractors, as appropriate.

c. Audit, examine, and/or review contractors' and subcontractors' accounts, records, documents, and other evidence; systems of internal control; and accounting, costing, and general business practices and procedures in accordance with Government Auditing Standards (Reference (d)), the Federal Acquisition Regulation (Reference (e)), the Defense Federal Acquisition Regulation Supplement (Reference (f)), and other applicable laws and regulations to the extent and in whatever manner is considered necessary to permit proper performance of the other functions described in paragraphs 5.d. through 5.j. of this Directive.

d. Approve, suspend, or disapprove costs on reimbursement vouchers received directly from contractors, under cost-type contracts, transmitting the vouchers to the cognizant Disbursing Officer.

e. Provide information and advice on proposed or existing contracts and contractors, consistent with paragraph 5.b. of this Directive, including, but not limited to:

(1) Acceptability of costs incurred under redeterminable, incentive, and similar-type contracts.

(2) Acceptability of incurred costs and estimates of cost to be incurred as represented by contractors incident to the award, negotiation, modification, change, administration, termination, or settlement of contracts.

(3) Adequacy of financial or accounting aspects of contract provisions.

(4). Adequacy of contractors' accounting and financial management systems, estimating procedures, and property controls.

f. Assist responsible procurement or contract administration activities in their surveys of the purchasing-procurement systems of major contractors.

g. Direct audit reports to the Government management level having authority and responsibility to take action on the audit findings and recommendations.

h. Cooperate with other appropriate DoD Components on reviews, audits, analyses, or inquiries involving contractors' financial position or financial and accounting policies, procedures, or practices.

i. Establish and maintain liaison auditors and financial advisors, as appropriate, at major procuring and contract administration offices.

j. Review Government Accountability Office reports and proposed responses thereto, that involve significant contract or contractor activities for the purpose of ensuring the validity of appropriate pertinent facts contained therein.

k. In an advisory capacity, attend and participate, as appropriate, in contract negotiation and other meetings where contract cost matters, audit reports, or related financial matters are under consideration.

l. Provide assistance, as requested, in the development of procurement policies and regulations.

m. Report incidents of suspected fraud, waste, and abuse to the appropriate authorities.

n. Design and manage DCAA activities and programs to improve standards of performance, economy, and efficiency, and demonstrate DCAA's attention to the requirements of its organizational customers, both internal and external to the Department of Defense.

o. Perform such other duties as may be assigned by the Secretary and Deputy Secretary of Defense or USD(C)/CFO.

6. RELATIONSHIPS

a. In performing assigned functions and responsibilities, the Director, DCAA, shall:

(1) Report directly to the USD(C)/CFO.

(2) Maintain liaison with the DoD Components, other Federal agencies, foreign governments, and private sector organizations for the exchange of information concerning assigned programs, activities, and responsibilities.

(3) Use existing systems, facilities, and services of the Department of Defense and other Federal agencies, when possible, to avoid duplication and to achieve maximum efficiency and economy.

(4) Receive support from the Military Departments and other DoD Components within their respective fields of responsibility to assist in carrying out the assigned responsibilities and functions of the DCAA.

b. The OSD Principal Staff Assistants and Heads of the other DoD Components shall coordinate with the Director, DCAA, as appropriate, on matters under their purview relating to DCAA operations, functions, responsibilities, and programs.

c. Procurement and contract administration activities of the DoD Components shall utilize audit services of the DCAA to the extent appropriate in connection with the negotiation, administration, and settlement of contract payments and prices that are based on cost (incurred or estimated), or on cost analysis.

7. AUTHORITIES. The Director, DCAA, is hereby delegated authority to:

a. Communicate directly with the Heads of the DoD Components, as necessary, to carry out assigned responsibilities and functions, including the transmission of requests for advice and assistance. Communications to the Military Departments shall be transmitted through the Secretaries of the Military Departments, their designees, or as otherwise provided in law or directed by the Secretary of Defense in other DoD issuances. Communications to the Commanders of the Combatant Commands normally shall be transmitted through the Chairman of the Joint Chiefs of Staff, except those communications dealing solely with contract audit functions.

b. Communicate with other Government officials, representatives of the Legislative Branch, members of the public, and representatives of foreign governments, as appropriate, to carry out assigned responsibilities and functions. Communications with representatives of the Legislative Branch shall be coordinated with the Assistant Secretary of Defense for Legislative Affairs or the USD(C)/CFO, as appropriate, and be consistent with the DoD Legislative Program.

c. Obtain reports and information consistent with DoD Instruction (DoDI) 8910.01 (Reference (g)), as necessary, to carry out assigned responsibilities and functions.

d. Establish DCAA facilities using appropriate established physical facilities and services of other DoD Components whenever possible to achieve maximum efficiency and economy.

e. Exercise the administrative authorities contained in Enclosure 2 of this Directive.

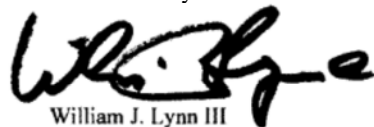
8. ADMINISTRATION

a. The Director, DCAA, shall be a civilian appointed by the Secretary of Defense, with the advice of the USD(C)/CFO.

b. The appointment of other personnel to DCAA will be subject to the approval of the Director, DCAA, or his or her designee.

9. RELEASABILITY. UNLIMITED. This Directive is approved for public release and is available on the Internet from the DoD Issuances Web Site at <http://www.dtic.mil/whs/directives>.

10. EFFECTIVE DATE. This Directive is effective immediately.



William J. Lynn III
Deputy Secretary of Defense

Enclosures

1. References
2. Delegations of Authority

ENCLOSURE 1REFERENCES

- (a) Sections 113, 173, 191, 192, and 2667 of title 10, United States Code
- (b) DoD Directive 5105.36, "Defense Contract Audit Agency (DCAA)," February 28, 2002 (hereby canceled)
- (c) DoD Directive 5118.03, "Under Secretary of Defense (Comptroller) (USD(C))/Chief Financial Officer (CFO), Department of Defense," January 6, 1997
- (d) U.S. Government Accountability Office, Government Auditing Standards, current edition¹
- (e) Federal Acquisition Regulation, current edition²
- (f) Defense Federal Acquisition Regulation Supplement, current edition³
- (g) DoD Instruction 8910.01, "Information Collection and Reporting," March 6, 2007
- (h) Executive Order 10450, "Security Requirements for Government Employment," April 27, 1953, as amended
- (i) Executive Order 12333, "United States Intelligence Activities," December 4, 1981, as amended
- (j) Executive Order 12968, "Access to Classified Information," August 2, 1995, as amended
- (k) DoD Directive 5200.2, "DoD Personnel Security Program," April 9, 1999
- (l) DoD 5200.2-R, "Personnel Security Program," January 16, 1987
- (m) Joint Federal Travel Regulation, Volume 1, "Uniformed Service Members," December 1, 2004
- (n) Joint Travel Regulations, Volume 2, "Department of Defense (DoD) Civilian Personnel," January 1, 2009
- (o) Title 5, United States Code
- (p) Section 412 of title 37, United States Code
- (q) Title 44, United States Code
- (r) DoD Directive 5015.2, "DoD Records Management Program," March 6, 2000
- (s) DoD Instruction 5025.01, "DoD Directives Program," October 28, 2007
- (t) DoD Instruction 5200.08, "Security of DoD Installations and Resources," December 10, 2005
- (u) DoD Instruction 1400.25, "DoD Civilian Personnel Management System," December 1, 1996
- (v) DoD Instruction 5105.04, "Department of Defense Federal Advisory Committee Management Program," August 6, 2007

¹ Available at <http://www.gao.gov/govaud/ybook/pdf>

² Available at <https://www.acquisition.gov/far/>

³ Available at <http://www.acq.osd.mil/dpap/dars/dfarspgi/current/index.html>

ENCLOSURE 2

DELEGATIONS OF AUTHORITY

Under the authority vested in the Secretary of Defense, and subject to the authority, direction, and control of the USD(C)/CFO, and in accordance with DoD policies and issuances, the Director, DCAA, or, in the absence of the Director, the person acting for the Director, is hereby delegated authority, as required in the administration and operation of DCAA, to:

a. Maintain an official seal and attest to the authenticity of official records under the seal.

b. Enforce regulatory procedures in accordance with Executive Order (E.O.) 10450 (Reference (h)), E.O. 12333 (Reference (i)), E.O. 12968 (Reference (j)), and DoDD 5200.2 (Reference (k)), as appropriate, and:

(1) Designate any position in DCAA as a “sensitive” position.

(2) Authorize, in case of emergency, the appointment of a person to a sensitive position in DCAA for a limited period of time and for whom a full field investigation or other appropriate investigation, including the National Agency Check, has not been completed.

(3) Initiate personnel security investigations and, if necessary, in the interest of national security, suspend a security clearance for personnel assigned to, detailed to, or employed by DCAA. Any actions under this paragraph shall be taken in accordance with procedures prescribed in DoD 5200.2-R (Reference (l)).

c. Authorize and approve:

(1) Temporary duty travel only for military personnel assigned or detailed to the DCAA in accordance with Joint Federal Travel Regulation, Volume 1 (Reference (m)).

(2) Travel for DCAA civilian personnel in accordance with Joint Travel Regulations, Volume 2 (Reference (n)).

(3) Invitational travel to non-DoD personnel whose consultative, advisory, or other highly specialized technical services are required in a capacity that is directly related to, or in connection with, DCAA activities, in accordance with Reference (n).

(4) Overtime work for DCAA civilian personnel in accordance with subchapter V of chapter 55 of title 5, U.S.C. (Reference (o)) and applicable Office of Personnel Management (OPM) regulations.

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d. Approve the expenditure of funds available for travel by military personnel assigned or detailed to the DCAA for expenses incident to attendance at meetings of technical, scientific, professional, or other similar organizations in such instances when the approval of the Secretary of Defense, or designee, is required by sections 4110 and 4111 of Reference (o) and section 412 of title 37, U.S.C. (Reference (p)).

e. Develop, establish, and maintain an active and continuing Records Management Program, pursuant to section 3102 of title 44, U.S.C. (Reference (q)) and DoDD 5015.2 (Reference (r)).

f. Utilize the Government purchase card for making appropriate purchases of material and services, other than personal services, for the DCAA when it is determined more advantageous and consistent with the best interests of the Government.

g. Authorize the publication of advertisements, notices, or proposals in newspapers, magazines, or other public periodicals as required for the effective administration and operation of the DCAA, consistent with section 3702 of Reference (q).

h. Establish and maintain, for the functions assigned, an appropriate internal publications system for the promulgation of regulations, instructions, and reference documents, and changes thereto, pursuant to the policies and procedures prescribed in DoD issuances published under DoDI 5025.01 (Reference (s)).

i. Enter into support and service agreements with the Military Departments, other DoD Components, or other Federal agencies, as required, for the effective performance of DCAA functions and responsibilities.

j. Enter into and administer contracts directly or through the Military Departments, a DoD contract administration services Component, or other Federal agency, as appropriate, for supplies, equipment, and services required to accomplish the DCAA mission.

k. Establish and maintain appropriate property accounts for the DCAA and appoint Boards of Survey, approve reports of survey, relieve personal liability, and drop accountability for DCAA property contained in the authorized property accounts that has been lost, damaged, stolen, destroyed, or otherwise rendered unserviceable, in accordance with applicable laws and regulations.

l. Issue the necessary security regulations for the protection of property and places under the jurisdiction of the Director, DCAA, pursuant to DoDI 5200.08 (Reference (t)).

m. Lease property under the control of the DCAA, under terms that promote the national defense or that are in the public interest, pursuant to section 2667 of Reference (a) and applicable DoD policy.

ENCLOSURE 2

n. Exercise the powers vested in the Secretary of Defense by sections 301, 302(b), 3101, and 5107 of Reference (o) on the employment, direction, and general administration of assigned employees.

o. Fix rates of pay of wage-rate employees exempted from the Classification Act of 1949 by section 5102 of Reference (o) on the basis of rates established under the Federal Wage System. In fixing such rates, the Director, DCAA, shall follow the wage schedule established by the DoD Wage Fixing Authority.

p. Administer oaths of office to those entering the Executive Branch of the Federal Government or any other oath required by law in connection with employment therein, in accordance with section 2903 of Reference (o), and designate in writing, as may be necessary, officers and employees of the DCAA to perform this function.

q. Establish a DCAA Incentive Awards Board and pay cash awards to, and incur necessary expenses for the honorary recognition of, civilian employees of the Government whose suggestions, inventions, superior accomplishments, or other personal efforts, including special acts or services, benefit or affect the DCAA, in accordance with section 4503 of Reference (o), OPM regulations, and DoDI 1400.25 (Reference (u)).

r. Use advisory committees and employ temporary or intermittent experts or consultants, as approved by the Secretary of Defense or the Director of Administration and Management, for the performance of DCAA functions, consistent with sections 173 and 174 of Reference (a), section 3109(b) and Appendix 2 of Reference (o), and DoD Instruction 5105.04 (Reference (v)).

s. Redelegate these authorities as appropriate, and in writing, except as otherwise specifically indicated in this Directive or prohibited by law, Executive order, or regulation.

ENCLOSURE 2

1-200 Section 2 --- Relationships with the Government Accountability Office

1-201 Introduction

This section contains procedures and guidance on: (1) relationships between DCAA and the Government Accountability Office (GAO), (2) granting the GAO access to DCAA audit records and files, (3) submitting information and comments to Headquarters for replies to GAO reports, and (4) coordinating DCAA and GAO activities to ensure effective working relationships. Relationships with members of Congress and Congressional committees are discussed at 1-410.

1-202 Relationship --- DCAA and GAO

a. The GAO has broad authority for conducting audits and investigations to enable the Comptroller General of the United States (Comptroller General), as an agent of Congress, to determine whether executive departments and Government agencies properly discharge their financial responsibilities. In connection with the audit of the procurement function, the GAO is granted access to contractors' records by law and by contract provisions. DoD personnel at all levels will cooperate fully with representatives of the GAO.

b. The Executive Officer (DX) monitors and coordinates all GAO matters in accordance with DoD Instruction (DoDI) 7650.01, Government Accountability Office (GAO) and Comptroller General Requests for Access to Records; DoD Instruction 7650.02, Government Accountability Office Reviews and Reports, and DoD Directive 7650.3, Follow-up on GAO, DoD Inspector General (DoDIG), and Internal Audit Reports.

