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Dispositioned Defective Pricing Audit Reports
at the U.S. Army Aviation and Troop Command

Report Number PO 98-603

December 23, 1997

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Acronyms

ADR	Alternative Disputes Resolution
AFARS	Army Federal Acquisition Regulation Supplement
ASBCA	Armed Services Board of Contract Appeals
ATCOM	Army Aviation and Troop Command
AVSCOM	Army Aviation Systems Command
CAFU	Contract Audit Followup
DCAA	Defense Contract Audit Agency
DFARS	Defense Federal Acquisition Regulation Supplement
FAO	Field Audit Office
FAR	Federal Acquisition Regulation
MDHC	McDonnell Douglas Helicopter Company
MDHS	McDonnell Douglas Helicopter Systems
OARB	Overage Audit Review Board
OMB	Office of Management and Budget
PLA	Procurement Liaison Auditor
RPA	Recommended Price Adjustment
TINA	Truth in Negotiations Act
U.S.C.	United States Code



INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
400 ARMY NAVY DRIVE
ARLINGTON, VIRGINIA 22202-2884



December 23, 1997

MEMORANDUM FOR UNDER SECRETARY OF DEFENSE (COMPTROLLER)
ASSISTANT SECRETARY OF THE ARMY (RESEARCH,
DEVELOPMENT, AND ACQUISITION)
DIRECTOR, DEFENSE CONTRACT AUDIT AGENCY
AUDITOR GENERAL, DEPARTMENT OF THE ARMY

SUBJECT: Evaluation Report on Dispositioned Defective Pricing Audit Reports at the
U.S. Army Aviation and Troop Command (Report No. PO 98-603)

We are providing this evaluation report for review and comment. The report is one in a series relating to our review of dispositioned defective pricing reports at selected DoD buying commands. We considered management comments on a draft of this report in preparing the final report.

DoD Directive 7650.3 requires that all recommendations be resolved promptly. The Under Secretary of Defense (Comptroller) concurred in principle with our finding and recommendation. The Department of the Army fully concurred with our findings and recommendations and left no unresolved issues. The comments from the Defense Contract Audit Agency were not responsive. As a result of management comments and additional evaluation work, we deleted draft Recommendation C.2. and incorporated the associated corrective actions into revised Recommendation A.2. to provide the Defense Contract Audit Agency more flexibility in implementing corrective action.

We request that management provide comments in response to the final report by January 30, 1998. Comments must describe actions taken or planned and provide completion dates for those actions.

We appreciate the courtesies extended to the evaluation staff. For additional information on this report, please contact Ms. Bonnie B. Weiss, Evaluation Program Manager, at (703) 604-8750 (DSN 664-8750) or Ms. Veronica H. Harvey, Evaluation Project Manager, at (703) 604-8740 (DSN 664-8740). See Appendix E for the report distribution. The inside back cover lists the evaluation team members.

Russell A. Rau
Assistant Inspector General
Policy and Oversight

Office of the Inspector General, DoD

Report No. PO 98-603
(Project No. 7OC-9013.01)

December 23, 1997

Dispositioned Defective Pricing Audit Reports at the U.S. Army Aviation and Troop Command

Executive Summary

Introduction. This report is one in a series relating to our FY 1997 evaluation of dispositioned defective pricing reports at selected DoD buying commands. DoD Directive 7640.2, "Policy for Followup of Contract Audit Reports," as amended August 16, 1995, requires the Office of Inspector General, DoD, to develop contract audit followup policy and to monitor, coordinate, and evaluate contract audit followup systems maintained by the DoD Components. As prescribed by the Directive, the Office of Inspector General, DoD, has the responsibility to identify areas where contract audit followup procedures can be improved and to recommend appropriate corrective action to the respective DoD Component head. The defective pricing program falls under the purview of the contract audit followup program.

We selected the U.S. Army Aviation and Troop Command, St. Louis, Missouri, for review because our analysis of its semiannual report for the period ended September 30, 1995, showed that its contracting officers closed 13 defective pricing audit reports sustaining only \$1.2 million (5.7 percent) out of the \$21.4 million recommended price adjustments. We found that the numbers reported are incorrect. Contracting officers actually closed 20 defective pricing audit reports sustaining \$1.2 million (7.4 percent) out of \$16.3 million. The 7.4-percent sustention rate is one of the lowest experienced in the history of our oversight of the DoD-wide contract audit followup program. The U.S. Army Aviation and Troop Command has been disestablished and realigned with the U.S. Army Missile Command to form the new Aviation and Missile Command, effective October 1, 1997.

Evaluation Objectives. The overall evaluation objective was to determine whether contracting officers at selected DoD major buying commands complied with the law and regulations in processing defective pricing audit reports. We also evaluated the adequacy of Defense Contract Audit Agency postaward audit coverage of contracts awarded by the commands and reviewed the adequacy of the management control program as it applied to the overall objective. This report discusses dispositioned defective pricing audit reports at the U.S. Army Aviation and Troop Command. A subsequent report on Project No. 7AL-0012, "Audit of the Acquisition of the RAH-66 Comanche," will address the ATCOM management control program.

Evaluation Results. The U.S. Army Aviation and Troop Command reconvened an Army Overage Audit Review Board to address continued overage audit reports. This added oversight should significantly improve the conditions found in the Command's processing of defective pricing audit reports. We observed similar overage settlements and low sustention rates in evaluations performed during 1991, 1992, and 1994. While we found the Defense Contract Audit Agency postaward audits to be adequate, the

Agency was not fully responsive to the Command's requests for additional support of disputed audit findings which contributed to delays in settlements. Three conditions warrant the Command's attention.

