



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

IN REPLY REFER TO

PAC 730.3.B.01/2012-01

March 22, 2012
12-PAC-008(R)

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

SUBJECT: Audit Alert on Direct and Indirect Charging of Proposal Preparation and Negotiation Support Costs

This MRD transmits a memorandum from the Director of Defense Pricing to the Government contracting community regarding direct and indirect charging of proposal preparation and negotiation support costs. The enclosed memorandum issued on November 10, 2011, provides that proposal preparation costs not funded by a grant or required by contract are by definition indirect and "proposal and negotiation costs should only be charged directly to a contract when there is a specific contractual requirement for the contractor to submit a proposal." The policy is consistent with the CAS requirements in 48 CFR 9904.402-61(c) that state:

(c) Under 9904.402, costs incurred in preparing, submitting, and supporting proposals pursuant to a specific requirement of an existing contract are considered to have been incurred in different circumstances from the circumstances under which costs are incurred in preparing proposals which do not result from such specific requirement. The circumstances are different because the costs of preparing proposals specifically required by the provisions of an existing contract relate only to that contract while other proposal costs relate to all work of the contractor.

In addition, the cost of proposals not required by a contract should be allocated in accordance with the CAS 420.

Auditors should examine disclosed practices and report a noncompliance with CAS 402 and CAS 420 if disclosed practices allow the contractor to charge proposal costs directly, absent a specific contractual provision for the effort. Auditors should be alert for vague and misleading wording in the disclosure statement that could lead to direct charging proposal costs that are not specifically required by an existing contract. If the examination is not within the scope of a current assignment, a focused audit of the specific cost accounting practice should be initiated under the 19100 activity code. Identified noncompliances should be reported immediately under the 19200 activity code. In addition, auditors should test proposal preparation costs identified in forward pricing and incurred cost audits for compliance with CAS 402 and 420.

March 22, 2012
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SUBJECT: Audit Alert on Direct and Indirect Charging of Proposal Preparation and Negotiation
Support Costs

FAO personnel should direct questions regarding this memorandum to their regional offices, and regional personnel should direct any questions to Accounting and Cost Principles Division at 703 767-3250 or e-mail: DCAA-PAC@dcaa.mil.

/s/ John C. Shire
/for/ Kenneth J. Saccoccia
Assistant Director
Policy and Plans

DISTRIBUTION: C

Enclosure:

DDP Memo Dated 11-10-2011



OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON
WASHINGTON, DC 20301-3000

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ACQUISITION,
TECHNOLOGY
AND LOGISTICS

MEMORANDUM FOR COMMANDER, UNITED STATES SPECIAL OPERATIONS
COMMAND (ATTN: ACQUISITION EXECUTIVE)
COMMANDER, UNITED STATES TRANSPORTATION
COMMAND (ATTN: ACQUISITION EXECUTIVE)
DEPUTY ASSISTANT SECRETARY OF THE ARMY
(PROCUREMENT)
DEPUTY ASSISTANT SECRETARY OF THE NAVY
(ACQUISITION AND PROCUREMENT)
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE
(CONTRACTING)
DIRECTORS OF THE DEFENSE AGENCIES
DIRECTORS OF THE DOD FIELD ACTIVITIES

SUBJECT: Direct and Indirect Charging of Contractor Proposal Preparation and Negotiation
Support Costs

Proposal preparation and negotiation support costs not funded by a grant or required by a contract are by definition to be indirectly charged to contracts through the Bid and Proposal (B&P) indirect cost pool. If there is a specific requirement in an existing contract to submit one or more proposals, costs of preparing those proposals are allocable only to the contract requiring the proposal preparation. In comparison, proposal costs not specifically required by a contract relate to and are allocable as B&P costs to the contractor's total business activity.

Proposal and negotiation costs should only be charged directly to a contract when there is a specific contractual requirement for the contractor to submit a proposal (see FAR 31.205-18(a) Definitions & CAS 9904.402-61(c)). The specific requirement should manifest itself in the contract, such as in a funded line item. As a matter of policy, contracting officers should minimize the situations where a contractor will be contractually required to prepare proposals for new requirements or to definitize unpriced contractual actions.

According to the Cost Accounting Standards (CAS) and the Federal Acquisition Regulation (FAR), if B&P costs (i.e., those costs without a specific contractual requirement) are incurred without a contractual requirement, those costs can never be re-characterized as direct costs of any contract since they were independent B&P costs at the time they were incurred. Likewise, if there is a specific requirement for submission of a proposal in a contract, the proposal and negotiation costs are direct costs of that contract and cannot be transferred to another contract. This is especially relevant to the situation where a contract requires a proposal be prepared for new requirements or a follow-on contract and then the contractor or contracting officer improperly attempts to transfer the proposal and negotiation costs to the new contract resulting from the proposal.

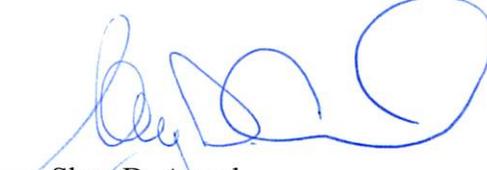
Some of the prevailing reasons for charging proposal preparation and negotiation costs directly to a contract when there is a specific requirement in the existing contract to submit a proposal that particular purpose include:

- Changes directed by the Government under the Changes Clause;
- Value Engineering Change Proposals (VECPs);
- Engineering Change Proposals (ECPs);
- Follow-on procurements;
- New requirements added to existing contracts; and,
- Definitization of unpriced contractual actions.

Follow-on work does not automatically qualify to be charged directly to a contract merely because there is an assumption that the contractor will submit a proposal as part of a continuing program. For the costs to be charged directly to a contract there must be to be a specific requirement in an existing contract to submit that particular proposal, not just an implied requirement. If a contracting officer requires a proposal for a follow-on contract or for new requirements, or determines it is necessary to award undefinitized contractual actions, the Department will often be placed in the position of paying for the proposal and negotiation costs on a reimbursable basis with little or no competitive control over the costs incurred. Contracting officers should avoid placing the Government in that position.

If a contracting officer determines that allowing proposal preparation and negotiation costs to be charged directly to a contract is in the best interest of the Government, the contracting officer should consider controls on such costs. Examples include having the proposal preparation as a firm fixed priced (FFP) or Not-To-Exceed (NTE) contract line item. To help determine the FFP or NTE price for such work, we encourage contracting officers to examine the typical B&P costs, which are *indirect charges* that the contractor incurs for similar proposal preparations. In addition, we will soon be issuing a proposed DFARS rule (Case No. 2011-D042), that will provide a check-list to help gauge the adequacy of a contractor proposal. Such controls like this checklist, once finalized, will help prevent the Department from being billed for a substandard proposal package that will not adequately support negotiation of a reasonable price.

My point of contact for this guidance is Mr. H. Clyde Wray at Clyde.Wray@osd.mil or at 703-602-0288.



Shay D. Assad
Director, Defense Pricing