1-203 GAO Access to Records and Files

a. When requested by GAO, furnish audit reports and associated working papers in accordance with DoDI 7650.01; DCAAR No. 5205.1, DCAA Information Security Program; and the procedures below. Advance approval of regional offices or Headquarters is not required, provided that the GAO has notified the Secretary of Defense and DCAA of the review and has conducted an entrance conference with DoD officials.

b. Do not furnish non-DoD agency reports, military department reports, non-DoD Inspector General reports, or criminal investigation organization reports (including the FBI) unless approved by DCAA Headquarters. This restriction also applies to summaries of such reports.

c. Promptly submit pertinent information to the Regional Director or the Director, Field Detachment and Headquarters, ATTN: DX. Identify the information furnished to GAO.

1-203.1 Access to Audit Records and Files on Completed Audits

a. When requested, grant GAO representatives unlimited access to audit records and files applicable to completed audits. This includes access to files on all types of system surveys, audit programs, working papers, correspondence on cost allowances, notices of cost suspended or disapproved, contracts, and audit reports.

b. Cooperate with GAO representatives by providing copies of existing reports and other documents. When furnishing contractor proprietary information to the GAO (e.g., documents marked For Official Use Only (FOUO) or documents that are believed to contain

contractor proprietary data), include the following statement in the transmittal memorandum:

"Please be advised that the contractor financial and accounting system information contained in this [letter / report / enclosure] is considered proprietary by the company and should not be released to the public. The information made available to you in this [letter / report / enclosure] contains financial data furnished to the Government in confidence. Such information must be protected from unauthorized disclosure under 18 U.S.C. 1905. For this reason, the [letter / report / enclosure] has been marked FOR OFFICIAL USE ONLY."

c. FAOs should also cooperate with GAO representatives in the completion of questionnaires dealing with DCAA's audit responsibilities and performance. Refer GAO questionnaires that require the preparation of extensive analyses or schedules or would require significant audit resources to Headquarters, ATTN: DX. (Also see b above and 1-203.4 below.)

d. Encourage the GAO representatives to perform their analytical effort onsite, both to minimize the use of DCAA resources and to enable the auditor to explain or clarify data if required.

1-203.2 Access to Audit Working Papers Relating to Incomplete/In-process Assignments

FAOs may grant the GAO access to any factual data contained in the records or files. However, FAOs should dissuade the GAO representative from examining audit working papers relating to incomplete/in-process audits, because any audit conclusions included therein are tentative and do not represent the official DCAA position until the audit is completed. If the GAO insists on examining working papers related to incomplete/in-process audits, elevate the matter to the Regional Director or the Director, Field Detachment to attempt to dissuade until such time as the audit is complete and reviewed by management. If the Regional Director cannot dissuade the GAO from examining working papers related to incomplete/in-process audits, the issue should be elevated to Headquarters, ATTN: DX.

1-203.3 Access to Audit Records on Replies to GAO Reports

Refer GAO requests for access to copies of correspondence or memorandums prepared to assist DCAA Headquarters and military departments or agencies in the formulation of an official reply to a GAO draft report or final report to Headquarters, ATTN: DX. This information requires special consideration because it does not represent the final position of DCAA or the military department or agency concerned with the report.

1-203.4. GAO Requests for Audit-Related Information and Non-Audit-Related Information

a. The GAO may request an FAO to use its access rights to obtain and/or validate contractor information that is not otherwise required by the FAO in carrying out DCAA's audit mission. The information could be either (1) audit-related (e.g., the GAO

asks that a postaward audit be done on a contract not selected by the FAO) or (2) non-audit-related (e.g., the GAO asks the FAO to complete a survey instrument or gather information for the purpose of statistical aggregation, and the information requested is not necessary for performing DCAA's audit functions). Written confirmation of the request for assistance will be furnished to the GAO within seven working days of receipt. The GAO request should be provided to the Regional Director or the Director, Field Detachment, and Headquarters, ATTN: DX with the agreed to course of action to be taken.

b. FAOs should generally accept and respond to requests for audit-related information taking into consideration the following: (1) Government's overall policy to have one contract audit face to the contractor and to avoid duplication of Government audit effort when possible, (2) DCAA resources required to fulfill the request, and (3) impact that acting on the request would have on meeting current audit requirements.

c. Except as noted below, FAOs should generally not accept and respond to requests to obtain non-audit-related information from contractors. Instead, the FAO should ask the GAO to have the contractor directly respond to such requests. An exception to this policy is when the non-audit information requested by GAO can be readily retrieved from the FAO's files, and the contractor has no objection to the release of the information. In these cases, FAO's should provide the GAO with requested information. If the GAO obtains non-audit information directly from contractors, the FAO will, upon request of the GAO, assist the GAO in the evaluation or validation of that information. When in doubt as to how best to handle a given GAO request for non-audit information, FAOs should contact the Regional Special Programs Division for guidance.

d. Promptly forward copies of all correspondence, memorandums of conversations, and reports prepared in response to such requests to Headquarters, ATTN: DX, with copies to the cognizant regional office.

1-204 Replies to GAO Reports

a. GAO reporting on defense contracting is primarily accomplished through: (1) reports (draft and final) issued by its headquarters office and addressed to the Secretary of Defense, the Secretaries of the Military Departments, or heads of Defense agencies; (2) letter reports issued by GAO regional offices directly to officials of field activities of the Military Departments or DoD agencies, and (3) congressional testimony.

b. DCAA is routinely requested to submit comments and participate in formulating the official DoD position on the cost aspects and related recommendations in GAO reports issued on defense contractors and on contract audit matters. In cases where DCAA Headquarters or other DCAA organizational element is providing comments, that element will often require (and therefore solicit) input from regional and FAO activities. (Also see 1-203.3 and 1-203.4 above.)

1-204.1 Replies to GAO Headquarters Reports

a. These reports generally pertain to defense contracting. They are initially submitted in draft form with a request for an official response and comments. The response is usually incorporated in the final GAO report.

b. The DoDIG) refers all proposed responses to GAO Headquarters reports related to procurement or contract audit matters to DCAA Headquarters for concurrence or comment. DCAA Headquarters will provide a response to the DoDIG.

c. In advance, Headquarters reviews GAO reports that may require comment. The cognizant Headquarters element will immediately transmit the report to the regional office(s) and FAO(s) involved if field action or input is required. The cognizant regional office or FAO will prepare the field office response in accordance with paragraph d. below and any special requests stated in the Headquarters transmittal.

d. Regional offices or FAOs will review and evaluate the factual information, the surrounding circumstances, and the conclusions presented in the report. Comments should be made on any corrective action taken or proposed. In addition, note any GAO report statements that are not fully compatible with audit findings or on which information is not available. To minimize elapsed time, conferences with the GAO review team may be necessary. In this case, make an appropriate request to the local GAO office or to the cognizant Headquarters element, depending on the origin of the GAO report.

e. In some cases, the primary action office requests Headquarters to perform audits or examine specific contractor records to aid in formulating the DoD position on a GAO report. In these instances, Headquarters will establish a firm due date for the response and forward the request directly to the field audit office, with copies to the regional office. Submit the field audit office's reply to the cognizant Headquarters element with a copy to the regional office.

f. Field audit offices may receive direct requests from procurement or contract administration field components for audit service on specific GAO reports. Promptly forward copies of all correspondence, memorandums of conversations, and reports prepared in response to such requests to Headquarters, ATTN: DX, with copies to the cognizant regional office.

g. Procedures for responding to GAO reviews are set forth in DCAAI 7050.2, Responding to Oversight Reviews. Procedures for monitoring compliance with GAO recommendations are set forth in DCAAR 7640.12, Follow-up on Audit Reports Concerning Defense Contract Audit Agency Operations.

1-204.2 Replies to GAO Letter Reports

a. GAO may issue letter reports on defense contracting directly to officials of field activities of DoD agencies or the military departments. Letter reports include any written communication from GAO requiring written response. These reports generally relate to matters of less significance than GAO Headquarters reports. They are addressed to the particular field activity responsible for the matters reported upon or for the implementation of any recommendations contained in the report. Thus, letter reports may be addressed to field procurement or contract administration offices or to DCAA field offices.

b. Prepare responses to GAO letter reports for the signature of the regional director. To assure uniformity in responses and conformity with DCAA policy, submit drafts of the proposed responses to Headquarters, ATTN: DX for concurrence prior to issuance. When necessary to meet a deadline, concurrence of Headquarters DX may be obtained by telephone.

c. FAOs may receive requests directly from a field procurement or contract administration office for audit information in connection with their responses to letter reports that were addressed to them. Honor such requests pertaining to contract audit responsibility. Prepare the response for the regional director's signature and reply directly to the requesting activity.

Forward copies of all correspondence and reports prepared in response to such requests to Headquarters, ATTN: DX.

1-204.3 Congressional Testimony

a. GAO reports on defense contracting through testimony presented before Congress. Occasionally DCAA Headquarters is requested to analyze the testimony in advance for factual accuracy and concurrence. These requests often have a short response time, and regional or field office input is usually not feasible.

b. Procedures to be followed in providing testimony to Congress are set forth in DCAAR 5030.16, Supporting Congressional Requests for Information.

1-204.4 Explanations of Delays in Submission of Responses to GAO Reports

Promptly submit an interim reply to the cognizant Headquarters element, with a copy to the regional office, when a complete response cannot be submitted by the established due date. State the specific reasons the due date cannot be met and the estimated time needed to complete the evaluation. Address as many of the report findings, conclusions, and recommendations as possible.

1-205 Liaison Between DCAA and Government Accountability Office Activities

DCAA will maintain liaison with GAO at the headquarters and/or regional levels to establish an effective working relationship. This is not intended to diminish or detract from the statutory and executive responsibilities, functions, or independence of either GAO or DCAA. Headquarters, DX will act as the primary liaison between DCAA and GAO to (1) resolve field operating problems requiring Headquarters attention, (2) coordinate GAO studies affecting the contract audit area, and (3) exchange ideas and training material in connection with improving performance of the two agencies.

1-205.1 GAO Reviews Affecting DCAA

a. Except for congressional requests, GAO regional directors are expected to inform DCAA of the scope of GAO planned and in-process reviews concerning contractors under DCAA audit cognizance. GAO generally contacts DCAA at the start of every review, conducts an exit conference at the end of such reviews, and furnishes a copy of the draft and/or final report. Before providing access to the GAO reviewer, determine that the review has been properly coordinated in accordance with DCAAI 7050.2, which also contains detailed procedures for supporting oversight reviews affecting DCAA.

b. When the GAO is involved in reviews of DCAA or in audits at contractor plants under DCAA cognizance, work closely with the GAO to assure that there is proper understanding of DCAA objectives and methods to avoid GAO duplication of our work and to determine reliance to be placed upon the work of the GAO (see 4-1000).

c. Provide written notification to the Regional Director or the Director, Field Detachment and Headquarters, ATTN: DX, of all GAO visits to FAOs or contractor sites.

d. As required by DCAAI 7050.2, a GAO reviewed FAO will provide a written memorandum of significant issues to the Regional Director or the Director, Field Detachment

within ten working days of an oversight visit. The region will forward the FAO's memorandum to Headquarters, DX, within five additional working days.

1-300 Section 3 --- Audit Services for Non-DoD Agencies**1-301 Introduction**

This section provides guidance for performing audit services for non-DoD agencies. The underlying audit policies, procedures, and support requirements pertaining to such services are presented in 15-100.

1-302 General Rules for Establishing Cognizance and Accepting or Rejecting Non-DoD Requests

a. Federal agencies are required to establish audit cross-servicing arrangements when doing so is in the best interest of the Federal Government and the organization being audited. Normally, the agency with the predominant financial interest should arrange for all audits at an organization. Department of Defense implementing guidance is provided by DoDI 7600.02, "Audit Policies." Thereunder, contract audit services may be provided to other Federal agencies upon request, with reimbursement at cost, as prescribed by the Under Secretary of Defense (Comptroller).

b. Cross-servicing arrangements have been made through memorandums of understanding (MOU) with various non-DoD agencies under the OMB criteria and DoD implementing guidance.

c. There are many Federal agencies with which DCAA has not established MOUs or had any contact concerning audit cognizance. Should DCAA auditors become aware of contract audit effort being performed by or on behalf of other Federal entities at contractor locations where DCAA is the cognizant contract audit agency, they should advise DCAA Headquarters, Attention: OWD, through their regional offices.

d. Any non-DoD agency request concerning a change in audit cognizance or related matters should be addressed to DCAA Headquarters, Attention: OWD.

e. DCAA is responsible for determining the scope of audit, including the manner and level of effort necessary to provide complete contract audit coverage at a contractor location. The Contract Audit Manual will be the determining guide for the conduct of audits. Complete contract audit coverage may include examinations of internal controls and of contractor accounting and financial management systems considered necessary to satisfy government auditing standards, as incorporated in Comptroller General of the United States "Government Auditing Standards," (Yellow Book). When possible, auditors should be responsive to any additional coverage suggested by the requesting agency.

f. Audit working papers prepared during the course of audits for Federal agencies are the property of DCAA and will generally remain in the possession of the auditor. However, they will be made available for review by properly authorized procurement and other representatives of the Federal agencies for which the audit services were performed. If audit cognizance is transferred from DoD to another Federal agency, audit files may be released to the successor agency if (1) the files are no longer required by DCAA, (2) the files will benefit the agency in carrying out its audit responsibilities, and (3) there are no restrictions on the release of the files, e.g., SIC and classified. FAOs should keep a record of files transferred. Audit folders or other documents which are still required by DCAA may be copied by the successor agency provided they meet the above criteria. However, prior to the actual transfer of audit files, the instructions contained in DCAAM 5015.1 Chapter 4, paragraph B.3, must be followed.