- o Contracting officers experienced processing delays in settling defective pricing audit reports. As a result, the downward adjustment of defectively priced contracts and recoupment of contract overpayments and applicable interest were significantly delayed (Finding A).

- o Contracting officers did not consistently issue timely and proper demands for payment in accordance with Federal Acquisition Regulation 32.610, "Demand for payment of contract debt," or properly assess and collect interest payments. Also, the Defense Finance and Accounting Service payment offices did not properly disposition interest payments. As a result, the Government did not immediately recover overpayments that were repaid by the contractors and interest amounts were understated or inappropriately credited to appropriated accounts (Finding B).

- o Contracting officers did not consistently sustain recommended price adjustments due to various contributing factors. As a result, contracting officers were often limited in influencing the final disposition of audit questioned costs (Finding C).

Recommendations in this report, if implemented, will result in significant process and operational improvements and will prevent illegal augmentation of individual contract appropriations. Also, interest payments totaling \$482,170 will revert back to the U.S. Treasury account 3210, "General Fund Proprietary Receipts, Defense Military, Not Otherwise Classified."

Summary of Recommendations. We recommend that the Assistant Secretary of the Army, Research, Development, and Acquisition, through the Commander, Aviation and Missile Command, develop a comprehensive in-house training program for its contracting work force on processing defective pricing audit reports and to improve the accuracy and reliability of its semiannual data. We recommend that the Director, Defense Contract Audit Agency, remind Field Audit Offices to treat requests for additional support of defective pricing audit reports as demand assignments and to issue supplemental or advisory reports whenever additional data that have a material effect on Government contract costs are provided by contracting officers or contractors. We also recommend that the Under Secretary of Defense (Comptroller) direct Defense Finance and Accounting Service payment offices to transfer improperly credited interest payments to Miscellaneous Receipts 3210 account.

Management Comments. The Under Secretary of Defense (Comptroller) concurred in principle and initiated action to implement our recommendation. The Department of the Army fully concurred with our findings and recommendations. The Defense Contract Audit Agency nonconcurred with recommendations directed to the Agency, stating that existing guidance on requests for additional audit support is clear and that reemphasizing the guidance on conducting periodic followup and maintaining open lines of communications with contracting officers before, during, and after the audit and providing timely followup support and assistance is unnecessary. The report contains a discussion of the management comments in Part I and the full texts of management comments in Part III.

Evaluation Response. The Under Secretary and Army comments were fully responsive to the report recommendations. The Defense Contract Audit Agency comments were not responsive. As a result of the management comments and additional evaluation work, we deleted draft Recommendation C.2. and incorporated associated actions into revised Recommendation A.2. to provide the Defense Contract Audit Agency more flexibility in implementing corrective action. The revisions are shown at the end of the respective findings and additional responses are required. We request that the Director, Defense Contract Audit Agency, comment on the unresolved recommendations by January 30, 1998.

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Part I - Evaluation Results

Evaluation Background

The Office of Management and Budget (OMB) Circular A-50, "Audit Followup," requires that resolution of contract audit reports, other than preawards, be achieved within 6 months of report issuance and that disposition take place as soon as possible after resolution. DoD Directive 7640.2, "Policy for Followup of Contract Audit Reports," as amended August 16, 1995, implements the OMB Circular and provides policy and procedural guidance to DoD Components for the resolution and disposition of specified contract audit reports. The Directive also requires the Office of Inspector General, DoD, to develop contract audit followup policy and to monitor, coordinate, and evaluate contract audit followup (CAFU) systems maintained by the DoD Components. Defective pricing audit reports issued by the Defense Contract Audit Agency (DCAA) fall under the purview of the Directive. In accordance with the Directive, the Office of Inspector General, DoD, conducts comprehensive oversight reviews of major DoD commands every 2 to 3 years to determine adequacy of implementation. This report is one in a series relating to our FY 1997 evaluation of dispositioned defective pricing reports at selected DoD buying commands. The report summarizes our review of resolution and disposition actions taken on defective pricing audit reports by U.S. Army Aviation and Troop Command (ATCOM) contracting officers. Appendix B contains summaries of prior evaluations at ATCOM.

Evaluation Objectives

We determined whether ATCOM contracting officers followed law and regulations in processing defective pricing audit reports. Specifically, we determined whether contracting officers at ATCOM took timely and appropriate action to disposition defective pricing reports, including recovery of contract overpayments and applicable interest. We also evaluated the adequacy of DCAA coverage of postaward audits and support of contracting officers in settling defective pricing reports. The Office of the Assistant Inspector General for Audit, DoD, will address the ATCOM management control program under its Project No. 7AL-0012 concerning the RAH-66 Comanche contracts. Subsequent reports on Project Nos. 7OC-9013.02, .03, and .04 will cover the results of our evaluations at the Warner Robins Air Logistics Center; the Naval Air Systems Command; and the National Security Agency, Maryland Procurement Office, respectively. See Appendix A for a discussion of the evaluation process.

Finding A. Processing of Defective Pricing Audit Reports

Contracting officers at the U.S. Aviation and Troop Command experienced processing delays in settling defective pricing audit reports. Three major factors caused the processing delays: contracting officers lacked training in the timely resolution and disposition of defective pricing audit reports; contracting officers did not consistently obtain timely contractor comments; and certain DCAA Field Audit Offices (FAOs) did not treat contracting officer requests for additional audit assistance as a high priority. As a result, the downward adjustment of defectively priced contracts and recoupment of contract overpayments and applicable interest were significantly delayed. The unwarranted delays prevented the timely use of available funds, increased difficulty in collecting the debt, and caused a monetary loss to the Government.

