



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

IN REPLY REFER TO

OTS 730.4.2.7

July 14, 2011
11-OTS-034(R)

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

SUBJECT: Audit Management Guidance on DoD Contractor Disclosure Program

BACKGROUND

The FAR 52.203-13 - Contractor Code of Business Ethics and Conduct, requires contractors to timely disclose in writing to the agency Office of Inspector General (IG) with a copy to the contracting officer, credible evidence of violations of Federal criminal law or the civil False Claims Act. Effective December 12, 2008, FAR required the inclusion of FAR clause 52.203-13 in contracts and related subcontracts in an amount greater than \$5,000,000 and more than 120 days in duration. The contractor submission of disclosures has been termed the contractor disclosure program and within the Department of Defense (DoD), replaces the DoD voluntary disclosure program. Contractors are to submit their disclosures directly to the DoDIG focal point for the contractor disclosure program at:

DoD Contractor Disclosure Program Manager
DoD Office of the Inspector General
Investigative Policy and Oversight Directorate
400 Army Navy Drive, Suite 1037
Arlington, VA 22202-4704
Toll Free Telephone: 866-429-8011
E-mail Address: disclosures@dodig.mil

After receiving the contractor disclosures, the DoD Contractor Disclosure Program Manager transmits them to all stakeholders, including DCAA. Within DCAA, the Headquarters – Justice Liaison Auditor (JLA) position has been designated to receive these disclosures from the DoDIG.

The DoD Instruction 5505.15 - DoD Contractor Disclosure Program assigns DCAA two specific responsibilities:

1. Ensuring that any contractor disclosure received directly from a contractor is immediately forwarded to the DoDIG and
2. Providing investigative audit support to the DoDIG and Defense Criminal Investigative Organizations (DCIOs).

Although DoD Instruction 5505.15 currently refers to providing investigative audit support to the DoDIG/DCIOs, which is ordinarily provided by the Regional Investigative Support Division in cases where there is a formal investigation in progress, the cognizant FAO rather than the Regional Investigative Support Division is responsible for performing the requisite contract audit work for contractor disclosures. The DoD Instruction 5505.15, Item 2 above, will be revised by the DoDIG to clarify that DCAA is responsible to provide audit support to the DoDIG, contracting officers, and DCIOs on the DoD Contractor Disclosure Program.

GUIDANCE

1. DoD Receipt of Contractor Disclosure.

a. Within the DoD, a proper Contractor Disclosure can only be submitted, in writing, directly to the DoD Contractor Disclosure Program Manager, at the DoD Office of the Inspector General. The FAOs should follow the following guidance if a contractor disclosure is made via other channels:

1) Should a contractor or its legal counsel attempt to provide a disclosure under the DoD Contractor Disclosure Program of a violation of Federal criminal law or of the civil False Claims Act to DCAA without first providing it to the DoD Contractor Disclosure Program Manager, the FAO should direct the contractor, in writing, to submit the disclosure to the DoD Contractor Disclosure Program Manager. Copy the DoD Contractor Disclosure Program Manager on any such correspondence along with a copy of the disclosure. The FAO should maintain documentation of any related discussions or correspondence and coordinate as necessary with the DoD Contractor Disclosure Program Manager. The FAO should contact the DCAA JLA to determine whether the contractor has submitted the disclosure to the DoD Contractor Disclosure Program Manager. Under no circumstances are DCAA personnel to accept refund checks.

2) Should a contracting officer contact DCAA to request audit assistance on a contractor disclosure matter, the FAO should determine, by contacting the DCAA JLA, whether the contractor has submitted the disclosure to the DoD Contractor Disclosure Program Manager. If the disclosure was not submitted to the DoD Contractor Disclosure Program Manager, the FAO should direct the contractor, in writing, to submit the disclosure to the DoD Contractor Disclosure Program Manager, copying the DoD Contractor Disclosure Program Manager and the contracting officer. Advise the contracting officer the disclosure was not properly submitted to the DoD Contractor Disclosure Program Manager and that an audit at this time would not be appropriate. The FAO should maintain documentation of any related discussions or correspondence and coordinate as necessary with the DoD Contractor Disclosure Program Manager.

b. The DoD Contractor Disclosure Program Manager forwards submitted disclosures to the DCAA through the DCAA JLA function at Headquarters – Technical Audit Services Division (OTS). The JLA will identify the appropriate FAO and prepare an action required notification memorandum to the FAO Manager/Resident Auditor (Enclosure 1)

attaching a copy of the contractor disclosure and a DCAA Disclosure Response (Enclosure 2 and discussed in paragraph “2.a.4)” below) to the FAO. A copy of the memorandum will be sent to the Regional Director or Director, Field Detachment, Regional Investigative Support Division, and Contract Audit Coordinator (CAC) office, when applicable. In some cases, the DCAA JLA will forward a contractor disclosure to an FAO for informational purposes only (Enclosure 3), such as, when the issue is not audit-related or the contractor does not currently have any DCAA audit activity.