- g. Audit reports will be addressed in the manner prescribed in 10-207.
- h. The auditor's responsibility for attending negotiation conferences requested by non-Defense procurement officials is essentially the same as that outlined in 15-400 for Defense procurement officials. The auditor will also be responsive to inquiries and personal visits from representatives of non-Defense agencies concerning the status and performance of requested audits. The objectives of such personal visits should be to seek information and to discuss mutual problems. They are not to be used to supervise and/or evaluate the performance of the audit.
 - i. Responsibility for follow-up of DCAA audit recommendations and reviews of program results remain with the non-DoD agencies for which audit services are performed.
 - j. Field activities will prepare reimbursable billings in accordance with the requirements of the DMIS User Guide.

1-303 Processing Non-DoD Agency Requests for Audit Information or Services

a. DCAA will be responsive to requests received from Government agencies outside the Department of Defense for information available in the audit files when the circumstances clearly show that the inquirer is entitled to the requested information. There is a presumption of entitlement if the requesting agency has a contract or is proposing to contract with the contractor and the information desired is related to the negotiation or administration of that contract. Requests for specific cost information which are readily available without audit effort will be accommodated without reimbursement. If the auditor has any doubt as to whether the requesting agency is entitled to the information, the auditor must obtain clearance from the contractor before releasing any specific cost or financial data, such as overhead rates. A request for cost or financial data, written material, or access to working papers or audit files by a non-Defense agency, except for the Internal Revenue Service, which pertains to a matter (except an investigation or litigation) unrelated to the negotiation or administration of a contract by the requesting agency, will be referred to Headquarters, Attention: PAS, for consideration. The referral will include all pertinent details, such as the names of the representatives involved, a summary of the information requested, purpose of the request, a summary of any discussions held with respect to the information desired, and any other pertinent observations. See 1-405 for guidance when requests by a non-Defense agency pertain to a matter involving an investigation or litigation; see 1-408 for all requests by the Internal Revenue Service.

b. Cross-servicing agreements with non-DoD agencies provide for audit requests to be forwarded directly to the cognizant field office. Audit requests will be honored at locations where DCAA maintains a continuing audit interest under DoD contracts.

c. A request for audit services to be performed at a contractor location where DCAA does not have a continuing audit interest is considered a "casual audit request." A continuing DCAA audit interest exists at any location where DCAA has performed audit effort on a continuing basis over the past several years, whether the contracting agency is affiliated with DoD/NASA or not.

d. Except for those agencies identified in DMIS User Guide, requests for audit services at locations where DCAA does not maintain a continuing audit interest will be referred to the Regional Audit Manager. Seasoned professional judgment and common sense must be applied to each casual audit request in making a decision as to whether or not to accept the

audit engagement. The following criteria will be used to determine whether to accommodate or decline a request:

- (1) Is the requested service compatible with normal DCAA responsibilities?
- (2) Would acceptance or refusal to perform the work result in establishment of duplicative audit activity?
- (3) Is another Government agency performing audit work at the contractor location that could perform the requested audit?
- (4) The extent and cost of DCAA TDY travel that would be required to honor a casual audit request should be a key factor. If honoring the request would require the incurring of TDY travel time and costs, it may be just as efficient for the requesting agency to make other audit arrangements. In addition, if the requesting agency maintains a local audit organization, rejection may well be the appropriate response.
- (5) It is important to consider the type of audit being requested and the contract audit capabilities of the requesting agency. For example, if a price proposal examination is requested, we should consider the nature of the proposed services or products, the urgency of the procurement, and the ability of the requesting agency to arrange for adequate timely contract audit service.

A regional determination that a casual audit request should be accepted will be coordinated with Headquarters, Attention: OAL.

e. When requested to provide audit services that include auditing indirect cost rates, auditors should remember that 10 U.S.C. 2313(d), 41 U.S.C. 4706(e) and FAR 15.404-2(c)(2) and 42.703-1(a) provide that contracting officers are required to determine whether a previously conducted audit of indirect costs meets the current audit objectives for indirect costs on executed contracts, subcontracts, or modifications and on a pre-award basis. Federal Agencies are not to conduct duplicative audits for the same objectives. This means that, where DCAA has audit cognizance, other agencies should not perform audits of indirect costs which duplicate the DCAA audits and that DCAA should not perform audits of indirect costs which duplicate the audits of other Federal Agencies. In situations where auditors find potential duplicative requests for audits of indirect costs, auditors should exercise professional judgment in analyzing the requests, identifying pertinent facts, and communicating the facts to the requestor. Requests which cannot be satisfactorily resolved should be reported to regional offices. Requests which regions cannot resolve should be reported to Headquarters, Attention: OAL.

f. When an auditor observes the presence of non-DoD contracts subject to audit coverage for which audit requests have not been received, they will be brought to the attention of appropriate non-DoD agency officials, to facilitate issuance of requests for audit.

g. Regional offices will notify Headquarters, Attention: OAL, of audit requests from non-DoD agencies not identified in the DMIS User Guide. Such requests must be processed promptly, since the requesting agency will need to make other arrangements if DCAA does not agree to accept the engagement. Typically, such work will be accepted if the audit effort falls within the normal scope of DCAA work and the requesting agency agrees to pay for the audit effort.

h. All audit requests should be promptly responded to in writing (see 4-104 for the content and format of the Acknowledgment letter). The response should state whether DCAA will accommodate or decline the request. If the request is declined, the reasons should be stated. If the request is accepted, the response should include the anticipated audit report date.

i. Based on prior agreements, DCAA will perform all contract audit work requested by NASA. DCAA has also agreed to perform contract audit work at all DOE prime contractor locations other than those designated as Management and Operating Prime Contractors.

1-400 Section 4 --- Relationships with Other Government Organizations

1-401 Introduction

This section provides guidance and procedures governing relationships with other Government organizations.

1-402 General

Other Government personnel may communicate with DCAA personnel on official business. In all cases, the identity of the individual and his or her need to know should be established prior to furnishing any information either written or oral. Appropriate security precautions should be observed with respect to both classified military information and contractor information.

1-403 Relationships with DoD Procurement and Contract Administration Organizations

1-403.1 DCAA Responsibilities to Procurement and Contract Administration Organizations

a. As the audit and financial advisor to procurement and contract administration activities, auditors must understand and support the service needs of these organizations. DCAA is committed to providing timely and responsive services and will maintain communications and liaison services sufficient to continuously assess if customer needs are being met.

b. Organizationally, DCAA is separate and independent from acquisition components of the DoD. Auditors are expected to exercise independent judgment in planning the type and extent of audit testing sufficient to render unqualified audit opinions, but will consider and address special areas of concern or informational needs of requestors. The auditor will also exercise independence in the formulation of audit opinions, recommendations, and conclusions contained in audit reports.

c. Government interests can best be served by maximum cooperation and exchange of useful information between audit and procurement personnel. DoD Instruction 7600.02 requires that DCAA coordinate annual contract audit plans with procurement and contract administration organizations. Effective liaison between the DCAA auditor and the contracting officer's representatives, and a clear understanding of the respective responsibilities of each in the overall procurement function, are essential. To ensure continuous close cooperation, DCAA should give procurement personnel timely notification of any significant changes in audit plans.

d. Regulations of the military departments and DLA require the contracting officers' representatives to use advisory audit services to the fullest extent practicable and to aid audit performance by furnishing the auditor with appropriate administrative and technical assistance. Appendix D of this manual refers to the procedures whereby the auditor obtains technical assistance and guidance which may be required in the evaluation of a contractor's proposal. For those contractor locations where there is a significant and continuing volume of audit workload, e.g., audit residency or suboffice, the auditor should establish an effective working relationship with the major field contract administrators to keep each other in-

formed on procurement and audit matters including forthcoming contractor proposals which will require audit services.

1-403.2 Procurement and Contract Administration Responsibilities to DCAA

Procurement and contract administration personnel have responsibility for the following:

- a. Requesting contract audit service.
- b. Providing sufficient time for the performance of the audit.
- c. Furnishing to the auditor, in connection with a request for audit, copies of any contracts (including change orders, supplements, amendments, and termination notices), cost statements, proposals, and other financial data submitted by contractors or, as appropriate, requested by the auditor.
- d. Establishing access to contractor records required by auditors.
- e. Furnishing such other information, data, or service as may be required (such as technical evaluation of the need for the quantity and type of labor and material proposed in contract pricing actions) or otherwise may be useful in performing the audit.

1-403.3 Resolving Contract Audit Recommendations

a. DCAA audit report recommendations may lead to disagreements between the auditor and the contracting officer. When disagreements occur, the auditor should maintain communications with the contracting officer to improve the potential for a satisfactory resolution of the issue prior to contract negotiations.

b. On December 4, 2009, the Director of the Defense Procurement and Acquisition Policy (DPAP) issued a policy memorandum outlining a process for resolving significant contract audit recommendations. DoD Components have established corresponding policies and procedures implementing the policy. DCMA has established the Contract Management Board of Review process that essentially implements the DPAP policy (see 1-403.4).

(1) The DPAP Policy places the responsibility upon the contracting officer to discuss significant disagreements with the auditor prior to negotiations. For any significant disagreements that exist after these discussions, the contracting officer is required to document the discussion and the basis for the disagreement in the pre-negotiation objective and in a written communication to the auditor (e.g., an email confirming the discussion or a copy of the applicable portion of the pre-negotiation objective). DCAA's management may request that the DoD Component's management review the decision. The request should occur within three business days of receiving the contracting officer's written communication. Therefore, it is imperative that upon receipt of the contracting officer's communication, the auditor immediately discuss the basis of disagreement with the Supervisory Auditor and FAO Manager to ascertain the need to elevate the issue to a higher level of management.

(2) While the DPAP Policy defines significant disagreements in the context of audits of forward pricing proposals (i.e., when the contracting officer plans to sustain less than 75 percent of the DCAA questioned costs from a proposal valued at \$10 million or more) the policy also provides that the DCAA Director may elevate any disagreement which he believes requires further attention. Examples of circumstances below the threshold that the DCAA Director may choose to elevate include those of high interest to the department or those which could establish a precedent.

c. Auditors should discuss all significant disagreements (i.e., not limited to forward pricing) with the contracting officer and attempt to resolve the issues at the lowest level possible. Should those discussions not result in a resolution, the process for elevating would begin with the FAO Manager discussing the basis for DCAA's disagreement with the contracting officer's higher-level management. If unresolved, the disagreement should continue to be elevated. Ultimately, the Regional Director should attempt to resolve the disagreement directly with the Component's Senior Executive or Flag Officer in the contracting officer's chain of command. In those cases where the disagreement remains unresolved, Regional Directors should elevate the disagreement to Headquarters, Policy and Plans Directorate, for resolution with senior leaders in the Department. It is important that the information forwarded to Headquarters is complete and has been reviewed by the Regional Director. Incomplete submissions will be returned to the Region for additional action resulting in delaying the resolution of the disagreement. The following are examples of items to include in the submission to Headquarters; however, it is not an all inclusive list:

- Audit Reports and/or other documents related to the disagreement (to include monetary amounts involved when feasible);
- Timeline that details all actions taken to resolve the issues and result of each action;
- Documentation of all meetings, which will include the names and titles of all participants and a summary of the discussion; and
- All correspondence between DCAA and the Government official's management chain.

1-403.4 DCAA Participation on DCMA Contract Management Boards of Review

a. DCMA has established procedures to review and approve selected contract actions. The purpose of the Board of Review procedures is to ensure reasonable exercise of judgment and adequate documentation in support of final contract decisions. Those procedures including a listing of the contract actions subject to Board Review are available at <http://guidebook.dcma.mil/282/index.cfm>. In addition to the contracting actions listed in its procedures, DCMA requires board review of any high risk, controversial, or precedent-setting contracting action, regardless of transaction type or dollar value. When a contracting action is subject to Board review, the ACO shall obtain Board approval before negotiating or taking any action to settle the issue.

b. Auditor Participation on DCMA Contract Management Boards of Review

The DCMA Board of Review procedures specify that DCAA may participate as advisory members. DCAA supports the DCMA Board of Review procedures as auditor participation in review board activities has proven beneficial in many instances. DCAA will only serve in this advisory capacity in support of issued DCAA audit reports and DCAA Forms 1.

c. Processing Requests for Participation

Requests may be received by Headquarters, regional offices, or field audit offices to furnish audit personnel to participate on review boards. The Assistant Director, Policy and Plans, is responsible for action on requests for board participation by Headquarters personnel. The cognizant regional director is responsible for action on requests for board participation by regional office and FAO personnel.

d. Documenting Participation on Boards of Review

The auditor should prepare a memorandum for the record (MFR) to document his/her participation and the results of the Board of Review. File the MFR in Livelink in the same folder with the official audit working paper files (see 4-407e(9)).

1-403.5 Signing Certificates of Non-Disclosure and Statements of Financial Interest

Source Selection Authorities (SSA) from various Service program offices may ask FAO auditors and Financial Liaison Advisors (FLAs) to sign Certificates of Non-Disclosure and Statements of Financial Interest to acknowledge understanding of the requirements set forth in FAR 3.104-4, "Disclosure, Protection, and Marking of Contractor Bid or Proposal Information and Source Selection Information." However, FAO auditors should not be required to sign a non-disclosure agreement. In accordance with 1-507, DCAA auditors are required to perform audits in such privacy as warranted under the circumstances, and provide all necessary safeguards to contractor confidential data at all times. Therefore, FAO auditors are already required by 18 U.S.C. 1905 and Agency policy to protect contractor data from unauthorized disclosure. It is permissible for FLAs advising on Source Selection Evaluation Boards (15-304.10) to sign such certificates as they may have access to all of the bidders' source sensitive information.