Resolution and Disposition Requirements

Resolution Requirements. The DoD recognizes under OMB Circular A-50, "Audit Followup," and DoD Instruction 7600.2, "Audit Policies," the need for contracting officers to give full consideration to contract audit advice and to document the disposition of audit recommendations. OMB Circular A-50 requires resolution of contract audit reports, other than preawards, within 6 months of report issuance. Resolution is the point at which the auditor and the contracting officer agree on the action to be taken on audit report findings and recommendations or in the event of disagreement, when the contracting officer determines a course of action after following the DoD Component prenegotiation documentation and review procedures. The contracting officer is responsible for reaching agreement with the contractor and has wide latitude and discretion in that regard. For most contract audit reports, the contracting officer should obtain contractor comments and the technical advice deemed necessary before resolution or formulation of a Government prenegotiation position. The additional information is to be shared with the DCAA auditor, as appropriate. If additional audit effort is required, the contracting officer is to promptly request the audit and the DCAA auditor should give priority to providing the additional audit support. The recommended price adjustment (RPA) must be adjusted accordingly by the auditor if additional factual data warrant the change. If no additional audit effort is necessary, the contracting officer will communicate with the auditor on the proposed disposition, as necessary, to reach a fully informed decision.

Disposition Requirements. Contract audit report disposition is achieved when the contractor implements the audit recommendations or the contracting officer decision; the contracting officer negotiates a settlement with the contractor and a

Finding A. Processing of Defective Pricing Audit Reports

contractual document is executed; or the contracting officer issues a final decision pursuant to the clause in Federal Acquisition Regulation (FAR) 52.233-1, "Disputes," and 90 days elapse without contractor appeal to the Armed Services Board of Contract Appeals (ASBCA). Disposition should take place as soon as possible after resolution but not later than 12 months from date of issuance.

Factors Affecting Resolution or Disposition

For the 42 defective pricing audit reports we reviewed, representing \$20.5 million in recommended price adjustments, contracting officers or contract specialists did not consistently process defective pricing audit reports in accordance with law and regulations. Three major factors contributed to delays:

- o contracting officers did not have adequate training in the timely resolution and disposition of defective pricing audit reports;
- o contracting officers did not consistently obtain timely contractor comments on the defective pricing allegations; and
- o certain DCAA FAOs did not treat contracting officer requests for additional audit assistance as a high priority.

Of the 42 defective pricing reports we examined, 36 were overage. We considered an audit report overage if the contracting officer did not meet the 6-month resolution standard or the 12-month disposition standard. Table 1 summarizes the three major delay factors and the associated percentages of occurrences.

Lengthy and complex litigation of disputed defective pricing issues also cause significant delays in the settlement of audit findings. However, such delays are beyond the contracting officers' control. Of the 36 overage reports, 13 were in litigation. Appendix C further discusses defective pricing reports in litigation and alternative disputes resolution procedures.

Finding A. Processing of Defective Pricing Audit Reports

Table 1 - Delay Factors Affecting ATCOM Processing of Defective Pricing Reports

Standard	Number of Defective Pricing Reports	Contracting Officer Delays	Contractor Delays	DCAA Delays
Exceeded Resolution/Disposition Standards	36	21	11	4
Met Resolution/Disposition Standards	0	0	0	0
Total	36	21	11	4
Percent of Delay Related to Each Factor	100%	58%	31%	11%

Need for Contracting Officer Training

Lack of contracting officer understanding on how to process defective pricing audit reports was a major factor that contributed to contracting officer delays. DoD Directive 7640.2 requires the Secretaries of the Military Departments and the Directors of the Defense agencies to ensure that acquisition personnel are adequately trained in the use of contract audit reports and the requirements of the CAFU program. Although ATCOM took corrective actions in response to our previous recommendations regarding training, additional training is needed, particularly in the processing of defective pricing audit reports.

Our review of contract files indicated that ATCOM contracting officers did not fully understand the difference between resolution and disposition as defined in DoD Directive 7640.2, Army Federal Acquisition Regulation Supplement (AFARS) 15.891, and ATCOM Standard Operating Procedures 715-1. For 14 of the 42 defective pricing cases, the records showed that resolution and disposition dates were the same, although the contracting officers completed those milestones on different occasions. Also, for eight cases, the contracting officers did not document resolution and disposition as required by the Directive and Army implementing guidelines. For contracts for which contracting

Finding A. Processing of Defective Pricing Audit Reports

officers prepared price negotiation memorandums or post-business clearances, we found no evidence that contracting officers provided copies to the cognizant DCAA FAOs as required by the Directive; FAR 15. 808, "Price negotiation memorandum;" and AFARS 15.890-2, "Business Clearance Procedures."

Contracting Officer Reassignments. Management decisions to reassign responsibility for processing defective pricing audit reports from the Contract Cost Analysis Division to the buying divisions exacerbated the lack of contracting officer training and experience in processing defective pricing reports and created confusion among the contracting personnel. Before the reassignment of the defective pricing reports to the buying divisions, ATCOM management dedicated two costs analysts from the Contract Cost Analysis Division to process defective pricing cases. However, it was unrealistic for ATCOM management to expect 2 cost analysts to handle more than 50 open reports, particularly when 1 of the analysts was dedicated to handling the highly complex McDonnell Douglas Helicopter Company (MDHC) global settlement litigation project. Consequently, many of the defective pricing reports languished and became overage with little or no action taken. The 36 overage reports dispositioned during the 18-month sample period demonstrate the lack of contracting officer training to resolve and disposition the defective pricing reports in a timely manner. The resultant confusion that ensued from the reassignments is best demonstrated in the following example.

