



**DEFENSE CONTRACT AUDIT AGENCY**  
**DEPARTMENT OF DEFENSE**  
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IN REPLY REFER TO

PAS 710.7

October 3, 2008  
08-PAS-032(R)

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

**SUBJECT:** Audit Guidance on Release of Contractor Proprietary Information to Third-Party Service Providers

**SUMMARY**

This memorandum revises guidance to prohibit the direct release of contractor proprietary information to non-Government Third-Party Service Providers. DCAA personnel should ensure appropriate safeguards are in place to protect contractor proprietary information and to only release contractor proprietary information to Government employees. The revised CAM Section 1-507c to reflect this new guidance is provided in Enclosure 1 in track changes format.

**BACKGROUND**

During the course of DCAA audits, contractors routinely provide financial data to support their submissions. This data is considered proprietary information and should be appropriately protected. Unauthorized disclosure of contractor proprietary information by Government employees is subject to penalties contained in 18 USC 1905.

Contracting officers frequently request DCAA to provide contractor financial data to assist them in performing their contracting responsibilities. Contracting commands and contract administration offices often use contractors, commonly referred to as Third-Party Service Providers (TPSPs), to support them in these efforts. Contractor employees are not covered by the restrictions imposed under 18 USC 1905. In addition, the safeguarding of proprietary information by TPSPs may not be appropriately addressed by existing nondisclosure agreements between the TPSP and the contracting office for data provided to or obtained by DCAA.

**GUIDANCE**

DCAA personnel should only provide contractor proprietary information to Government employees with a need to know the information. Contractor proprietary data should not be directly provided to TPSPs employed by the contracting command or contract administration office.

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**SUBJECT:** Audit Guidance on Release of Contractor Proprietary Information to Third-Party Service Providers

Before discussing or releasing contractor proprietary data, DCAA personnel should confirm the individual receiving the data is a Government employee. If a question exists as to whether the requestor is a contractor or Government employee, the auditor should request an e-mail from the employee that includes a statement confirming that they are a Government employee.

We have discovered that the DoD policy on identifying contractors by including “ctr” in the e-mail address is not consistently followed. Therefore, DCAA employees should not rely on the e-mail address to verify the requestor/recipient of contractor information is a Government employee. Likewise, some contractor employees’ badges may not identify them as a contractor employee. Auditors need to obtain the necessary assurance that the requestor is a Government employee prior to releasing or discussing proprietary data. CAM Section 1-507c is being revised to reflect this new guidance (see Enclosure 1 for the CAM change in track changes format).

If 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 Government staff member. The contracting officer will then make a determination as to what data he or she will release to the TPSPs.

To facilitate discussion of this revised guidance, a PowerPoint briefing for presentation at the next FAO staff meeting is attached (Enclosure 2). We have also prepared responses to Frequently Asked Questions (Enclosure 3). In addition, Financial Liaison Advisors (FLAs) will be briefing the buying commands on the revised guidance.

## **CLOSING REMARKS**

FAO personnel should direct questions regarding this memorandum to their regional offices. Regional offices should direct their questions to Auditing Standards Division, at (703) 767-3274 or by e-mail at DCAA-PAS@dcaa.mil.

/s/ Terry M. Schneider  
/for/ Kenneth J. Saccoccia  
Assistant Director  
Policy and Plans

Enclosures: 3  
a/s

**DISTRIBUTION:** C

## 1-507 Security Requirements for Contractor Information

c. 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, studies, or other activities. 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 Government employees. If 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 Government staff member. Before discussing or releasing contractor proprietary data to TPSPs, FAO personnel should confirm that appropriately worded contract clauses, nondisclosure agreements, and/or other notifications, have been executed and that they address data provided to or obtained by DCAA. DCAA personnel should ensure that these documents

(i) authorize DCAA to release the contractor information to the TPSP and (ii) prohibit the TPSP from any unauthorized use of the contractor information. To be considered properly executed for DCAA's purposes, the documents must:

- (1) be executed by an appropriate senior company official who is authorized to provide an approval for the release of contractor proprietary data;
- (2) specifically state that DCAA can release the data directly to the named TPSP contractor (or include DCAA as part of a broadly encompassing “all Government personnel” reference); and
- (3) include language designating the type of data that DCAA can release. Such designation must be broad in that it must expressly designate both data the contractor directly provides to DCAA and data DCAA itself chooses to access in the contractor's records under its audit access rights.

In all circumstances not meeting the conditions above, responses to TPSP requests for contractor data should be provided directly to the contracting officer or his/her designated Government staff member. The contracting officer will then subsequently make the determination as to what data can be released outside of the Government.