2. FAO Actions Required. Upon receipt of the notification memorandum, the FAO should review the disclosure to determine what action is required and confirm that the FAO has cognizance of the contractor, the contracts impacted, and the contractor’s books and records that support the contractor disclosure. Contact the JLA should the contractor disclosure need to be redirected to a different DCAA Office (i.e., Field Detachment).

a. Action Required Notifications.

1) The existence of the contractor disclosure results in an increase in audit risk and should be treated as a high risk audit lead due to the contractor’s disclosure of credible evidence of violations of Federal criminal law or the civil False Claims Act. Due to the sensitivity and our need to track these actions, a self-initiated audit assignment will be established. This will provide the desired visibility and collection point for the resulting audit actions. The audit should be performed in a separate assignment using DMIS activity code 17900 until a new DMIS activity code 17920 for the contractor disclosure program is implemented during the next update to DMIS, scheduled for later in fiscal year 2011. Once DMIS activity code 17920 is implemented, activity code 17900 should not be utilized to set-up assignments for the accomplishment of effort on the contractor disclosure program.

2) The planning phase of the audit will include an assessment of how the contractor’s disclosure impacts audit effort (in-process and planned), and based on that assessment document what the FAO plans to do as a result of the analysis. The examination of the contractor disclosure, at a minimum, should include verifying the completeness and accuracy of the disclosure, including any disclosed cost impact to Government contracts. The FAO should also verify that the Government received the calculated refund or credit. The nature of the disclosure rather than the materiality of an individual disclosure are the relevant factors when performing the risk assessment. Consider the following when performing the risk assessment/audit:

- Confirm the completeness of the disclosure, such as, did the contractor consider all related time periods or instances of the issue and/or all related contracts?
- Identify how the contractor identified the disclosure issue.
- Evaluate the accuracy and reasonableness of the contractor methodology for quantifying any cost impact and completing any related accounting adjustments.
- Determine if the contractor’s disclosure analysis considers all directly associated costs and related burdens.
- Evaluate whether the disclosure is an isolated incident or if the contractor made several disclosures representing a pattern or possible systemic issue. For example,

- has the contractor submitted individual disclosures for numerous instances of labor mischarging at one contractor facility covering the same time periods?
- Determine if the FAO completed or is performing audits related to the disclosure issue.
 - Determine the impact of the disclosure on contractor internal control systems. Has DCAA previously cited the contractor for a system deficiency related to the disclosure? Did the contractor complete the recommended corrective action?
 - Evaluate the impact of the disclosure to the design and operation of contractor business ethics awareness and compliance program as required by FAR 52.203-13 – Contractor Code of Business Ethics and Conduct.
 - Determine the impact to currently planned and ongoing audits potentially related to the disclosure.
 - Coordinate with a technical representative, if applicable.
 - Coordinate with the CAC office, if applicable.
 - Coordinate with DCAA audit offices cognizant of higher tier contractor entities, if applicable.

3) Coordinate with the administrative contracting officer (ACO)/procuring contracting officer (PCO) by sending the ACO/PCO a notification letter regarding FAO planned audit services and requesting the ACO/PCO of any other actions deemed necessary as a result of the contractor disclosure. Based on the FAO assessment and input from the ACO/PCO, the FAO should document their rationale of planned actions regarding the contractor disclosure and how the disclosure impacts the scope of audit effort at the contractor. As discussed above, this will be documented as part of the contractor disclosure assignment, under DMIS activity code 17900 or 17920, when the 5-digit code becomes available. Actions to be taken immediately as a result of the disclosure, i.e., examination verifying the completeness and accuracy of the disclosure, including any disclosed cost impact to Government contracts and verifying that the Government received the calculated refund or credit, should be performed as part of the contractor disclosure assignment. Additional audit effort to be performed in other assignments, considered necessary as a result of the contractor disclosure, i.e., labor floor check due to disclosure of multiple labor mischarging issues, should be cross-referenced in the contractor disclosure assignment for tracking purposes. In addition, the contractor disclosure should be annotated in the Electronic Contractor Permanent File, folder B-06 Audit Leads and should be considered, if applicable, in the risk assessment when planning the scope of audits. The following are two examples illustrating the implementation of this guidance:

Example 1: The FAO received a contractor disclosure regarding 8 hours of labor mischarging on a Government contract. Based on the FAO's initial assessment and in coordination with the ACO/PCO, the FAO set-up a contractor disclosure audit assignment verifying the completeness and accuracy of the disclosure, including any disclosed cost impact to Government contracts, and verifying that the Government received the calculated refund/credit. The rationale of the assessment, the coordination with the ACO/PCO, and the audit effort verifying the accuracy of the disclosure and the calculated refund/credit will be documented in the contractor disclosure assignment using DMIS activity code 17900 or 17920, once implemented. A report on the audit results will be issued to the ACO.