DCAA audit report number 4231-92C42040-019, (HR Textron), October 29, 1992, alleged that the contractor did not disclose accurate, complete, and current data during the negotiations of contract DAAJ09-88-C-1150, including Modification P0001, and recommended a price adjustment of \$158,681. The defective pricing case was reassigned to one of the ATCOM buying divisions on January 4, 1995. Before that time, the Contract Cost Analysis Division handled the defective pricing case for which the last contracting officer action occurred on September 15, 1993. The contractor concurred with a portion of the recommended price adjustment and issued check number 022537 for \$38,350 on December 8, 1993. However, the former contracting officer did not forward the check to the payment office for processing. On February 8, 1994, HR Textron stopped payment on the original check and replaced it with another check for the same amount. The contracting officer misplaced the second check and did not process it for collection. One year later, the incumbent contracting officer found the second missing check on February 1995; however, the period of validity had also expired on the check. The incumbent contracting officer requested additional audit assistance from DCAA Van Nuys on March 9, 1995, to reconcile differences between the Government and the contractor regarding part number 745008-5. On May 31, 1995, the DCAA confirmed that defective pricing could not be substantiated on part number 745008-5. The contracting officer issued the official demand letter on July 26, 1995, requesting HR Textron to issue separate checks, one for the principal at \$38,350 and one for interest at \$12,368. The ATCOM contracting officer received the repayment and interest checks on August 18, 1995.

The circumstances surrounding this settlement indicate that the contracting officer initially responsible for the audit report did not know what to do with the HR Textron partial refund of \$38,350. Negotiable instruments (checks) are

Finding A. Processing of Defective Pricing Audit Reports

generally valid only for 90 days and must be immediately processed for collection to ensure proper crediting of appropriate accounts. Training needs to include existing procedural guidance to have such funds deposited or forwarded to the designated payment or accounting and finance office on a daily basis. Existing regulations do not prevent contracting officers from accepting partial payments of contract debts or voluntary refunds; however, the Defense Federal Acquisition Regulation Supplement (DFARS) 242.71 states, "Acceptance of a voluntary refund will not prejudice remedies otherwise available to the Government." In keeping with that policy, contracting officers should include in the letter of acceptance a caveat that acceptance of the partial refund or repayment does not release the contractor from liability for defective pricing nor does it preclude the Government from pursuing subsequent defective pricing adjustments.

Defective Pricing Cases Assigned to Inexperienced Contract Specialists.

After the reassignment of defective pricing reports to the buying divisions in December 1994, certain contracting officers assigned the processing of the defective pricing cases to junior contract specialists who had little or no knowledge or experience in how to proceed with the cases. This practice further delayed the defective pricing settlements. For example, in processing audit report number, 6361-92A42040-003, September 23, 1993, Boeing Defense and Space Group, the contracting officer requested a "voluntary price adjustment" in the amount of \$44,275, in lieu of pursuing a defective pricing adjustment. ATCOM management explained that an inexperienced contract specialist drafted the November 8, 1993, letter to Boeing for a contracting officer who also had limited experience with defective pricing.

Other contracting officers explained that emphasis was placed on new procurements rather than on settling complex defective pricing reports that were allowed to languish at the Contract Cost Analysis Division. For example, on audit report number, 4461-92H42020-002, September 30, 1993, McDonnell Douglas Aerospace, Defense and Electronic Systems, the contracting officer took no substantive action after receipt of the audit report through the first quarter of 1995. Contract documentation indicates that when the CAFU monitor checked the defective pricing status with the incumbent contracting officer in March and September 1994, the contracting officer indicated he had no time to process the defective pricing audit report. The audit report, recommending a price adjustment of \$407,708, incorporated the contractor's agreement with the audit findings except for two minor exceptions. On April 19, 1995, the contractor offered to credit the Government \$423,476.50 in principal and \$73,277.31 in interest. The DCAA took no exception to the McDonnell Douglas Aerospace proposed adjustments for material, overhead, facilities capital cost of money, or profit because the total credit exceeded that of the audit. However, the DCAA believed the interest calculation was understated by \$20,432. Because the contractor had received all payments due under the contract, the CAFU monitor advised the contracting officer on August 4, 1995, that a cash recovery of the overpayment amount plus applicable interest was all that was necessary to disposition the case. However, the contracting officer did not issue the required demand letter. Instead, he issued a bilateral price-reduction modification on August 18, 1995, and delegated the

Finding A. Processing of Defective Pricing Audit Reports

assessment and collection of the interest payment to the administrative contracting officer at Huntington Beach, California. The contractor subsequently paid the Government \$423,476.50 in principal and \$98,043 in interest on August 29, 1995.

Need for Timely Contractor Comments

Another contributing factor to processing delays is contracting officer inability to obtain timely contractor comments on defective pricing allegations. For most contract audit reports, DoD Directive 7640.2 requires the contracting officer to obtain contractor comments and technical advice deemed necessary before resolution or formulation of a Government prenegotiation position. An exception to this rule is when an audit report already includes contractor comments concurring with the audit findings.