1-403.6 Improper Payments and Payment Recapture Audits

a. The Improper Payments Elimination and Recovery Act (IPERA; Pub. L. 111-204) amended the Improper Payments Information Act of 2002 (IPIA; Pub. L. 107-300) and generally repealed the Recovery Auditing Act (Section 831, Defense Authorization Act, for FY 2002; Pub. L. 107-107). IPERA also directed the Office of Management and Budget to issue government-wide guidance on the implementation of IPERA which is now contained in Parts I and II to Appendix C of OMB Circular A-123, Management's Responsibility for Internal Controls. Significant components of OMB's guidance include: describing alternative improper payment measurements; expanding payment recapture audits to all types of payments and activities with more than \$1 million in annual outlays if cost effective; improving corrective action plans and incorporating lessons learned from the Recovery Act implementation; distributing funds recovered through payment recapture audits for authorized purposes; and establishing compliance reviews and requirements for agencies deemed non-compliant. A Payment Recapture Audit is a review and analysis of an agency's or program's accounting and financial records, supporting documentation, and other pertinent information supporting its payments. It is not an audit in the traditional sense. Rather, it is a detective and corrective control activity designed to identify and recapture overpayments, and, as such, is a management function and responsibility.

b. DoD maintains an extensive post-payment process for identifying improper payments and utilizes review techniques performed both internally and by payment recapture auditing contractors paid from the proceeds actually recovered. Since the focus of these audits is the DoD Component's books and records, DCAA would not normally become involved in payment recapture audit effort. DCAA performs contract audits of the books and records of a Federal contractor pursuant to the allowable cost and payment clause at FAR 52.216-7 incorporated into the contract. As distinguished from the payment recapture audit a contract audit is normally performed for the purpose of determining if amounts

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claimed by contractors are in compliance with the terms of the contract and applicable laws and regulations.

Figure 1-4-1
Certificate of Non-Disclosure Statement

I acknowledge that [*insert name of program office*] has provided me with contractor proprietary and source selection information to enable me to perform my official duties.

As required by FAR 3.104, I agree not to divulge, publish, or reveal by word, conduct, or any other means, any such information to any other person, except in accordance with applicable law and regulations.

I also understand that I must exercise appropriate care to safeguard such information against unauthorized disclosure, and I will promptly report any mishandling, loss or unauthorized disclosure of contractor proprietary information of which I am aware to my supervisor, the Source Selection Authority (SSA), and/or the [*insert program name*] Security Director.

I understand that information marked "Competition Sensitive" must be handled as contractor proprietary or Government non-public information, as applicable.

I understand that failure to comply with this policy may result in penalties.

If an actual or potential conflict of interest (as described in Title 5, Code of Federal Regulations (CFR), Part 2635, "Standards of Ethical Conduct for Employees of the Executive Branch," and implementing Department of Defense regulations) arises in connection with my access to, or use of, any contractor proprietary information provided to me by the [*insert name of program office*]. I will promptly report such actual or potential conflict of interest to my supervisor.

[Signature of FAO Auditor]

Name of FAO Auditor
Title of FAO Auditor
FAO Name
FAO Address
FAO Telephone No.

1-404 Relationship with DoDIG and Other Executive Branch Internal Audit Organizations

1-404.1 Organizations for Government Internal Audit

a. The DoD Inspector General is responsible for DoD level internal and oversight audits and investigations. Responsibilities of the DoDIG include (1) evaluating activities relating to contract audits; (2) investigating fraud, waste, and error; (3) monitoring adherence to contract audit principles, policies, and procedures; and (4) monitoring actions taken by DoD components in response to contract audits.

b. Internal audit, oversight, and investigative services are performed by the offices of the Assistant DoDIGs for Auditing and Investigations and the Director for Departmental Inquiries. DoD component internal audit organizations include the Army Audit Agency, the Naval Audit Service, and the Air Force Audit Agency. The various Military Services also have additional internal review and audit groups such as the Inspector Generals of the Army, Navy and the Air Force. Most non-DoD agencies have similar activities for the performance of internal audit within their organizations. The following guidance also applies to non-DoD executive agencies.

1-404.2 DCAA Assistance to Government Internal Audit Organizations

a. When internal audits require verification of contractor data or records at contractors' plants, the internal audit organization normally will obtain fact-finding assistance from DCAA.

b. Support will be furnished to the internal auditor where doing so does not conflict with the contract auditor's basic role of providing advisory services to contracting officers. Requests requiring contract auditors to evaluate contracting officers' performance are inappropriate, whereas assistance concerning contractors' performance is appropriate.

c. Contract audit working papers, reports, and files relating to completed assignments will be made available to internal auditors in their audits of procurement, contract administration or related functions, provided DCAA has received written notice of the objective and the scope of the internal audit evaluation. However, FAOs should dissuade auditors from examining working papers relating to incomplete/in-process audits, because any audit conclusions included therein are tentative and do not represent the official DCAA position until the audit is completed. If the internal auditor insists on examining working papers related to incomplete/in-process audits, elevate the matter to the Regional Director or the Director, Field Detachment to attempt to dissuade until such time as the audit is complete and reviewed by management. If the Regional Director cannot dissuade the internal auditor from examining working papers related to incomplete/in-process audits, the issue should be elevated to Headquarters, ATTN: DX. DoDIG's right of access to DCAA records is set forth in DCAAI No. 7050.1.

d. Government internal audit organizations, on occasion, may request an FAO to use its access rights to gather and/or validate information that is not otherwise required by the FAO in carrying out DCAA's audit mission. The information could be either (1) audit-related (e.g., the DoDIG asks that a post-award audit be done on a contract not selected by the FAO) or (2) non-audit-related (e.g., the DoDIG asks the FAO to com-

plete a survey instrument or gather information for the purpose of statistical aggregation). Written confirmation of the request for assistance will be furnished to the internal auditor within seven working days of receipt. The request should be provided to Headquarters, DX through the Regional Director, or the Director, Field Detachment with the agreed to course of action to be taken.

e. FAOs should generally accept and respond to requests for audit-related information; however, several factors should be considered before doing so. These factors include the (1) Government's overall policy to have one contract audit face and avoid duplication of Government audit effort when possible, (2) DCAA resources required to fulfill the request, and (3) impact that acting on the request would have on meeting current audit requirements. DoD internal auditors are required by DoD audit policy to coordinate all audits involving contractor records with DCAA and the appropriate contract administration office to avoid duplication of audit work.

f. Except as noted below, FAOs should generally not accept and respond to requests for non-audit-related information. Instead, the FAO should ask the internal audit organization to have the contractor directly respond to such requests. An exception to the preceding guidance is when the non-audit information requested by the internal auditor can be readily retrieved from the FAO's files and the contractor has no objection to the release of the information. In these cases, FAO's should provide the internal auditor with the requested information. When in doubt as to how best to handle a given request for non-audit information, FAOs should contact their Regional Special Program Division for guidance.

g. Supplement 1-4S1 presents illustrative audit situations involving interface between contract and internal audit organizations.

1-404.3 Government Internal Audit Organization Assistance to DCAA

In certain instances, contract audits involve work at a defense installation or remote location where the nature of the work, proximity of an internal audit office, or other factors make it more practical or economical for the contract auditor to obtain assistance from a Government internal auditor. Such cross-service audit assistance shall be referred to DCAA Headquarters, ATTN: DX, for a determination before the request is issued.

1-404.4 Interfacing with Government Internal Audit Organizations

a. This section deals with requests for assistance from Government internal audit organizations. Oversight reviews are discussed in 1-404.5.

b. Requests from Government internal audit organizations are normally coordinated through DCAA Headquarters, DX who will notify the cognizant Headquarters division. That division, in turn, will notify the affected Regional and field office(s). Regional and field offices may receive requests for audit assistance directly from the internal audit organization without prior Headquarters coordination. When such requests are limited in nature, e.g., factual information at a specific location, Headquarters need not be notified. However, all other requests should be referred to Headquarters, DX, before any action is taken.

c. During the course of visits or telephone contacts by a Government internal audit organization, the FAO manager should answer questions raised and tactfully clarify or

correct any misinterpretation of factual information. Discussions with representatives of the Government internal audit organization should be limited to factual matters related to specific DCAA audits and/or the management of those audits. Matters regarding overall Agency policy, operations or resources that are not covered in published Agency guidance should be referred to Headquarters, Attention: DX.

d. The FAO manager should promptly report to the Regional Director or the Director, Field Detachment the results of any Government internal audit organization's visit or telephone contact. If DCAA's response has been limited to providing access to or copies of pre-existing material, the FAO manager's report need only identify the general nature of the materials provided. If DCAA has been asked to prepare additional materials for the Government internal auditor's use, the FAO should comply with the region's instructions regarding appropriateness of such activity.

1-404.5 Oversight Reviews

a. Oversight reviews are coordinated through DCAA Headquarters, DX, which will notify the Headquarters division cognizant of the review's subject area. Before providing access to an oversight reviewer, determine that the review has been properly coordinated in accordance with DCAAI 7050.2. Oversight organizations, particularly the DoDIG, may request answers to questions arising from their visits to DCAA field elements.

b. Provide written notice to the Regional Director or the Director, Field Detachment and Headquarters, ATTN: DX, of all oversight visits to FAOs or contractor sites.

c. As required by DCAAI 7050.2, a reviewed FAO will provide a written memorandum of significant issues to the Regional Director or the Director, Field Detachment within ten working days of an oversight visit. The information in the memorandum should be limited to factual data relating to the oversight reviewer's observations on the specific audits reviewed. Matters relating to overall Agency policy, operations or resources should be separately referred to Headquarters, Attention: DX, and should not be commented on in the memorandum. The region will forward the FAO's memorandum to Headquarters, DX within five additional working days.

d. When interim DCAA responses to field visits are required, regions are responsible for receiving draft responses from FAOs; preparing responses; and forwarding responses directly to the oversight organization, with a concurrent copy to Headquarters. Technical guidance and overall coordination will be available from Headquarters as required. Procedures for responding to oversight reviews are contained in DCAAI 7050.2.

1-404.6 Issuance of Audit Reports

When an audit performed at the request of an internal audit organization requires corrective action by the contractor involving such matters as unallowable costs and cost avoidance, the auditor will follow the normal procedures and issue the audit report to the cognizant ACO to assure timely corrective action. A copy of the report will also be forwarded to the requesting internal audit organization by a transmittal letter indicating that the audit report has been issued directly to the ACO. When an audit performed at the request of an internal audit organization does not require corrective action by the contractor, the audit report will be issued to the internal audit organization (see 10-207).

1-404.7 Visits by the DoDIG and Military Inspectors General

When an Inspector General of a DoD component, or his/her representative, visits an audit office, the auditor should, after satisfying himself/herself as to the identity of the individual, cooperate fully in responding to inquiries pertaining to the audit of contracts under the auditor's cognizance. Requests for sensitive information, or requests that require the assignment of an auditor for a substantial period of time, should be in writing. The auditor should report such visits to the Regional Director or the Director, Field Detachment and furnish copies of all correspondence and memorandums. Before furnishing any sensitive information, the auditor should coordinate the matter with the regional director. Unusual or significant inquiries should be reported to Headquarters, Attention: DX.

1-405 Relationship with Investigative Agencies of the Government

a. Auditors will cooperate with representatives of the Federal Bureau of Investigation, DoD criminal investigators, and criminal investigators from other agencies (See 4-702.6). Written material and access to files or working papers already in the possession of the FAO will be made readily available to such investigators. Under no circumstances is the FAO to contact the contractor or access contractor systems to obtain data or other information in support of an investigation. However, if access to working papers related to incomplete/in-process audits is provided, the auditor should notify the investigator of such, and inform them that the conclusions may not represent the official DCAA position. It is not necessary to inform the contractor when the FAO provides information to the investigators that the FAO has in its possession. Original documents may be provided to investigators if a subpoena is issued for the documents. If investigators insist upon obtaining original documents in other situations, promptly refer the matter to Headquarters, Attention: OIS. In either case, original documents cannot be released until copies have been prepared for retention by DCAA. Document all meetings with members of Governmental investigative agencies in the audit working papers or use the Electronic Contractor Permanent File (ECPF) system, folder B-07 Fraud Risk Indicators as appropriate in the circumstances. Guidance pertaining to the protection of information related to investigations is provided in 4-702.5d, (e), (f), and (g).

b. Except as otherwise provided in this section (1-400 et seq.), inform Headquarters, Attention: OIS, of any requests for written material or access to files and working papers made by representatives of other agencies (e.g., civil investigators from the DOL, EEOC, etc.). Ask that the request be put in writing, and that it include the names of the investigators, a summary of the information requested, and purpose of release. Obtain the approval of Headquarters before complying with such requests. The FAO manager may grant representatives of a civilian agency access to audit files pertaining to that agency's contracts regardless of whether the request is made in conjunction with an investigation; however, Headquarters should be notified of the visit. If the request arises under a joint investigation with an agency with access rights and the request is made by the privileged agency, Headquarters need not be notified.

c. Occasionally an investigator will interview an auditor in connection with an inquiry of contractor activities. The auditor should request to review the investigator's write-up of the interview before its release, to ensure statements have been accurately

recorded. Report investigative interviews of an unusual or important nature to Headquarters, Attention: OIS. Identify the investigative agency, name of investigator(s), summary of the questions asked, and other pertinent information. It is not necessary to report routine investigative contacts by DoD investigators. Any information discussed during interviews with an investigator should not be disclosed to the contractor.

1-406 Relationship with Government Legal Counsel in Contract Disputes, Bid Protests, and Other Matters

a. When requested, it is Agency policy to assist Government counsel in auditing matters in all contract disputes, bid protests, and other matters, whether initiated through an Agency finding or by other means. Audit support should fully respond to the needs of counsel and may consist of comprehensive audit and accounting advisory services; accounting research applicable to the specific case, including testimony relative to the audit report; or testimony as an expert on accounting and auditing practices and procedures. All work done at the request of the Government trial attorney is subject to the attorney work product privilege. As such, while DCAA may maintain custody of any documents developed while providing support to the trial attorney, control over the documents, and any decision pertaining to the release of these documents, rests with the trial attorney or his/her successor. This policy is in keeping with the Agency's assigned responsibility to provide accounting and financial advisory services to all DoD procurement and contract administration activities in negotiating, administering, and settling contracts.

b. Although control of the documents rests with the trial attorney, the DCAA auditor is responsible for their content (see 15-500, which also applies to cases before the Court of Federal Claims). Should the trial attorney attempt to obtain audit working papers prior to release of the report, the cognizant FAO should:

(1) offer to provide copies of any relevant documents and

(2) explain to the trial attorney that the audit process is incomplete until required supervisory reviews are completed.