Example 2: The FAO received a contractor disclosure regarding \$100,000 of labor mischarging for 5 employees on a Government contract. Based on the FAO's assessment and in coordination with the ACO/PCO, the FAO set-up a contractor disclosure audit assignment verifying the completeness and accuracy of the disclosure, including any disclosed cost impact to Government contracts, and verifying that the Government received the calculated refund/credit. The rationale containing the assessment and the coordination with the ACO/PCO will be documented in the contractor disclosure assignment using DMIS activity code 17900 or 17920, once implemented. In addition, it was determined there was a need to initiate a 13500/10310 labor floor check assignment to determine if the labor mischarging is a systemic problem. The risk assessment of the labor floor check assignment should address the specific issues identified in the contractor disclosure assignment as a basis for initiating the labor floor check. The contractor disclosure assignment and audit report sent to the ACO should also reference the initiation of the 13500/10310 labor floor check assignment.

4) Within 30 days of receipt of the contractor disclosure, the FAO should complete the DCAA Disclosure Response (Enclosure 2) and return it to the DoD Contractor Disclosure Program Manager with a copy to the DCAA JLA and the cognizant Regional Investigative Support Division. The purpose of the DCAA Disclosure Response is to acknowledge the FAO's receipt of the disclosure, provide initial information regarding the disclosure (i.e., any prior knowledge/coordination of the disclosure), identify an FAO point-of-contact, and provide an assignment number documenting the FAO's examination of the contractor disclosure. After the DoD Contractor Disclosure Program Manager receives the FAO completed DCAA Disclosure Response, the DoD Contractor Disclosure Program Manager may contact the FAO regarding the contractor disclosure. FAOs should respond directly to the DoD Contractor Disclosure Program Manager, copying the DCAA JLA, with their response to inquiries.

5) Based on the assessment and coordination with the ACO/PCO, the examination of the contractor disclosure should be treated as a customer requested audit and schedule/complete the effort with the priority of a demand assignment within 180 days. Inform the DoD Contractor Disclosure Program Manager and the DCAA JLA of any anticipated delays in the completion of the audit. The accomplishment of these actions should be performed as an examination of the disclosure and reports issued with an opinion using DMIS activity code 17900, until activity code 17920 is implemented. Reports should reference the applicable contractor disclosure number and be addressed to the cognizant contracting officer with copies to the DoD Contractor Disclosure Program Manager and the DCAA JLA. The report should also reference the initiation of additional assignments as a result of the contractor disclosure. The FAO can complete effort for a number of contractor disclosures under one assignment, if the disclosures are for like issues, such as, all relate to labor mischarging.

b. Informational Notifications. In some cases, a contractor disclosure is forwarded by the DCAA JLA to an FAO for information only (Enclosure 3), such as, the issue is not audit-related or the contractor does not currently have audit activity. An assessment regarding how the contractor disclosure will impact the scope of future audit effort is generally not required in these circumstances, but can be performed if the FAO determines it is warranted.

The DCAA Disclosure Response should still be completed within 30 days for informational disclosures.

3. Special Considerations.

a. Contractor disclosures should not be disseminated outside of DCAA without the prior approval of the DoD Contractor Disclosure Program Manager. For example, if a contractor representative at a segment location requests copies of disclosure documents, refer them to the official that made the disclosure.

b. FAOs are expected to complete audit effort regarding contractor disclosures irrespective of any pending investigations or investigative support being provided by the Regional Investigative Support Division. If the FAO is advised in writing by an investigator not to proceed with their audit effort due to a pending or open investigation, the FAO should advise the DoD Contractor Disclosure Program Manager and the DCAA JLA that the audit effort will be postponed or stopped due to pending investigative actions.

c. Contractor cooperation is essential to timely and effective completion of the audit effort. The FAO should promptly notify both the DoD Contractor Disclosure Program Manager and the DCAA JLA when the contractor fails to cooperate fully per FAR 52.203-13 – Contractor Code of Business Ethics and Conduct. This will afford the DoD Contractor Disclosure Program Manager an opportunity to resolve the matter before any action to formally report a denial of access to contractor records. If the DoD Contractor Disclosure Program Manager efforts are unsuccessful in resolving the matter, the FAO should consider the contractor's lack of cooperation in supporting their disclosure as a denial of access to contractor records and follow the procedures in DCAA Instruction 7640.17, Formal Reporting Procedures for Denial of Access to Contractor's Records. Additionally, the FAO should consider whether the contractor's unsatisfactory cooperation impacts the contractor's current control environment and contractor responsibility for performance on Government contracts.

d. Immediately coordinate with the DoD Contractor Disclosure Program Manager any significant findings or concerns identified in auditing contractor disclosures. If submitting a DCAAF 2000 to the DCAA JLA related to suspected irregularity activities not previously disclosed, but related to the contractor's disclosure, identify the related contractor disclosure number on the referral.