For 11 reports, contractors did not provide timely responses to DCAA auditors' or contracting officers' requests for comments on the defective pricing audit findings or for additional information during the draft audit phase, fact-finding, or negotiations. Obtaining contractor comments is a process largely beyond the control of contracting officers. In those cases, the contracting officer is in the position of relying on another entity to provide information needed before achieving resolution or disposition of an audit report. However, the process can be facilitated when contract auditors and contracting officers foster open lines of communication with contractor representatives throughout and at the conclusion of the audit. The DCAA Contract Audit Manual urges auditors to discuss pertinent factual matters with the contractors by providing them with copies of draft reports, exhibits, disputed documents, and other significant audit evidence. This practice gives contractors the opportunity (normally 30 days) to review the allegations and to provide any additional information for the auditors' consideration before the final report is issued.

Ideally, contractor responses to defective pricing allegations and auditor rejoinders to those comments should be included in the final report to minimize resolution delays. However, some contractors refuse or are not able to provide official comments on the allegations within the 30-day suspense. In those instances, DCAA auditors are required to solicit the assistance of the contracting officers; however, no more than 30 days after the exit conference should be allowed for receipt of contractor comments so as not to delay the issuance of the final report. Contracting officers should assist contract auditors as necessary in obtaining contractor comments. In cases in which final defective pricing audit reports do not incorporate contractor comments, the DoD Directive requires contracting officers to solicit contractor comments and other technical advice before formulating the Government prenegotiation objectives. When a contractor continues to ignore or fails to respond to requests for comments or additional information, the contracting officer, after following agency procedures, should not hesitate to issue a final decision.

DCAA Guidance on Resolution of Audit Findings

The DCAA Contract Audit Manual chapter 14-125, "Resolution of Audit Findings," states, "The auditor must continue to coordinate and communicate with the contracting officer after postaward audit reports are issued in order to enable the government to achieve a timely and favorable resolution" The guidance also states that the auditor should continuously offer assistance, such as commenting on data received by the contracting officer after the audit report is issued, and should offer to attend negotiations. The manual also states that when the contracting officer requests assistance, it should be given high priority by the DCAA FAO. If the contracting officer advises the auditor of a disagreement with the audit position, every effort should be made to resolve the differences before a final determination is made. If the differences cannot be resolved, the DCAA Contract Audit Manual requires the auditor to elevate the matter to management for resolution.

We identified DCAA auditor delays of up to 10 months for issuing rejoinders or supplemental reports, responding to contractor rebuttals, or providing additional comments on contracting officer decisions. Of the 42 defective pricing cases reviewed, DCAA took longer than 30 days for 4 defective pricing cases to issue a supplemental advisory memorandum or audit report. However, we excluded from consideration DCAA delays in issuing supplemental audit reports that were associated with the MDHC global settlement because of the complexity of the issues and number of assist audits involved.

DCAA supplemental defective pricing report, 4271-91V42040-259-S1, (Applied Companies), September 10, 1992, took 3 years and 4 months to disposition because of lengthy discussions between the DCAA FAO and the contracting officer regarding the technical merits of the case. The DCAA auditor did not agree with the postaward contracting officer on the interpretation of conditions that should have been known at negotiation. Specifically, resolution was delayed because DCAA was not asked to review material costs proposed on a revised proposal. The revised proposal had a defective methodology for determining material. The DCAA auditor believed that the revised proposal put the parties on an unequal footing at the time of negotiation. The postaward contracting officer believed that because DCAA had questioned most of the proposed material on the preaward audit of the original proposal and because only two items, including a substantial increase in material, were revised, the preaward contracting officer should have known that the area of material required scrutiny and should have acted accordingly. The postaward contracting officer made a determination of no defective pricing, which is reasonable based on the disclosures provided in the contractor's initial and revised price proposals for the delay claim. The postaward contacting officer determined that the preaward contracting officer knew or should have known of the differences between the price escalation methods and should have been aware of the potentially overclaimed escalation. Therefore, no defective pricing existed on the proposal because the escalation was disclosed through successive proposals and discussions. However, the DCAA auditor refused to rescind the defective pricing allegations. After failing to persuade the DCAA auditor to rescind the RPA, on January 1, 1996, the contracting officer dispositioned the defective pricing report with zero costs sustained.

Finding A. Processing of Defective Pricing Audit Reports

Other DCAA auditor delays involved two defective pricing audit reports on Boeing, 6361-92A42040-003 and 6361-94A42098-001, dated September 23, 1993, and August 4, 1994, respectively. For example, available documentation on audit report, 6361-94A42098-001 showed that DCAA did not formally respond to the contracting officer's memorandums dated September 29, and October 20, 1994, until July 13, 1995, when DCAA issued a datafax reiterating the defective pricing allegations. The postaward contracting officer believed that audit findings regarding defective pricing data were not material to the negotiations and that even if the Government had known about the data, it would not have negotiated a lower price. After the contracting officer obtained legal concurrence with his position, he tried to have the FAO withdraw the defective pricing findings. Nonetheless, the DCAA did not withdraw the defective pricing findings. DCAA Contract Audit Manual chapter 14-122, "Discussing Audit Findings," requires auditors to confirm reliance on and disclosure of cost or pricing data, to resolve differences in method of calculation with the contracting officer to ensure mutual understanding of the facts, and to present a unified position to the contractor. The guidance states, "Significant factual issues should be confirmed with the contracting officer as early as possible to avoid wasted effort and incorrect conclusions." We subsequently requested the Procurement Liaison Auditor (PLA) to ascertain why the DCAA auditors refused to rescind the allegations when it was very evident that they could not be supported by the contracting officer. The PLA provided us a facsimile dated March 14, 1997, with advice that the FAO did, in fact, subsequently revise the RPAs from \$44,275 and \$69,112 to \$0 in the FAO Management Information Systems. However, we saw no evidence in the files that the FAO notified the contracting officer of the revisions. Therefore, ATCOM reported the original RPAs with zero costs sustained in its September 30, 1995, semiannual report.