Review of incomplete audit files may lead the attorney to draw erroneous inferences regarding the DCAA audit position. Should the trial attorney persist in a request for incomplete working papers, Headquarters, PAS, should be notified before incomplete audit files are released.

c. Under certain circumstances, trial attorneys may request DCAA auditors to sign a litigation protective order. A litigation protective order usually restricts the use of contractor information to the conduct of the trial; i.e., it could not be used for any other purpose. The restrictions could impair DCAA's audit rights and use of contractor data for all other appropriate Government purposes. Auditors approached by trial attorneys to sign a litigation protective order should not sign the order. However, if trial attorneys insist, auditors should elevate the request to their region.

1-406.1 Armed Services Board of Contract Appeals (ASBCA)

a. Details of the ASBCA Charter are found in Appendix A to the DoD FAR Supplement. The ASBCA is the authorized representative of the Secretaries of Defense, Army, Navy, and Air Force in hearing, considering, and determining appeals by contractors

from decisions of contracting officers or their authorized representatives or other authorities on disputed questions. These appeals may be taken pursuant to:

- (1) the Contract Disputes Act of 1978,
- (2) the provision of contracts requiring the decision by the Secretary of Defense or by a Secretary of a Military Department or their duly authorized representative or board, or
- (3) the provisions of any directive whereby the Secretary of Defense or the Secretary of a Military Department has granted a right of appeal not contained in the contract on any matter consistent with the contract appeals procedure.

b. Rules on submitting contractor appeals and preparing for and conducting a hearing are in Part 2 of Appendix A to the DoD FAR Supplement. These rules may vary from a case requiring the submission of a substantial amount of evidence, the presentation of witnesses, and a prehearing and formal hearing to a situation in which the hearing is waived and the case settled on the basis of the submitted record. The rules also provide for decisions of appeals involving \$10,000 or less, under an optional small claims (expedited) procedure or for appeals where the amount in dispute is \$50,000 or less, under an optional accelerated procedure.

c. The auditor will be mainly concerned with ASBCA procedures which require the contracting officer and Government trial attorney to submit a file of applicable documents and to produce documents, admit facts, and answer questions when properly requested by the other party to do so. Guidance regarding requests for such information is in DCAA Regulation No. 5410.11, *Release of Official Information in Litigation and Testimony by DCAA Personnel as Witnesses*. That regulation requires that all such inquiries be transmitted to the DCAA General Counsel (DL) and that responses not be provided without specific instructions from DL. Further details on audit procedures and responsibilities in connection with ASBCA cases are in 15-500.

1-406.2 Other Boards

In addition to the ASBCA, there are boards that service various other agencies and departments of the Government. On occasion, the DCAA auditor may be called on to assist in hearings before these boards. While the size of the board and the rules may vary, the type and degree of services an auditor must provide will generally be the same.

1-406.3 Bid Protests

a. An unsuccessful bidder or offeror for a Government contract may file a bid protest with GAO. The GAO bid protest regulations, found at 4 CFR Part 21, allow for hearings on protests. Occasionally, audit issues will arise during the course of a protest. When this occurs, auditors shall cooperate with counsel representing the Government by making records and working paper files readily available. Additionally, circumstances may occur which require the auditor to testify in such proceedings. Such testimony is permitted when requested by counsel representing the Government. If such testimony is requested by any other party, the provisions of DCAAR 5410.11 apply.

b. If the acquisition involves ADPE hardware, services or maintenance, a protest may be filed with the GSBCA or the GAO. If the protest is filed with the GSBCA, that board's rules for resolving contract disputes cases apply to bid protests as well. In such cases, the auditor will follow the guidance contained in 1-406.2.

1-407 Relationship with Component Remedies Coordinators

The head of each DoD component must establish a remedies coordinator in order to meet DoD Instruction 7050.05 (Coordination of Remedies for Fraud and Corruption Related to Procurement Activities) requirements. The remedies coordinator will be responsible for establishing procedures to develop a specific remedies plan for each significant investigation involving fraud or corruption relating to procurement activities. Under this remedies plan, appropriate DoD officials would consider all appropriate civil, administrative, and contractual remedies available to the Department of Defense, including suspension or debarment. Agency policy is to assist component remedies coordinators in developing effective remedies plans. The plan should be consistent with our mission of providing accounting and financial advice to DoD officials regarding negotiation, administration, and settlement of contracts. Further, FAO's will consider obligations imposed on a contractor by a remedies plan during the planning process. For an example, see 4-711 (Reviewing contractor compliance with administrative suspension and debarment agreements).

1-408 Relationship with the Internal Revenue Service (IRS)

a. Procurement-related requests from the IRS (Department of the Treasury) should be handled in accordance with 1-303, following 15-115 for distribution of any resulting report. The procedures contained in 1-404 should be followed regarding contacts by the IRS internal audit staff.

b. Field audit offices may receive direct requests from the IRS for records and files related to an IRS investigation or tax matters. The field audit office should coordinate IRS requests for investigative or tax information with the regional office, before providing any information of this type to the IRS. With regional approval, information related to an IRS fraud or criminal investigation, or in connection with a docketed case before the U.S. Tax Court, should be released directly to the IRS. The field audit office should request the IRS to provide information showing that the requested information relates to these situations.

c. For requests related to civil investigation or administrative inquiry, the field audit office is only authorized to release information that would normally be releasable to the general public under the Freedom of Information Act (for example, publications and most MRDs). If the requested documents would not normally be releasable by DCAA to the general public (for example, audit reports or contractor proprietary information), the region should forward the request to Headquarters, ATTN: DL, for a release determination. The region should provide Headquarters with a summary of the information requested, purpose of release, and other pertinent information.

1-409 Relationship with Members of Congress and Congressional Committees

a. DCAA personnel will cooperate with members of Congress and congressional committees by responding fully and promptly to their official requests for information on this Agency's programs and operations. All written responses and/or copies of DCAA documents will be provided directly by the appropriate Headquarters element. Detailed guidance relative to:

(1) inquiries from members of Congress,
(2) visits by congressional committees,
(3) preparation of material for testimony or use before congressional committees,
and

(4) comments on legislation and legislative matters is set forth in DCAA Regulations Nos. 5020.3 and 5030.16.

b. The Headquarters Executive Officer (DX) should be notified immediately of any inquiry from members of Congress, congressional committees, or their staffs.

c. The Headquarters Executive Officer (DX) should also be notified of any customer (Government agency) requests for assistance in responding to an inquiry from members of Congress, congressional committees, or their staffs. In these situations:

(1) DCAA audit reports and related materials prepared at the customer's request or otherwise in the customer's possession are releasable to Congress at the customer's discretion. If possible, the customer should be encouraged to include the following statement with the materials:

"Please be advised that the contractor financial and accounting system information contained in the attached [report, memo, presentation] is considered proprietary by the company and should not be released to the public. The information made available to you in this [report, memo, presentation] contains financial data furnished to the Government in confidence. Such information must be protected from unauthorized disclosure under 18 U.S.C. 1905. For this reason, the attachment has been marked FOR OFFICIAL USE ONLY."

(2) Should the customer request that DCAA update existing materials or prepare additional materials to support the customer's response to Congress, the FAO should provide the new or updated material to Headquarters, attention DX, for review by the Headquarters Executive Officer prior to releasing it to the customer.

1-409.1 Written Requests for Information

a. Written requests for information received from Congressional members or their staffs should be forwarded to Headquarters, ATTN: DX, as expeditiously as possible. When requested by Headquarters, field and regional elements will provide, through the regional director, the following information to the responsible Headquarters staff element not later than the date established by the head of the staff element:

- (1) the congressional inquiry,
- (2) a copy of any interim acknowledgment,
- (3) a copy of the requested audit report(s), if applicable,
- (4) a proposed final reply to the inquiry, and
- (5) the information upon which the proposed final reply is based.

When proposing to furnish contractor proprietary information (e.g., documents marked For Official Use Only (FOUO) or documents that the FAO/region believes contain contractor proprietary data), include the following statement in the proposed final reply:

"Please be advised that the contractor financial and accounting system information contained in this [letter / report / enclosure] is considered proprietary by the company and should not be released to the public. The information made available to you in this

[letter / report / enclosure] contains financial data furnished to the Government in confidence. Such information must be protected from unauthorized disclosure under 18 U.S.C. 1905. For this reason, the [letter / report / enclosure] has been marked FOR OFFICIAL USE ONLY."

b. When a proposed final reply cannot be forwarded to the responsible staff element within the established due date, the regional director will forward a brief memorandum stating the anticipated date that the reply and information will be provided. (See DCAAR No. 5030.16 for detailed processing requirements.)

1-409.2 Meetings with and Visits by Congressional Committees

a. Field and regional elements will immediately notify Headquarters, DX (through the regional director) of written or oral requests received from Congressional committees or their staff to visit a DCAA office.

b. In accordance with DCAAR No. 5030.16, regional and field personnel will permit committee members or their staff to examine records which pertain to areas of interest to the committee. Regional directors will refer any committee requests to remove or retain records (including audit reports and working papers) to Headquarters, DX. Headquarters, DX will coordinate receipt and transmission of requested files to the committee's offices in Washington, D.C. Requests for any other information to be provided to committee representatives will be forwarded to Headquarters, DX, within 10 working days following the visit. In any case, no information should be released until authorized by DX.

c. Field and regional elements will forward a memorandum (through the regional director) summarizing visits by Congressional representatives within five working days following the visit. The memorandum should specifically enumerate the subjects discussed during the visit, any requests for data, and questions and answers still to be provided. If a request has been made for audit reports or working papers, the memorandum should also include an assessment of the requested materials' compliance with Agency policy. If the assessment discloses any deficiencies in the reports or working papers, additional comments should be included to clearly establish the steps taken to correct the deficiency.

1-4S1 Supplement --- Illustrative Audit Situations Involving Interface Between Contract and Internal Audit Organizations

1. Audit of Japanese master labor contract.

The Defense Contract Audit Agency has responsibility for audit of contractual payments. Many of the functions relating to the contract such as the need for, utilization, classification, and control of contract employees; establishing pay and allowances in conformance with the terms of the contract; and submission of payroll data are the responsibility of Army, Navy, and Air Force activities. Internal audit normally would encompass evaluation of these functions. Contract auditors may need internal audit assistance in confirming the accuracy and reliability of reports from military activities which form the basis of contract reimbursements.

2. Audit of small cost-type contracts at remote defense installations.

Travel and per-diem costs may be saved by DCAA obtaining internal audit assistance on audit of relatively small contracts performed at remote defense installations where internal auditors are in residence or in the vicinity. Factors to consider are the location, complexity of the contract audit work, and the availability of internal auditors. An example is a small construction contract at Goose Air Base in Labrador. Audit by DCAA would require travel from New York. Audit can be performed by internal auditors in residence.

3. Audit of administration of Government property furnished to contractors.

Prime responsibility for audit of the administration of Government property, including that furnished to contractors, is a part of the internal audit mission. However, DCAA likewise performs property auditing in its role of advisor to the property administrator and contracting office, as well as in connection with cost determination. When an internal audit of the Government property administration function requires verification of detailed records maintained by a contractor, assistance ordinarily can be obtained from the cognizant contract auditor. However, if necessary to performance of the internal audit mission, internal auditors will be afforded access to contractor-maintained records.

4. Audit at Government-owned, contractor-operated plants.

At GOCO plants DCAA is responsible for audit of the cost-reimbursement operating contracts. Internal auditors are responsible for auditing operations of the Contracting Officer. DCAA should assist the internal auditors by providing such cost and financial information from contractor records as is essential to permit evaluation of the management of the facility.

5. Audit at military installations where services and/or maintenance are purchased under contracts subject to DCAA audit.

Circumstances may be such that the internal auditors need fact-finding assistance from contract auditors to obtain or verify information from contractors' records. For example, the internal auditor may be reviewing the potential for savings from elimination of duplicating supply operations and information is needed from the contract auditor regarding the contractor's supply system.

6. Audit of a weapon system where supply, maintenance, funding, and other functions are closely integrated with input from or operations of major contractors.

Internal audits of this nature give rise to various situations where audit information is needed from contractors' books and records. Assistance from contract auditors would be appropriate in some cases and not in others. Examples follow:

a. Internal auditors are reviewing a contract pricing action. Contract audit assistance ordinarily should not be requested since the contract auditor participated in the procurement team effort.

b. Internal auditors determine that substantial quantities of end items which have been inspected and accepted are found subsequently to have defects requiring major modification. In trying to ascertain the cause for this situation, the auditors find it necessary to determine whether the contractor has responded timely to contract change orders requiring modification during production. Contract audit assistance in conjunction with technical assistance would be appropriate as determinations of this nature are an integral part of operations audits of contractors' production scheduling and control systems. These determinations are also made during reviews of contractors' internal planning and control systems when performing Earned Value Management System Criteria reviews.

c. An internal auditor is reviewing the computation of requirements which involve data on assets in the hands of the contractor and reports thereon. Contract audit assistance would be appropriate to verify data furnished by the contractor.

d. An internal auditor is reviewing funding status and validity of obligations which involve data and reports from contractors. Contract audit assistance would be appropriate to verify data furnished by contractors.

7. Audit at contractor location where DCAA is the cognizant contract audit organization

Government internal auditors may need fact-finding assistance from contract auditors to confirm, obtain or verify information from contractors' records. For example, the internal auditors may be performing an audit to identify potential conflicts of interest on the part of consultants working both for the Government and its contractors. Appropriate DCAA assistance to the internal auditors might consist of providing information from audit files on evidence of services rendered.

1-500 Section 5 --- Relationship with Contractors

1-501 Introduction

Requirements for specific audit conferences with contractors are stated in 4-300. This section covers other aspects of the relationships between DCAA and contractors.

1-502 Establishment of DCAA Field Audit Offices (FAOs) and Suboffices

1-502.1 General

The DCAA Organization Manual, Chapter 9, contains the procedures for activation and deactivation of DCAA FAOs. The activation or deactivation of DCAA FAOs (excluding suboffices) is subject to approval by the Director, DCAA, upon the recommendation of the cognizant regional director. The regional director may establish or discontinue suboffices. Regional directors should periodically review the operations of existing FAOs to determine if they still meet the criteria referred to in the manual or whether, due to changed conditions, any of these offices should be discontinued. Conversely, consideration should be given to establishing FAOs at those locations where the workload so warrants. If any such changes are indicated, submit recommendations to Headquarters, ATTN: OWD (with concurrent copy directly to CP), containing the information required by the manual.

