

DCAA used to maintain a “proposal adequacy checklist” to help auditors determine whether a contractor’s proposal met the requirements of FAR 15.408. That tool was eliminated when the checklist was incorporated into the DFARS in January 2014. Per the DFARS solicitation provision [252.215-7009](#), a prospective contractor must complete the checklist and submit the completed checklist along with its proposal, when certified cost or pricing data are being required.

Yes, readers. You got it. The result of the change was that the effort previously performed by DCAA auditors was shifted to the contractors. As has become the norm with the audit agency that is chronically short of resources (or perhaps short of the competence to manage the resources it has).

The DFARS proposal adequacy checklist has 36 boxes to be checked (or items to be discussed if the answers don’t fit into the boxes). According to the regulations, the purpose of checking the boxes is “to facilitate submission of a thorough, accurate, and complete proposal.” But sometimes, even though all the boxes have been checked, DCAA finds that the submitted proposal is not thorough, accurate, or complete.

What happens then?

According to the Department of Defense Office of Inspector General (DoDOIG), “DCAA issues a memorandum to the contracting officer that outlines the noncompliances and the actions required to correct the noncompliances.”

And then what happens?

Well, at that point things become a bit hazy. The DoDOIG is not particularly clear on who does what—or who *should* do what. The most that can be said is “The contracting officer is responsible for determining the extent of support required to evaluate a contractor’s price proposal” In other words, DCAA is not the final arbiter of whether a contractor has submitted sufficient (certified) cost or pricing data; that’s the responsibility of the cognizant contracting officer.

Or is it?

In a recent [audit report](#), the DoDOIG seemed to acknowledge the primacy of the CO's discretion, while criticizing DCMA COs for failing to document how they dealt with DCAA's determinations of "noncompliance" with FAR Table 15-2 requirements.

The IG looked at 23 contractor proposals where DCAA had "advised the contracting officers that the proposals did not comply with the FAR requirements, including FAR Table 15-2." The IG could not fault the COs actions. The report stated "For all 23 contractor price proposals, the contracting officers took appropriate actions to address the proposal inadequacies identified by DCAA"

But it seems that no DoDOIG audit report can be issued unless there is some criticism of DCMA; and this audit report was no exception to that rule. Even though the DCMA COs took "appropriate actions," not all of them *documented* those actions to the satisfaction of the IG auditors. The audit report found that "for 9 of the 23 proposals, contracting officers did not comply with the FAR requirements for documenting the negotiation because they did not adequately document the contractor price proposal inadequacies or the actions taken to address the inadequacies in the contract file."

The basis for the IG audit finding was stated to be FAR 15.406-3 ("Documenting the Negotiation"). According to the audit report, that FAR subsection "requires that contracting officers document in the contract file the principal elements of the negotiated agreement."

In fact, FAR 15.406-3(7) does require that COs add to the contract file "A summary of the contractor's proposal, *any field pricing assistance recommendations, including the reasons for any pertinent variances from them*, the Government's negotiation objective, and the negotiated position." (Emphasis added.) The question is, when DCAA tells a CO that the contractor proposal is noncompliant with FAR Table 15-2—but states nothing more—*is that actually a recommendation*? We mean:

Unless the DCAA memorandum actually contains a recommendation to do something, our reading of the regulation would seem to indicate that there would be nothing to document, other than (perhaps) "DCAA said the proposal was crap; I looked at their findings and disagreed with

the assessment(s). I was able to negotiate a fair and reasonable price despite the alleged noncompliance(s)."

Also, what qualifications does a DCAA auditor have to determine whether a CO can or cannot overcome the (alleged) inadequacies of a contractor proposal? Are DCAA auditors routinely trained in negotiation techniques? Are they certified Master Negotiators? Because if not, then perhaps all that's happening is that a DCAA auditor is signaling that one or more of the 36 proposal adequacy boxes haven't been properly checked. And not all of those boxes are equal! Some boxes matter more than others. But you wouldn't know that from the DoDOIG audit report (which curiously omits any discussion of the requirements of DFARS 215.408(4) and the solicitation provision 252.215-7009).

Anyway, even though the IG auditors saw fit to omit discussion of pertinent regulatory guidance—and even though the IG auditors saw fit to omit discussion of the competence of a DCAA auditor to actually determine whether or not a contractor proposal was suitable for audit—the IG auditors were able to confidently conclude that "Without adequate documentation, the contracting officers could not readily demonstrate that they had appropriately addressed the contractor price proposal inadequacies before they negotiated a fair and reasonable price with the contractor."

Which is a flawed conclusion, since the auditors never demonstrated that was a required step.

The root cause of the so-called "noncompliance" of the contracting officers was, according to the audit report, "a lack of DoD policy and instruction" telling the COs to document the DCAA findings of the so-called contractor "non-compliances" and disposition each one in the contract file. It's not surprising (to us) that there was no DoD policy or instruction, because none was required. But that's not how the DoDOIG saw it.

Despite our criticisms of the criticisms of the DoDOIG audit report, "Defense Pricing and Contracting Principal Director agreed to implement guidance that requires contracting officers to document the actions they take on contractor price proposal inadequacies." Unlike the responses from COCOMs and DPAP, there was no response published in the DoDOIG audit report that came from the office of Vice Admiral Lewis (Director, DCMA).

Everybody's a Critic, Especially the DoD Office of Inspector General

Written by Nick Sanders

Monday, 19 November 2018 00:00

(*Ed. Note:* Gratuitous and possibly libelous opinions on the willingness of senior DoD leadership to back up the contracting officers in the field deleted from this post in a rare moment of discretion.)