DCAA Followup of Open Defective Pricing Issues. Contract Audit Manual, chapter 4-125 also states, "During periodic discussions with the contracting officer, the auditor should always determine the status of open defective pricing issues." We found evidence that the DCAA FAOs followed up on the status of only 13 overage defective pricing reports. The following example demonstrates what could happen when there is no periodic followup.

At the DCAA San Fernando Valley Branch Office, Van Nuys, California, an open defective pricing file on audit report, 4231-92C42040-019, issued October 29, 1992, on HR Textron, was inadvertently sent to storage. The DCAA discovered that the case file was missing only after the incumbent contracting officer contacted the DCAA office on March 9, 1995, to discuss HR Textron's exceptions to the audit findings. The last action of the former contracting officer occurred September 15, 1993. Had the San Fernando Valley Branch Office periodically followed up on the status of the overage audit, it may have alerted the buying command that no substantive action was being taken on the defective pricing report.

Finding A. Processing of Defective Pricing Audit Reports

Summary

As a result of acquisition reform and new laws, the FAR, and the DFARS have changed in the last few years and thereby have neutralized the value of prior training in contracting processes. Continuous training is necessary to keep up with the myriad laws and regulations affecting contracting officer duties. Army management should ensure that the number of contracting officers and support staff match the volume of contract actions and that the contracting officers and support staff are properly trained. Contracting officers have identified an increased workload and lack of training on defective pricing as significant obstacles in their jobs. Further, the Army has moved toward using more junior or inexperienced contract specialists in handling complex defective pricing cases. Training in the required technical competencies is needed for the contracting personnel to perform its jobs.

The accomplishment of the DCAA defective pricing program requires a DCAA commitment to coordinate and communicate with Government contracting personnel. As a key player in proving defective pricing, DCAA auditors must coordinate and communicate with contracting officers and prime contract auditors on a regular basis throughout an audit to enable the Government to achieve timely and maximum resolution of defective pricing findings. In soliciting contracting officer comments on the draft audit position, the auditor should provide the contracting officer with draft report exhibits and other explanatory notes on the audit position and with copies of disputed documents and other significant audit evidence. The documentation is especially important if the price negotiation memorandum was the source of the audit opinion regarding reliance on and disclosure of cost or pricing data. Moreover, Army Aviation and Missile Command management should emphasize to its contracting officers to use the services of the DCAA PLA to facilitate communications and the cooperation of the DCAA FAOs. Contracting officers should not hesitate to inform the PLA if they are experiencing problems with specific FAOs with regard to the timeliness and quality of audit reports and audit support.

Recommendations, Management Comments, and Evaluation Response

Revised Recommendation. We received extensive comments from the DCAA. The full text of the comments is in Part III. As a result of management comments and additional evaluation work, we combined the actions in draft Recommendations A.2. and C.2. into revised Recommendation A.2. to provide DCAA more flexibility in implementing corrective action. We request that the Director, DCAA, consider the revised recommendation and provide additional comments on the final report.

Finding A. Processing of Defective Pricing Audit Reports

A.1. We recommend that the Assistant Secretary of the Army, Research, Development, and Acquisition, through the Commander, Aviation and Missile Command, develop a comprehensive in-house training program for contracting personnel at the Aviation and Missile Command on defective pricing to ensure compliance with regulatory and Army guidelines, including accurate reporting, timely resolution, followup, and disposition of defective pricing audit recommendations and documentation thereof; facilitating open-lines of communication with the contractor; timely and proper issuance of demands for payment; and proper assessment and collection of interest payments.

Army Comments. The Army concurred with the recommendation. The Aviation and Missile Command will conduct a comprehensive defective pricing training program within six months of its official response to address concerns raised in the report. The full text of the Army comments is in Part III.

Evaluation Response. The Army comments are fully responsive to the report recommendation.

A.2. We recommend that the Director, Defense Contract Audit Agency:

a. Use teleconferences, the Agency website, or other electronic means to reemphasize to field auditors the importance of treating requests for additional audit support or assistance as demand assignments, conducting periodic followup of overage defective pricing audit reports, and maintaining open lines of communication with its customers in resolving and dispositioning defective pricing audit reports.

b. Emphasize the requirement for field auditors to advise the contracting officer if the additional review or support will take longer than 30 days.

c. Require the Procurement Liaison Auditor to periodically coordinate with contracting officers and to assist them in following up on any overdue requests for audit assistance.

DCAA Comments. The DCAA nonconcurred, stating that a reemphasis of the guidance is not necessary because DCAA responded within 30 days in 90.5 percent of the cases reviewed. The DCAA stated that the report lacks specific examples of delays and that the cited exceptions either occurred prior to the change in DCAA guidance or were incorrectly reported in the draft. With regard to the two Boeing audit reports, the DCAA stated that our report was "incorrect in stating that the FAO personnel revised the recommended price adjustment in the FAO Management Information System (FMIS) to zero, without informing the contracting officer of a change in audit position." The DCAA also disagreed that guidance needs to be reemphasized regarding

Finding A. Processing of Defective Pricing Audit Reports

followup of open overage defective pricing reports, stating that DCAA has not required auditors to establish a formal tracking or followup system under DoD 7640.2, and Contract Audit Manual 14-125 should not be read as suggesting that such a formal followup mechanism exists for defective pricing. The DCAA disagreed that the PLA should be tasked with coordinating on all requests for followup audit support. Further, DCAA stated that the draft report is unclear as to whether our evaluators examined DCAA audit files or relied solely on the contracting officer's files to make determinations.