1-502.2 Establishment of Branch Offices

a. A branch office is defined as a DCAA field audit office that (1) performs mobile audit work at all contractors within its designated geographic areas that are not audited by a DCAA resident office and/or (2) performs resident audits of several unrelated contractors through suboffices. Branch offices are established at appropriate locations within DCAA regions for these purposes.

b. A branch office may be located in a contractor facility only if there is unrestricted access to the DCAA office by other (nonhost) contractor representatives and adequate security is provided for data of such other contractors. Regional directors are responsible for establishing the most efficient and economical arrangements for specific locations within these restrictions. If a branch office is located in a contractor facility, the name of the branch office will not include the contractor's name, and the mail system will be arranged so that DCAA mail does not go to or through the host contractor's system.

c. A branch office may have one or more suboffices. A suboffice is defined as a subordinate element of an FAO. A suboffice may be established:

(1) at a geographic point distant from the main branch office location if a concentrated workload of mobile audits exists in the area which can be performed more economically by stationing one or more auditors permanently at that distant point,

(2) at a particular contractor location which has a continuous workload requiring the full-time assignment of one or more auditors (see 1-502.3e), or

(3) at a location where a significant combination of the two preceding conditions exists. A suboffice with both mobile and resident workload must meet the criteria of b above, unless the exception in 1-502.3b applies.

1-502.3 Establishment of Resident Offices

a. A resident office is defined as a DCAA field audit office located at a contractor's facility for the purpose of performing the contract audit workload at the contractor. The office may be made up of suboffices located at components of the same company and still meet the resident office definition.

b. On a case-by-case basis with prior Headquarters approval, limited amounts of mobile work may be assigned to resident offices without changing the office designation. This exception applies only to situations where it is uneconomical or impractical to assign the mobile work to a branch office.

c. Resident offices are usually established at principal locations of major defense contractors. The main criteria for establishing a resident office are whether the audit workload at the contractor is of a continuing nature and is sufficient in significance, complexity, and volume to warrant a full-time staff large enough to require a resident audit manager and clerical staff.

d. A resident office has the important advantage of enabling auditors assigned to the contractor location on a continuing basis to develop a comprehensive understanding of the contractor's operations and basic management policies and practices in relation to Government contracting. This understanding enables more efficient audits of major contractors and more timely and effective audit advice on these contractors to procurement and contract administration activities.

e. FAR 52.215-2 provides the basis for DCAA to occupy space at contractor locations when warranted. This clause provides that the "right of examination shall include inspection at all reasonable times of the contractor's plants, or parts of them, engaged in performing the contract." Additionally it provides that the contractor shall make its records available at all reasonable times "at its office." Implicit in FAR 52.215-2 is the requirement for a contractor to provide space at its office if audit work is of a sufficient magnitude to require a permanent DCAA presence. Although FAR 52.215-2 provides an implicit right, it is the ACO's authority to enforce FAR 52.215-2. Therefore, any issues that arise concerning DCAA occupying contractor space should be resolved through the ACO. The space provided should be comparable to what is furnished to contractor employees. If questions arise regarding this issue, auditors should also make the contractor aware that, while DCAA has the right to remove copies of contractor records from contractor locations, FAR 52.215-2 provides for review at the contractor's office, and it is preferable to audit original records on-site rather than requiring contractors to make copies available for off-site audit.

1-502.4 Change of FAO Cognizance

a. Occasionally, FAO cognizance of a contractor's organization will change because of such contractor actions as relocations, reorganizations, or consolidations. FAO cognizance of a contractor may also need to be reassigned as a result of DCAA's actions, such as establishing new FAOs, realigning or consolidating workload between FAOs, or the deactivation of FAOs. When audit responsibilities of a contractor need to be transferred, the branch or resident FAO having audit cognizance prior to the change (i.e., the losing FAO) is required to coordinate with the gaining FAO to assure that continuity of audit services is maintained.

b. After the gaining FAO concurs with the transfer of cognizance, actions to be taken by the losing FAO include:

(1) Resolving existing issues, wherever possible, prior to transferring cognizance to the gaining FAO. This includes, but is not limited to, recording of PNM information and/or settlement information. Prepare a summary of all unresolved issues and provide it to the gaining FAO. This summary should include the current status of the issues and the last action taken.

(2) Do not cancel assignments just because the contractor(s) is transferring unless instructed to do so by the Regional Office. In most cases, any existing assignments under the losing FAO are still valid and the gaining FAO will have the responsibility to perform the audit/review.

(3) Coordinating with the gaining FAO regarding when the transfer will occur. If no in-process assignments exist for the contractor under the losing FAO, the transfer should take place immediately. Partial transfers, i.e., leaving assignments with the losing FAO, will not be performed. Therefore, if an in-process assignment(s) exists at the losing FAO, one of the following options must be agreed upon between the FAOs:

(a) Perform the transfer immediately with an agreement between the losing and gaining FAOs that the remaining effort on the in-process assignment(s) will be performed by the gaining FAO.

(b) Perform the transfer immediately with an agreement between the losing and gaining FAOs that the remaining effort on the in-process assignment(s) will be performed by the losing FAO:

- The losing FAO's auditor(s) will charge time to the in-process assignment(s) under the gaining FAO's ROrg/assignment number(s),
- The FAOs will come to an agreement regarding who will sign the report or memorandum as well as what names will be listed as the point of contact(s).
- The report or memorandum would be issued with the gaining FAO's ROrg/assignment number(s),
- The losing FAO will provide the DMIS closing information to the gaining FAO for entry into DMIS,
- The losing FAO provides the finalized work paper package(s) and other required documents to the gaining FAO for filing under the gaining FAO's Prefix.

(c) Postpone the transfer until the in-process assignment(s) are completed, closed out in DMIS and filed in Content Server 10 (formerly named Livelink) by the losing FAO. If other assignments must be started before the transfer can take place, the gaining FAO will perform the assignment under the losing or gaining FAO's ROrg as follows:

- Existing Assignment - The losing FAO can assign one of the gaining FAO's auditors to an existing assignment(s) under the losing FAO's ROrg. This gives the gaining FAO's auditor visibility to the assignment and access to create the APPS file. The gaining FAO's auditor would charge time under the losing FAOs assignment code. In addition, the gaining FAO supervisor can request TDY Supervisor Rights to the losing FAO in order to manage his or her assignment(s) under that ROrg Code.
- New Assignment - The gaining FAO can create new assignments under gaining ROrg by typing in the DUNS ID field on the DMIS Assignment Request or Setup tabs. However, the gaining FAO must take care not to duplicate assignments for activities that already exist under the losing FAO.

- The contractor can be moved after the losing FAO's in-process assignment(s) are issued, dispositioned in DMIS, and filed. At that time all the assignments, including any being worked by the gaining FAO under the losing FAO's RORg, will transfer to the gaining FAO.

(4) Issuing notification to the contractor, major procurement and contract administration activities that do business with the contractor; providing the name, address, telephone and facsimile numbers of the FAO gaining cognizance of the contractor, and the effective date of the change. In addition, provide the appropriate DCAA DoDAAC for the gaining FAO and advise the contractor that the new DoDAAC must be used in contract documents as well as electronic invoices and billings submitted using the DoD Invoicing, Receipt, Acceptance, and Property Transfer (iRAPT) system.

(5) Issuing notification to DL when there is a litigation hold; providing the name, address, telephone and facsimile numbers of the FAO gaining cognizance of the contractor and the effective date of the change.

(6) Providing the gaining FAO with a listing of all auditable contracts. The listing should include the name of the procurement office, contract number, type, amount of award, the cognizant ACO, and identify those contracts that provide for DCAA provisional approval of public vouchers.

(7) Transferring permanent file information to the gaining FAO, with a transmittal memorandum that lists the content of the files. A copy of the transmittal memorandum should be sent separate from the files. The transmittal memorandum should request acknowledgement of receipt of the permanent files and a copy of the transmittal memorandum and acknowledgement should be filed in Content Server 10 by both the losing and gaining FAOs.

(8) Providing the gaining FAO with a copy of all requirements and program plan data relating to the contractor for the current and prior years.

(9) Notifying the CAC/GAC of the change in audit cognizance and provide information concerning status of audit issues affecting the CAC/GAC network.

(10) Providing a listing of files maintained at the Federal Records Center to the gaining FAO.

(11) Issuing a change of address notification to the Federal Records Center for any audit files that are in records retention. The change of address should be forwarded through the regional office, ATTN: Records Liaison Officer.

(12) Providing the respective regional office's Information Technology Division (RSA) with a brief explanation of all contractor data maintained in the DMIS that will need to be transferred to the gaining FAO and the effective date of the transfer. When possible, provide this information at least 60 days in advance of the anticipated change. Again, no partial transfers will be performed. Each region may have its own documentation requirements for a transfer request. Follow the appropriate regional office's procedures that has cognizance over your FAO and provide the documentation required to proceed with the transfer.

(13) After the transfer is performed in DMIS, create a Folder Transfer Workflow(s) in Content Server 10 to move the filed work papers to the gaining FAO.

(14) Transfer any data relating to the contractor that is included in regional or Headquarters periodic reports to the gaining FAO, complete with any computer-based files (e.g., incurred cost status report database). Concurrent notification of the change in FAO cognizance should be made to the responsible regional office element.

c. Insufficient staffing at the gaining FAO is not a valid reason for a gaining FAO to reject or stall a transfer.

d. If disagreements arise between the losing and gaining FAOs, elevate the concern through the proper chain of command for resolution.

e. These guidelines apply to all contractor transfers; however, there may be instances where transfers between Regions and FD require special handling to avoid duplicate incurred cost assignment years. These types of transfers should be closely coordinated between the losing and gaining FAOs and Regions.

1-503 Notification of Visits to Contractor Facilities

1-503.1 Security Requirements and Procedures

a. Section 3-201d of the DoD Industrial Security Regulation (DoD 5220.22R) and Chapter 6 of the DoD Industrial Security Manual for Safeguarding Classified Information (DoD 5220.22M) require that the contractor be given advance notice in writing when access to classified information held by the contractor is involved. The manual requires such notification to include:

- The name and title of person(s) to be visited.
- The name, title, date and place of birth, citizenship, and security clearance status of the DCAA representative(s).
- The purpose of and justification for the visit, including identification of related program(s) or contract(s) and classified information to which access is required, if known.
- The date of the proposed visit or period during which the notice is to be valid.
- It is DCAA policy to also include the following information:
 - DCAA identification number (auditor credential card number or equivalent).
 - Visitor Category (the Industrial Security Manual designates category 1 for U.S. Government employees).

b. When a visit will require access to classified matter held by the contractor and/or access to a secured contractor plant, DCAA Form 5220-1 will be used to notify contractors of planned visits. This form will also be used for DCAA personnel permanently located at contractor facilities (such as those assigned to resident offices and suboffices) and for those visiting contractors on a regular basis (such as regional audit managers and members of regional audit teams). Notification in these cases will normally consist of blanket notices submitted on an annual basis. A copy of each notification sent to the contractor will be forwarded to the cognizant contract administration office.

c. DCAA personnel will inform their security officer of planned visits to contractor facilities in sufficient time to enable timely notification.

1-503.2 Required Notification to Contract Administration Offices and Courtesy Notice to Contractors

a. Whether or not access to classified matter or secured area(s) is required, to preclude duplicate demands on the contractor, prospective visitors to contractor facilities are to provide information concerning the visit to the cognizant Contract Administration Office (CAO)

sufficiently in advance and in adequate detail so as to permit the CAO to advise the visitors in the event information related to the contract administration functions currently exists that may satisfy the stated purpose of the visit (FAR 42.101(a) and 42.402(a) and (b)). The visitor will make a courtesy telephone call to inform the contractor and make appropriate arrangements if a planned visit will involve contractor personnel. If desired, the visitor may send a letter to confirm arrangements made. Such a letter will not substitute for any notification required by 1-503.1.

b. If a planned visit will involve contract administration personnel, make advance arrangements comparable to those for contractors as stated in a above.

1-504 Access to Records of Contractor

1-504.1 General

a. Statutes, implementing regulations, or contract terms may provide access to contractors' records for purpose of audit (1-504.2). The clause at FAR 52.215-2 provides the auditor's primary authority for access to contractor records. This clause must be inserted in all negotiated contracts, except those (1) not exceeding the simplified acquisition threshold; (2) for commercial items; or (3) for utility services. (See FAR 15.209(b)). This clause provides the contracting officer's representative with the authority to examine and audit contractors' books, records, documents and other evidence and accounting procedures and practices, regardless of form (e.g., machine readable media such as disk, tape, etc.) or type (e.g., data bases, application software, data base management software, utilities, etc.), sufficient to reflect properly all costs claimed to have been incurred or anticipated to be incurred in performing cost-reimbursement, incentive, time-and-material, labor-hour, or price-redeterminable contracts. The clause also provides access rights for the purpose of evaluating the accuracy, completeness, and currentness of certified cost or pricing data.

b. In addition to access to specific cost records, access to records refers to contractor policies, procedures, systems, management reports (see 4-202.1 for information pertaining to access to internal audits), personnel, minutes of its board of directors meetings, charter and bylaws, and any other information source which affects and reflects the incurrence, control, and allocation of costs to contracts.

c. Adequate audits are possible only when all existing evidence which pertains to the representations, claims, or proposals under audit is available to the auditor. A contractor's failure to make all pertinent records available to the auditor when needed leads to audit reports that contain qualified or adverse opinions, and may result in more difficult negotiations and delay in the contract award or settlement.

d. For field pricing support audits, FAR 15.404-2(c)(3) states that the auditor is responsible for determining the scope and depth of audit. Inherent in this responsibility is the right of auditors to determine the specific records or other evidential matter needed to accomplish the audit. DCAA auditors must adhere to generally accepted Government auditing standards in determining what comprises appropriate, relevant, and sufficient evidential matter. Therefore, auditors must use good judgment and rationale in deciding what contractor records or other evidential matter should be sought. In determining the sufficiency of evidence needed, auditors must consider the audit objective, the risk, and materiality of an error or misstatement in the area being audited and the effect on the audit

opinion. See 5-502.1 for additional guidance on access to contractor budgets and 14-304.2 on access to cash flow forecasts.

e. FAOs should not enter into written nondisclosure agreements with contractors or concur with contractor letters containing access to records provisions or procedures. Any such written agreements may give the appearance of limiting access. Furthermore, auditors are required to protect proprietary information from unauthorized disclosure under 18 U.S.C. 1905 (see CAM 1-507). Therefore, agreements addressing the protection of proprietary information are not necessary. However, responses to contractor requests for confirmation that proprietary data will be protected in accordance with applicable laws and regulations are permissible. See 1-805 for guidance on memorandums of agreement pertaining to matters other than access to contractor records.

f. While FAOs will not sign agreements, letters or procedures indicating concurrence on access to records matters, they will obtain and review any such documents containing contractor procedures or policies. If the FAO believes the policies and procedures will invoke unreasonable delays, waste audit time or otherwise impede the orderly process of the audit, the contractor should be notified in writing of such concerns in accordance with procedures in 1-504.4, and 1-504.5. If no such concerns exist, the FAO should follow contractor procedural arrangements for obtaining access to needed information.

g. Agreements between a contracting officer and a contractor which appear to restrict DCAA's access to a contractor's records should be transmitted through Headquarters, ATTN: PPS, to the General Counsel for a legal analysis.