**Non-release of Contractor Proprietary Data to  
Third-Party Service Providers (TPSPs)  
Frequently Asked Questions**

	<b><u>Question</u></b>	<b><u>Answer</u></b>
1.	What is a third party service provider?	A company or organization contracted with a contracting command, contract administration office, or other Government unit to perform activities that are not inherently Governmental.
2.	What type of activities might TPSPs be involved in?	TPSP employees serve in a support function to contracting command organizations and contracting officers. They support contract closeouts, pricings, or other activities where a specific action by a warranted contracting officer is not required. The work products, including analysis of contractor proposals and historical data, are sometimes provided by the TPSP employee for contracting officer review and action. However, TPSPs generally do not have a <i>warrant</i> authorizing contractual actions like a contracting officer does.
3.	What is contractor proprietary information?	Contractor proprietary information includes financial data, intellectual property, and performance details that the contractor considers sensitive and should only be released beyond Government channels when authorized by the contractor. It is Agency policy to comply with all data protection requirements to safeguard contractor information. (CAM 1-507)
4.	If the FAO receives a written request for audit or financial data from a contracting officer and there is no mention of TPSP involvement, what should we do?	DCAA may provide contractor proprietary data directly to a contracting officer as they must be a Government employee. However, it is no longer acceptable for DCAA personnel to provide contractor proprietary information to TPSPs. Therefore, before providing or discussing contractor proprietary data with individuals from contracting commands or contract administration offices (other than contracting officers), DCAA personnel should confirm the contacts are with Government employees.

**Non-release of Contractor Proprietary Data to  
Third-Party Service Providers (TPSPs)  
Frequently Asked Questions**

5.	How do I confirm a requestor is a Government employee?	If a question exists as to whether a contracting employee is a Government employee, the auditor should ask the requestor to confirm with an e-mail that includes a statement from the requestor confirming that they are a Government employee. Auditors are cautioned that employees' badges and e-mail addresses may not necessarily identify the employee as a contractor employee.
6.	What do I do if the contracting officer or other Government employees gives permission or requests DCAA to provide contractor proprietary data directly to a TPSP?	If a Government official indicates he or she prefers that DCAA provide information directly to a TPSP employee, the auditor should explain to the requestor that DCAA's policies prohibit this practice. Arrangements should be made for the auditor to provide the information to a designated Government employee with the contracting organization. A contracting officer will then make subsequent determinations as to what he or she will release to TPSP employees.
7.	Can I release the contractor proprietary information to the TPSP if they provide a copy of the nondisclosure agreement or other documents that permit disclosure?	No. DCAA may only provide contractor proprietary data directly to a contracting officer or a Government employee with a need to know the information. DCAA will no longer be required to review contract clauses, nondisclosure agreements, and/or other notifications to determine if they are appropriately worded to authorize release of the contractor information to the TPSP since we will only release data to a Government employee.



# Defense Contract Audit Agency

## Third Party Service Providers (TPSPs)

**Protection of Contractor Proprietary or Sensitive  
Information from Disclosure Outside of  
Government Channels**

# Third Party Service Provider (TPSP)



- Contractors hired by contracting commands and contract administration offices
- Assist contracting organizations in contract closeouts, pricings, or other activities
- **Concern:**
  - Contractor employees may not be covered by the same restrictions from misuse or for mishandling of contractor proprietary or sensitive information in their possession as Government personnel.

# Access to Contractor Proprietary Information



- DCAA's access to contractor information is provided through clauses in current contracts or provisions of contractor solicitations (CAM 1-504).
- Data accessed through exercise of contract clauses are to be used for the performance of audit or oversight responsibilities.
- Auditors must provide all necessary safeguards to protect contractor confidential data. (CAM 1-507)

# Regulations on Releasing Contractor Proprietary Information



- For Government employees:
  - Unauthorized disclosure of contractor proprietary information is subject to penalties contained in 18 U.S.C. 1905.
- For TPSPs – No standard regulation prohibiting nondisclosure
- DCAA's concern is that data provided by the auditor to a TPSP employee might be inappropriately used or disclosed outside Government channels.

# Revised Guidance – CAM 1-507



- Proprietary or sensitive contractor information should be provided only to Government employees.
- Do not provide such information to TPSP employees.
- Before discussing or releasing contractor proprietary data, DCAA personnel should obtain confirmation that they are Government employees.
- The contracting officer or Government staff member is then responsible for making any subsequent release to the TPSPs.



Questions?