CONCLUDING REMARKS

This audit management guidance is effective immediately for all contractor disclosures forwarded to FAOs after the date of this MRD. For those contractor disclosures already in the possession of FAOs for which effort in previously provided action plans will be completed and reports issued in the next 60 days, those actions may be completed as planned without compliance with this MRD. For all other contractor disclosures in the possession of FAOs where effort has not started or will take more than 60 days for report issuance, those actions must be completed in accordance with the guidance contained in this MRD.

OTS 730.4.2.7

SUBJECT: Audit Management Guidance on DoD Contractor Disclosure Program

Questions on this memorandum may be directed to the Technical Audit Services Division, at (703) 767-2238, or email DCAA-OTS@dcaa.mil.

/s/

Nina I. S. Kissinger
Deputy Assistant Director
Operations

Enclosures: 3

1. Notification Memorandum
2. DCAA Disclosure Response
3. Informational Notification Memorandum

DISTRIBUTION: C



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MEMORANDUM FOR BRANCH MANAGER/RESIDENT AUDITOR, FAO

ATTENTION: Mr./Ms. FAO Manager/Resident Auditor

SUBJECT: Notification of Contractor Disclosure 20XX-0XXX
Contractor Name

As part of the Contactor Disclosure Program administered by the Department of Defense Inspector General (DoDIG), we received contractor disclosure 20XX-0XXX (Enclosure 1) for the Contractor Name, which we understand is under the cognizance of your office. The contractor disclosed

After your review of the contractor disclosure, set-up an assignment, using DMIS Activity Code 17920 and perform an assessment regarding how the contractor disclosure will impact the scope of audit effort with the contractor. At a minimum, the examination of the contractor disclosure should include verifying the completeness/accuracy of the disclosure, including any disclosed cost impact to Government contracts and that the Government received the calculated refund/credit. Report the results of this effort to the cognizant contracting officer.

Also, please complete the "DCAA Disclosure Response" (Enclosure 2) providing key information that the DoDIG has requested. Please forward the completed form to the DoDIG with a copy to DCAA Justice Liaison Auditor (JLA) and the cognizant Regional Investigative Support Division within the next 30 days.

Finally, the contractor disclosure should be annotated in the Electronic Contractor Permanent File, folder B-06 Audit Leads.

Questions on this memorandum may be directed to the DCAA JLA.

Nina I. S. Kissinger
Deputy Assistant Director
Operations

Enclosures: 2

1. Contractor Disclosure 20XX-0XXX
2. DCAA Disclosure Response

Copy furnished:
RD, Region
RSI-X

DEPARTMENT OF DEFENSE CONTRACTOR DISCLOSURE PROGRAM

DCAA DISCLOSURE RESPONSE

CONTRACTOR DISCLOSURE NUMBER 20XX-0XXX (Contractor Name):

(Respond Y or N to the following statements)

_____ The Contracting Office has coordinated with DCAA regarding this disclosure. If yes, please identify contracting officer and provide contact information _____
_____.

_____ The Contractor has coordinated with DCAA regarding this disclosure.

_____ DCAA Field Audit Office has submitted or is considering submitting a DCAA Form 2000 regarding the issue(s) in this disclosure. If a Form 2000 "early alert" was issued, identify the Investigative Organization (i.e., Air Force OSI, Army CID, DCIS, NCIS) with which this was submitted (provide contact information) _____
_____.

FAO: DCAA – FAO Address

FAO Point of Contact for Disclosure Issue: _____

POC Phone Number: _____

POC E-mail: _____

Assignment Number: _____

Signature: _____ Date: _____ Phone Number: _____

Return to Office of the Inspector General (with a copy to DCAA JLA and RSI)
Room 1051
400 Army Navy Drive
Arlington, Virginia 22202-4704



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The contractor disclosure is forwarded to your office for your information and use. You are not required to take action on contractor disclosure 20XX-0XXX. However, if you decide action on the contractor disclosure is warranted, set-up an assignment, using DMIS Activity Code 17920 and perform a risk assessment regarding how the contractor disclosure will impact the scope of future audit effort with the contractor. Coordinate with the ACO/PCO regarding what actions and audits are planned as a result of the contractor disclosure. Based on the risk assessment and input from the ACO/PCO, document your rationale regarding the action the FAO plans to take as a result of the contactor disclosure.

Also, please complete the "DCAA Disclosure Response" (Enclosure 2) providing key information that the DoDIG has requested. Please forward the completed form to the DoDIG with a copy to DCAA Justice Liaison Auditor (JLA) and the cognizant Regional Investigative Support Division within the next 30 days.

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