1-504.2 Statutory and Regulatory Requirements

Among statutory bases for access to contractor records are 10 U.S.C. 2313(a), "Examination of Records of Contractor," 10 U.S.C. 2306a, ("Truth in Negotiations"), and 41 U.S.C. 422(k) (Cost Accounting Standards). The following acquisition regulations have implemented these statutory and other access requirements:

a. FAR 15.209(b)(1) requires an "Audit - Negotiation" clause (FAR 52.215-2) in all negotiated contracts other than those which are not expected to exceed \$100,000.

b. FAR 15.408 Table 15-2, Instructions for Submission of a Contract Pricing Proposal.

c. FAR 52.215-20 and 52.215-21 (Requirements for Certified Cost or Pricing Data or Data Other Than Certified Cost or Pricing Data).

d. FAR 52.230-2 and 52.230-3 (Cost Accounting Standards).

e. FAR 52.216-4 (Economic Price Adjustment - Labor and Material).

f. FAR 52.232-16 (Progress Payments).

1-504.3 Guidance for Requesting Access to Contractor Records

a. Records should first be informally requested during the FAO's normal course of business with the contractor (either verbally or in writing). The auditor should be ready to discuss the basis for the request with the contractor. CAM or other Agency guidelines should not be cited as the reason for requesting a record in lieu of explaining the underlying audit need.

b. Occasionally contractors may ask that requests for records be in writing. Auditors should generally accommodate the contractor where it will facilitate access and avoid misunderstanding. However, contractor requirements that all requests for records be in writing are unacceptable as such a process would unnecessarily impede the audit process.

c. All requests should be for specific records rather than a general class of records. For example, requests should be for "the general ledger for FY 2000," or "the payroll register for the pay period ending July 4, 2000" rather than "the general ledger," or "payroll data." Addressing specific records relates the request to a specific audit. This action should avoid lengthy discussion with the contractor on the merits of the request.

d. When the auditor does not know precisely what records exist, a listing of what does exist (such as "recurring financial reports" or "IT files") should be requested. The listing itself may be considered a record, particularly if the contractor already produces such a list for other purposes.

e. Unusual or extensive requests for reproduction of contractor records should be made by supervisors and be in writing if requested by the contractor.

f. When original records or documents are provided by the contractor, auditors will ensure that all such records and documents are returned to the contractor as soon as possible.

g. Circumstances justifying an evaluation of original records at locations other than contractor facilities include records seized by investigators under a warrant or obtained by Government counsel through criminal, investigatory, or civil subpoena. DCAA has the right to evaluate any records in the hands of Government agents. Regardless of the circumstance under which the auditor obtains access to contractor records, due professional care will be exercised in protecting the records while in the auditor's possession.

h. Auditors will not remove original records from the locations at which they are furnished without prior Agency approval. Auditors who might be confronted with an unusual circumstance and need to move the contractor's original records from the location at which they are furnished will request their regional office to obtain the contractor's authorization. Auditors will fully explain in their request the reasons the contractor's original records cannot be used at its site. Regional offices will submit their approved auditors' requests to Headquarters, attention: PPS, for evaluation and coordination with legal counsel.

i. Auditors should not request copies of contractor records for the sole purpose of allowing the auditor to work at home rather than at the contractor's site. Auditors who might be confronted with an unusual circumstance related to working at home, and need to obtain and remove a copy (total or a portion) of the contractor's original records from the location at which they are furnished will request the FAO manager's written request to obtain and document the contractor's authorization. Auditors will fully explain in their request the reasons the records cannot be used at the contractor's site and why a copy is needed. Contractors who encourage auditors to take copies of records from their premises rather than work onsite should not be accommodated without good cause. Auditors may continue to request copies of selected records which are necessary to document audit files and support audit positions. See 1-507 guidelines for safeguarding contractor information.

1-504.4 Conditions Representing Denial of Access to Contractor Records

The following conditions qualify as access to records problems where a specific record is needed within these general areas:

a. Contractor refusal to provide access to any requested record including (i) support for unclaimed costs excluded under CAS 405 or (ii) records maintained in an electronic or optical format (even if paper copies are available).

b. Unreasonable delays by contractor representatives in permitting the audit commencement or in providing access to needed data or personnel. Since the determination of unreasonable delay is subjective, it is important to distinguish between occasional delays due to unexpected circumstances (for example, a key employee is out sick) and recurring delays which suggest that it is a contractor's practice to engage in delaying tactics. Recurring delays should be carefully documented with the names of contractor employees, data requested, dates when requested, dates when provided, etc.

c. Restrictions on reproduction of necessary supporting evidential matter.

d. Partial or complete denial of access to internal audit data or other management reports on contractor operations.

e. Denial of access to the contractor's data base. This denial can be a refusal to produce the necessary reports, or allow DCAA to validate reports by testing the database using DATATRAK, or other data retrieval software.

f. Chronic failure of contractor personnel to comply with agreed-to dates for furnishing data.

g. Assertion of attorney-client privilege or attorney-work-product doctrine.

(1) The attorney-work-product doctrine protects documents and other memoranda prepared by an attorney in contemplation of litigation, including private memoranda, written statements of witnesses, and mental impressions of personal recollections prepared or formed by an attorney in anticipation of litigation or for trial. As its purpose is to protect the adversarial trial process by insulating the attorney's preparation from scrutiny, the work-product rule ordinarily does not attach until at least some claim, likely to lead to litigation, has arisen. Courts have also accorded work-product protection to materials prepared by non-attorneys who are supervised by attorneys.

(2) A contractor invoking the attorney-client privilege must show a communication between client and counsel that; was intended to be and was in fact kept confidential and; was made for the purpose of obtaining or providing legal advice. The attorney-client privilege is given strong protection by the courts, and thus judges rarely order the production of these documents. If the privileged data is provided to a third party including DCAA, then contractors may risk waiving the privilege and they may be required to disclose the information to others, even their adversaries.

(3) If a contractor asserts the attorney-client privilege or the attorney-work-product doctrine, the auditor should ask the contractor to explain in writing (i) the basis of the assertion and (ii) why the contractor cannot provide the requested information or some alternative, non-privileged information that will meet the auditor's needs. Auditors with questions on whether the contractor's assertion of attorney-client privilege or attorney-work-product doctrine is appropriate in their specific situation should contact DCAA-DL for assistance. If the contractor continues to deny access and does not provide alternative, non-privileged information, the procedures in DCAAI 7640.17 should be followed until such time as a high level executive from the company asserts the privilege in writing. After receiving the contractor's written assertion, the issue should be elevated to the Regional office. At a minimum, the Regional Director should contact top level contractor management to explain that even if the privilege is appropriate, the contractor is still required to support how it complies with its contractual requirements using non-privileged data. Non-privileged data may include filings with a court that are available to the public, contractor's summaries of data, other public filings, etc. If these efforts do not prove successful, the following information should be provided to DCAA-PPS so that Policy may review the assertion with DCAA Legal counsel.

- Identifying information including FAO name, contractor name, audit assignment number, audit subject, FAO point of contact, and information pertaining to prior coordination that has taken place in order to try to obtain the requested data.
- A copy of the contractor's formal assertion of attorney work product doctrine or attorney-client privilege for the data requested.
- A detailed listing of data requested, with the rationale for each document's necessity in order to complete the scope of the audit, and why that data cannot be obtained from another source or in another manner from the contractor.

(4) An assertion of attorney-work-product or attorney-client privilege related to contractor's disclosures of violations of Federal criminal law or the False Claims Act as required by FAR 52.203-13 should be pursued as an access to records issue in a similar manner as other contractor assertions of attorney work product or attorney-client privilege. The only difference is the DoDIG should also be contacted to assist in gaining access, in addition to applying the procedures in Section 6 of DCAAI 7640.17.

1-504.5 Resolution of Contractor Denials

a. When contractor personnel deny or unreasonably delay access to records needed for audit, auditors should immediately notify and thoroughly discuss the issue with responsible contractor officials authorized to make decisions. Reasonable effort should be made to resolve the issue in a timely manner at the lowest possible DCAA and contractor management level. If access is denied following the initial conference with the contractor, the auditor should follow the procedures cited in DCAA Instruction No. 7640.17.

b. When implementation of DCAA Instruction No 7640.17 does not resolve contractor denial of access to records, then the regional office should consider requesting Headquarters to subpoena the records in accordance with DCAA Regulation No. 5500.5. The DCAA Director is authorized to subpoena contractor documents and records needed to audit costs incurred under flexibly priced Government contracts and subcontracts, and to audit the accuracy, completeness, and currentness of certified cost or pricing data used for negotiated Government contracts and subcontracts.

1-504.6 Impact of Contractor Denial of Access

a. When the contractor denies the auditor access to records/data, the costs affected by the denial should be questioned under price proposals. Such costs should also be questioned on progress payments and suspended under cost-reimbursement contracts per 6-902a. A contractor's denial of access to records may be so extensive that it is impractical to perform any audit or determine an amount affected by the denial. In such a case, immediately notify all procurement and contract administration activities that may be involved with the subject audit and request their assistance. In addition, the auditor may consider using DCAA Forms 1 to suspend payments on all affected contracts until the access to records problem is resolved.

b. The impact of a contractor's denial of access to records on the scope of audit should be described in the "Qualifications" and "Results of Audit" paragraphs of the audit report. The report should identify the records that were sought, discuss the need for the records, and describe the measures that were taken to gain access (see 10-210.4).

1-505 Reserved

1-506 Other Access to Records Issues -- Records Destroyed or Not in Condition for Audit

a. When the contractor's records are inadequate, not current, or otherwise not in condition for audit, immediately bring the deficiency to the contractor's attention. If corrective action is not instituted promptly, notify the regional office, the requesting procurement activity, and other Government offices affected. Except as authorized by law, regulation, or court order, the auditor should not undertake or participate in correcting the deficiencies.

b. When records are alleged to have been destroyed, lost, stolen, or otherwise cannot be located, 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) 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 made using the remaining available records. Under these circumstances, denial of access to records should not be pursued. Additionally, the auditor should not attempt reconstruction of contractor's records.

c. Any audit reports issued under these circumstances should contain appropriate comments on all the facts, with any necessary disclaimer, adverse opinion, qualifications, and/or explanations of questioned costs.

1-507 Security Requirements for Contractor Information

a. Auditors should perform audits in such privacy as warranted under the circumstances, and should provide all necessary safeguards to contractor-confidential data. Working papers, audit reports, unpublished financial statements, correspondence, files, and other records and sources available to or in the possession of the auditor usually contains proprietary information that the contractor regards as confidential. Auditors shall use such information only for performance of official duties. The auditor should only request access to contractor proprietary information when required for a specific audit assignment or there is a need to know for other official duties. Except as authorized by law, regulation, or court order, the auditor shall not disclose the information to other persons except with the contractor's permission, and shall not discuss information in a manner that might permit disclosure to unauthorized persons.

b. The law pertaining to unauthorized disclosure of contractor information, and penalties for violation thereof, is contained in 18 U.S.C. 1905, as amended, and is quoted below:

Whoever, being an officer or employee of the United States or of any department or agency thereof, any person acting on behalf of the Office of Federal Housing Enterprise Oversight, or agent of the Department of Justice as defined in the Antitrust Civil Process Act (15 U.S.C. 1311-1314), or being an employee of a private sector organization who is or was assigned to an agency under chapter 37 of title 5, publishes, divulges, discloses, or makes known in any manner or to any extent not authorized by law any information coming to him in the course of his employment or official duties or by reason of any examination or investigation made by, or return, report or record made to or filed with, such department or agency or officer or employee thereof, which information concerns or relates to the trade secrets, processes, operations, style of work, or apparatus, or to the identity, confidential statistical data, amount or source of any income, profits, losses, or ex-

penditures of any person, firm, partnership, corporation, or association; or permits any income return or copy thereof or any book containing any abstract or particulars thereof to be seen or examined by any person except as provided by law; shall be fined under this title, or imprisoned not more than one year, or both; and shall be removed from office or employment.

c. For Official Use Only (FOUO) is a Department of Defense (DoD) dissemination control applied to unclassified information that if disclosed to the public would reasonably cause harm to the interested parties (e.g. contractor proprietary information). Procedures for the identifying and protecting FOUO documents are contained in DoD Manual 5200.01, Volume 4. Contractor proprietary information qualifies as FOUO; therefore, will be marked accordingly. The auditor is required to protect the contractor's proprietary information at all times. When the FAO is located in a secure building, FOUO information may be stored in unlocked containers, desks, or cabinets; if not, the information shall be stored in locked desks, file cabinets, etc.