Evaluation Response. The DCAA comments are nonresponsive. Our position is that there is room for improving FAO compliance with current guidance and a need for management to periodically monitor compliance with the guidance. Because the untimely DCAA audit support was only a peripheral issue to the overall problem of processing delays of defective pricing audit reports, we did not think it necessary to provide the specific details of each delay. However, our report cited examples of DCAA auditor delays of up to 10 months for issuing rejoinders or supplemental reports, responding to contractor rebuttals, or providing additional comments on contracting officer decisions. The DCAA position is that there is no room for improvement because it responded within 30 days in 90.5 percent of the cases reviewed. DCAA did not consider that we excluded the DCAA delays in issuing supplemental advisory reports that were associated with the MDHC global settlement. As stated in our report, we excluded those delays because of the complexity of the issues and the number of assist audits involved. While our review did not identify significant conditions that warranted further review of the FAOs involved, we believe the reported conditions merit management emphasis by reminding field auditors of their responsibility to assist contracting officers in resolving and dispositioning audit recommendations.

Moreover, the DCAA believes that its two 8-month delays that occurred during the lengthy resolution process of audit report, 4271-91V42040-259-S1 were excusable because they occurred in 1991 and 1992, "well before the Section 14 -125 was added to the CAM [Contract Audit Manual] in January 1994." DCAA had a long-standing policy to treat followup support effort as "demand assignments" well before 1991 and 1992. In its December 19, 1990, policy memorandum to Regional Directors (90-OPD-253), the DCAA required the use of guidance (88-OPD-098) it had issued on August 29, 1988, and in the Contract Audit Manual and DoD Directive 7640.2 that requires followup support effort be treated as demand assignments. See Appendix D for the full text of the policy guidance. DCAA issued the policy memorandum as a result of the many comments received by the Director, DCAA, during his 1990 visits to major buying commands regarding the defective pricing program and to better meet the needs of DCAA customers.

Finding A. Processing of Defective Pricing Audit Reports

The DCAA also presented conflicting information on the two Boeing audit reports. DCAA commented that our report was incorrect in stating that FAO personnel revised the recommended price adjustment in the FAO Management Information System [FMIS] to zero. However, the PLA provided us that information after we asked for additional data on those audits and to review the DCAA rationale for not rescinding the defective pricing allegations. On March 14, 1997, the PLA sent us a facsimile, which stated, "The FAO actually revised its RPAs to \$0 in the DCAA FAO Management Information System before closing out these A/Rs [audit reports] In finally revising the RPAs to \$0, the FAO, in effect, agreed with the CO's [contracting officer's] position."

In summary, we are not recommending that DCAA establish a followup system under the DoD Directive 7640.2 or issue further guidance. We believe that emphasis on timely audit followup support to DCAA field offices would help improve DCAA responsiveness to its customers. As a result of management comments, we revised Recommendation A.2. as previously discussed to facilitate implementation of corrective action.

Finding B. Demand Letters and Assessment and Collection of Interest

Contracting officers did not consistently issue timely and proper demand letters for payment of contract debt or properly assess and collect interest payments. Also, the Defense Finance and Accounting Service (DFAS) payment offices did not consistently credit the Miscellaneous Receipts 3210 account of the U.S. Treasury after receiving correct disposition instructions on interest payments from contracting officers. These conditions occurred because contracting officers and DFAS personnel lacked experience in handling defective pricing reports and in the proper disposition of interest payments. As a result, the Government did not immediately recover overpayments that were repaid by the contractors and interest amounts were understated and incorrectly credited to individual contract appropriations.

Defective Pricing Guidance

The Truth in Negotiations Act. In 1962, the Congress passed Public Law 87-653, the Truth in Negotiations Act (TINA), currently codified at Title 10 United States Code (U.S.C.), Section 2306a. TINA was applicable only to DoD, National Aeronautics and Space Administration, and U.S. Coast Guard negotiated contracts entered into, on, or after February 15, 1987. Before, February 15, 1987, 10 U.S.C. 2306f contained the necessary provisions. Public Law 89-369, currently codified at 41 U.S.C. 254b, made the TINA applicable to the rest of the Executive Branch. As amended, TINA requires Government contractors to submit cost or pricing data and to certify that such data are accurate, complete, and current upon agreement on price. More important, TINA requires a downward adjustment to the contract price, including profit or fee, when it is determined that the contract price was increased because the contractor submitted defective cost or pricing data and the Government relied on the data submitted. The purpose of TINA is to give the Government informational parity with contractors and subcontractors during price negotiations so that the Government could avoid excessive prices.

In 1985, the Congress amended the TINA to make contractors liable for interest on overpayments made by the Government as a result of defective cost or pricing data and for penalty equal to the amount of the overpayment if the submission of defective cost or pricing data was a "knowing submission." In 1986, due to renewed concerns about contractor overcharging, the Congress again amended the TINA to eliminate certain contractor defenses and to clarify the offset provisions. Additionally, it provided a definition of "cost or pricing data." The DoD assigned DCAA the primary responsibility of testing contractor compliance with TINA.