d. Contracting commands and contract administration offices may use contractors, commonly referred to as third party service providers (TPSPs), to assist in contracting activities, such as contract closeouts and pricings. DCAA personnel are not to provide contractor proprietary information directly to TPSPs. Before discussing contractor proprietary data with individuals from contracting commands or contract administration offices, or release of such information, DCAA personnel should confirm the contacts are U.S. Government employees. If U.S. Government officials request that DCAA provide contractor proprietary information directly to a TPSP, the auditor should explain that DCAA cannot provide proprietary data to non-Government employees and arrangements should be made to provide the information to the contracting officer or his/her designated U.S. Government staff member.

e. Audit Reports and audit working papers generally contain a significant amount of contractor proprietary information. It is the auditor's responsibility to protect this information. The FAO will generally not release audit working papers in their entirety; however, in order to clarify or demonstrate the audit position, the auditor may consider sharing parts of the working papers, such as large excel spreadsheets that demonstrate rate calculations. When releasing such information, the auditor must be sure they are not releasing proprietary information outside of the appropriate channels. The release of an audit report is at the discretion of the contracting officer, not DCAA (CAM 1-703). Therefore, auditors should direct all requests for specific audit reports to the appropriate contracting officer.

f. Handle the release of contractor information to the Government Accountability Office, members of Congress and congressional committees and their staffs, offices of inspector general, and Government investigative agencies, in accordance with the procedures outlined in the applicable paragraph under 1-203, 1-404.6, or 1-405. Release of contractor provided information in litigation is governed by DCAAR 5410.11 and the discovery rules of the forum involved. Release of contractor provided information in response to requests under the Freedom of Information Act is governed by DCAAR 5410.8, with supporting information in the DCAA Freedom of Information Act Processing Guide.

g. If an auditor inadvertently discloses contractor proprietary information, the auditor must take action to mitigate the situation. First, the FAO will determine if the proprietary information included Personally Identifiable Information (PII). If the disclosure includes PII, the FAO will follow the procedures in DCAA Instruction No. 5410.10, DCAA Privacy Program, for reporting the incident. If the disclosure does not include PII, the FAO will

provide a letter to the contractor explaining the FAO released the contractor's proprietary information. Include in the letter a complete explanation of the situation, including who received the data, the information the auditor inadvertently released, and the FAO's actions to mitigate the situation. At a minimum, the FAO will contact the individual who received the proprietary information and verify the recipient, and anyone they forwarded the information to, destroyed the information.

1-508 Assistance in Preparing Claims Against the Government

a. Officers and employees of the Government are prohibited by law (18 U.S.C. 205) from acting as agents or attorneys for prosecuting any claim against the United States or aiding or assisting in the prosecution or support of any such claim other than in the proper discharge of their official duties. A part of the auditor's official duties is to inform contractors of the manner in which public vouchers, termination settlement proposals, cost statements, and other financial representations connected with the negotiation and performance of Government contracts should be prepared and submitted.

b. The auditor may advise contractors as to types of costs which are considered allowable and unallowable and on request may orally express an opinion as to the acceptability of a specific item of cost.

c. The auditor may advise contractors to screen and not claim costs specifically unallowable by contract terms, statute, public policy, or Government regulations. If the contractor consistently claims costs which are clearly unallowable under the contract terms, refer the matter to the Plant Representative/ACO for appropriate action. (See 8-405.)

1-509 Handling Contractor Complaints About an Auditor

a. Maintaining independence in audits is critically important to DCAA's credibility and is required by GAGAS. DCAA expects auditors to always act professionally, objectively, and without bias when conducting audits and interacting with contractor personnel. In some cases, however, contractors will make a complaint about circumstances or behavior that indicate, or appear to indicate, auditor bias, which may in turn indicate a threat to independence. DCAA policy states that all DCAA employees must report potential threats to independence to their supervisors and take action to evaluate, reduce, and eliminate such threats.

b. Disagreements between auditors and contractor personnel over audit issues can and do occur during audits (for example, a dispute over access to contractor records). This type of disagreement does not indicate bias or lack of objectivity and is not the subject of this section. DCAA leadership will support its auditors in obtaining the cooperation they need to perform a quality audit. However, if a contractor representative makes a complaint about inappropriate behavior that could indicate a potential threat to independence, DCAA management should perform a prompt and impartial inquiry into the complaint. The inquiry should consider all the facts available and include discussions with both the contractor and the auditor. Based on this inquiry, management will make an informed and impartial decision about the appropriateness of the behavior and whether an impairment to independence exists.

c. As soon as DCAA management determines that there is a sufficient basis for inquiry into a contractor complaint, management will immediately notify and temporarily remove the auditor from the affected audits. Management should clearly communicate to the auditor, in a memorandum, the following:

(1) The complaint lodged against the employee.

(2) That the reason the supervisor is temporarily removing the auditor from the affected audits during managements' inquiry into the complaint is to prevent any potential impairment to the auditor's independence.

These actions are necessary to protect the auditor and the complainant, as well as to ensure an independent investigation of the complaint. Management should coordinate with their human resources office, as necessary, regarding the complaint and any potential personnel issues).

d. If, based on the inquiry, DCAA management finds that no significant threat to independence exists and that the auditor's independence has not been impaired, the supervisor should remove the temporary limitation and assign the auditor duties as usual.

e. If based on the inquiry, DCAA management finds that a significant threat to independence exists and therefore, the auditor's independence is impaired, either of mind or in appearance, DCAA management should take immediate action to eliminate or reduce the threat to an acceptable level. These actions may include, reassigning the auditor, for example (See CAM 2S-103.1.b(1)c).

In addition to the above actions, DCAA management should document, generally in a memorandum to the employee, the following:

(1) Whether or not the inquiry substantiated any significant threats to independence.

(2) The rationale for the conclusions reached based on the inquiry.

(3) The actions taken – or those that will be taken – to eliminate or reduce the threat to an acceptable level.

1-600 Section 6 --- Relationship with the News Media

1-601 Introduction

This section contains guidelines regarding contacts with the news media.

1-602 General

DCAA Regulation 5230.1 implements DoD Directive 5230.9, Clearance of DoD Information for Public Release. The Regulation includes guidance regarding information to be furnished the news media. Information in any form concerning Agency plans, policies, programs, or operations must be cleared through Headquarters before release.

1-603 Processing Requests for Information

Agency personnel are often contacted directly by the news media. Although talking with the news media is not prohibited, the above references govern the release of information. If contacted by the media, the employee should obtain the person's name, the organization represented and telephone number, and the questions to be answered. This information and the circumstances surrounding the request should be conveyed to the Agency Executive Officer (DX), Headquarters. The Executive Officer is responsible for deciding how the request from the media will be satisfied and for obtaining appropriate clearance for the release of information.

1-700 Section 7 --- Processing Freedom of Information Act (FOIA) Requests**1-701 Introduction**

This section contains information and pertinent references for processing Freedom of Information Act (FOIA) requests.

1-702 General

The Freedom of Information Act, 5 U.S.C. 552, is a public law which is designed to allow the general public access to Government records. DCAA Regulation 5410.8, DCAA Freedom of Information Act Program, implements DoD Directive 5400.7, DoD Freedom of Information Act Program. DCAA's implementing regulation is codified as 32 C.F.R. Part 290 and contains policy and procedural information relative to the Act. This issuance is supplemented by DCAAP 5410.14, DCAA Freedom of Information Act Processing Guide. Additional information may be found on the DCAA web site.

1-703 Scope of the Statute

a. All audit work products are subject to public demand under the Freedom of Information Act. Although there is a preference for release of Government documents, aspects of these documents may be subject to withholding under one or more of the established exemptions contained in the Act. The Agency must prove that a specific harm will be realized to preclude release of the requested records. An explanation of the exemptions is contained in DCAAP 5410.14.

b. Typically, requestors seek copies of audit reports and working papers. Some requests are specific to a particular audit report while others are more general. Since the release of most audit reports is at the sole discretion of the contracting officer, the primary demand for records will be limited to the working papers. Requests for DCAA records compiled to support an ongoing investigation are normally referred to the investigative agency for processing until all actions related to the case have been resolved. Similarly, requests that would cover records generated in support of a trial attorney are covered by the attorney work product privilege. Their release should be coordinated with the trial attorney or his/her successor.

1-704 Processing Requests for Information under FOIA

Request for records may require a search of the Agency's records to identify potentially responsive documents and information pertinent to the releasability of each record. Specific instructions for the processing of each request will be provided by the FOIA Coordinator at the regional level and the DCAA Information and Privacy Advisor for the Headquarters. A listing of Agency FOIA personnel may be found in DCAAR 5410.8 and DCAAP 5410.14.

1-800 Section 8 --- Auditor Participation on Contractor and Government Process Action Teams (PATs); Integrated Product Teams (IPTs); Management Councils; and Related Streamlined Acquisition Initiatives

1-801 Auditor's Role on Contractor and Government Teams Such as PATs, Steering Committees, and Management Advisory Boards

Audit Guidance on PATs is currently under revision. Questions should be referred to Headquarters, PAS.

1-802 Integrated Product Teams (IPTs) - Background

Guidance on Integrated Product Teams is currently under revision. In the meantime, the guidance in MRD 08-PAS-024(R), dated August 5, 2008, and MRD 08-PAS-026(R) should be followed.

1-803 Auditor's Role on DoD IPTs and Related Streamlined Acquisition Initiatives

See note under 1-802 above.

1-804 Management Councils, Single Process Initiative (SPI), and Cost-Benefit Analysis

Audit guidance on management councils, single process initiative, and cost-benefit analysis is currently under revision. Questions should be referred to Headquarters, PAS.

1-804.1 Management Councils

See note under 1-804.

1-804.2 Single Process Initiative (SPI)

See note under 1-804.

1-804.3 Cost-Benefit Analysis

See note under 1-804.

1-805 Memorandum of Agreement

The guidance is currently under revision. Questions should be referred to Headquarters, PAS.

I-900 Section 9 – Contingency Contracting

1-901 Introduction

This section provides guidance for auditing contract costs related to contingency contracts. General information about contingency contracting is available from the Joint Contingency Contracting Handbook linked to the Defense Procurement and Acquisition Policy web site (<http://www.acq.osd.mil/dpap/ccap/cc/jcchb/index.html>).

1-902 Definitions and Concepts

a. A contingency operation, described in 10 U.S.C. 101(a)(13), represents a military operation that is “designated by the Secretary of Defense as an operation in which members of the armed forces are or may become involved in military actions, operations, or hostilities against an enemy of the United States or against an opposing military force; or results in the call or order to, or retention on, active duty of members of the uniformed services ... during a war or during a national emergency declared by the President or Congress.”

b. FAR Part 18 provides procedures to facilitate and expedite acquisitions of supplies and services during contingency and emergency operations. DFARS Part 218 supplements FAR Part 18 for DoD acquisitions. Acquisition flexibilities are allowed under these circumstances. The provisions of these regulations should be considered in planning and performing audit testing for specific engagements.

1-903 Civil Augmentation Program (CAP)

Contingency and emergency contracting is used to purchase essential supplies and services to sustain deployed forces. Logistics involve managing the flow of goods, information, and other resources between points of origin and use. Logistical support contracts for troops are known as service contracts, because they involve performance of a task rather than furnishing an end item.

The Government uses contractors to augment logistical capabilities in both preplanned and short-notice conditions, sometimes referred to as a Civil Augmentation Program (CAP). The Army Logistics Civil Augmentation Program (LOGCAP), Air Force Contract Augmentation Program (AFCAP), and Navy and Marine Contingency *Construction Capabilities* (CONCAP) Programs are CAPs.

1-904 DCAA Audit Services

a. Under optimal circumstances, the DCAA audit team will receive a request to perform a review of proposed costs for a contingency contract acquisition with ample time for review, negotiation, and award of a contract. Agency policies for planning, execution, and reporting of audit findings should be applied. If warranted, the audit team might consider whether they should address the requested services as an agreed-upon procedures assignment (14-1000).

b. Contracting officers may ask DCAA audit teams to provide specific information related to contract pricing within short timeframes. The audit team may provide infor-

mation, such as contractor indirect rates, to assist the contracting officer. Auditors should provide written confirmation of such responses (9-107).

1-905 Audit Considerations in a Contingency Environment:

Due to conditions involving contingency situations, it is much more effective to audit costs on a real-time basis. Real-time audits are performed as costs are being incurred. The audit team must promptly arrange for access to accounting and management records necessary for audit. Audit teams must identify access to records issues early, and elevate them quickly (1-504.4). If access is not timely, the auditor may consider using DCAA Forms 1 to suspend billed costs until the contractor provides access necessary to support claimed or billed costs.

a. The DCAA audit team for the prime contractor should promptly initiate assist audits of the contractor's in theater systems and operations since both the contractor's in theater and domestic internal control systems are usually involved in accounting for and billing costs for contingency contracts.

b. System of Internal Controls

(1) Contingency contracts are often awarded based on an urgent and compelling need and the performance of the contracts are often in territories distant from the contractor's home facilities. Since the contractor's in theater operations are usually remote from the company's other work, existing accounting, procurement, and management systems are often augmented by procedures specifically used in the theater of operations for the contingency contracts. Contractors should be asked about any unique policies and procedures in place for the company's contingency contracts. It is important for auditors to quickly understand the special systems used for in theater operations and to promptly cite material weaknesses or questionable contractor records to responsible Government contracting officials.

(2) Timely in theater labor audits (MAARs 6) and purchasing and consumption (MAARs 13) reviews are essential to ensure labor and material resources are used and documented properly. DCAA audit teams for the prime contractor must maintain close coordination with DCAA in theater audit teams to ensure understanding of the audit needs and communication of results for appropriate reporting.

c. Subcontracts. Prime contractors performing on contingency contracts typically use subcontractors indigenous to the theater of operations. Audits of in theater subcontracting should be planned early in the procurement process. The audit team should evaluate the prime contractor's process for managing the subcontracting process, including the contractor's method for performing and documenting cost/price analysis. If the audit team identifies significant deficiencies, the audit team should promptly report the deficiencies to the cognizant contracting officer.