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FAR 15.804-7, "Defective cost or pricing data." Section 15.804-7 of the FAR implements TINA, as amended, and prescribes the policies and procedures for adjusting defectively priced contracts. If after contract award, cost or pricing data are found to be inaccurate, incomplete, or noncurrent as of the date of final agreement on price given on the contractor's or subcontractor's certificate of current cost or pricing data, the Government is entitled to a price adjustment, including profit or fee, on any significant amount by which the contract price was increased because of the defective data. This entitlement is ensured by including in the contract one of the clauses prescribed in FAR 15.804-8, "Contract clauses and solicitation provisions," and is set forth in clause 52.215-22, "Price Reduction for Defective Cost or Pricing Data," and clause 52.215-23, "Price Reduction for Defective Cost or Pricing Data-Modifications." In addition to the price adjustment amount, the Government is entitled to interest on any overpayments. The Government is also entitled to penalty amounts on certain overpayments. For defective pricing purposes, overpayments occur only when payments are made for supplies or services accepted by the Government. "Overpayments would not result from amounts paid for contract financing as defined in FAR 32.902." This language, last amended in FAR 15.804-7(b)(7)(i) on October 1, 1995, limits the assessment of interest for purposes of defective pricing overpayments. It should not be interpreted to mean that overpayments cannot or do not occur in circumstances other than invoice payments or payments for partial and full deliveries.

Untimely or Improper Demands for Payment

FAR Requirements on Demands for Payment. The FAR 32.610 (a), "Demand for payment of contract debt," requires that "a demand for payment shall be made as soon as the responsible official has computed the amount of refund due." The demand must include a description of the debt, including the debt amount; notification that interest will be assessed from the date of the overpayment until the date of repayment; notification that the contractor may submit a proposal for deferment of collection if immediate payment is not practicable or if the amount is disputed; identification of the responsible official designated for determining the amount of the debts and for its collection; and identification of the payment office to which the contractor is to send the debt payments.

Director, Defense Procurement, Guidance on Contract Debt Collection. On April 22, 1994, the Office of Inspector General, DoD, issued report number AFU[Analysis and Followup] 94-02, "Followup Review of Recovery of Funds Due the Government as a Result of Contract Debts." The report states that principal recommendations from the original 1987 report had not been implemented; deficiencies originally identified have persisted; and additional deficiencies required corrective action. In response to Office of Inspector General concerns and recommendations, the Director, Defense Procurement,

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provided additional contract debt collection guidance on January 13, 1995, to clarify contract debt collection procedures set forth in the FAR. The guidance states:

Demands for payment shall be issued as soon as the contracting officer has determined the amount of the refund due. Such a determination is a final decision, and issuing "preliminary" decisions as a basis for demands for payment is prohibited. Demands for payment shall be issued as business letters and shall not be incorporated into contract modifications. Even though the debt will be the subject of a bilateral modification or supplemental agreement, the contracting officer must still issue a demand for payment.

Demand Letters. The purpose of the demand letter is to provide the contractor with instructions on how, when, and where to repay a contract debt and to inform the comptroller officials to establish an account receivable. It is critical that the contracting officer send a copy of each demand letter to the payment office and request acknowledgment of receipt. The contracting officer must provide the payment office a distribution of the principal amount of the debt by appropriation preferably attached to the payment office copy of the demand letter. If the contracting officer receives the contractor's checks, they should immediately be sent to the payment office with a request for confirmation of receipt. For active defectively priced contracts, the contract adjustment should result in a reduction of the contract price or cost allowance, as appropriate, to prevent overpayments on future deliveries. However, where payments have been made for delivered goods or services, a demand for the amounts overpaid and applicable interest is also necessary until repayment is received.

Issuance of Demand Letters. The 42 defective pricing audit reports we reviewed recommended price adjustments totaling \$20.5 million. Of the 42 reports, 19 settlements required official demands for payment in accordance with FAR 32.610; however, contracting officers issued only 12 demands. The remaining seven cases were either involved in litigation and subsequently settled out of court to reduce or avoid litigation costs or resulted in supplemental agreements. One of the cases related to the litigation of 11 MDHC defective pricing audit reports was globally settled on July 24, 1995. The other six cases involved DCAA audit report numbers: 3231-90S42040-001-S2, Fibertek; 4461-92H42020-002, McDonnell Douglas Aerospace; 4461-93H42020-001, McDonnell Douglas Aerospace; 1461-0-42003-6211-S1, Martin Marietta; 1461-0-42000-8212-S2, Martin Marietta; and 2460-91A42099-037, General Electric. For those seven settlements, the contracting officers did not issue official demands because the contracting parties involved executed settlement agreements or bilateral modifications to establish the contract debt. However, the demand letter is the only official notice that triggers or causes a payment office to establish an account receivable to record the contract debt and applicable interest. Without an established account receivable, the payment office has no means to follow up on delinquent contractor debts and to update interest calculations. A settlement agreement or a bilateral price-reduction modification does not provide sufficient notice of debt disposition.

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Of the 12 demand letters that contracting officers issued, 9 were not timely. For example, in processing defective pricing audit report number 3771-0A42002-6186, August 8, 1990, the contracting officer and MDHC concluded negotiations on January 10, 1996, after numerous processing delays. However, the contracting officer did not issue the demand for payment until 4 months later on May 17, 1996. In the settlement of audit report number, 3771-91A42030-009, the contractor, MDHC, agreed to the audit report RPA of \$67,578 on December 6, 1991; however, the contracting officer did not issue the demand letter until 4 years later on September 5, 1995. The remaining seven reports with untimely demands involved audit report numbers: 4231-92C42040-019, H R Textron, 3771-92A42040-012, MDHC; 3771-91A42097-023, MDHC, 3581-91R42010-013-S1, MDHC; 3581-93R42040-014, MDHC; 3581-90R42010-001-S3, MDHC; and 3581-88R42097-021-S2, MDHC. Also, ATCOM contracting officers issued 11 improper demand letters that generally did not include the required elements prescribed by FAR 32.610. The nine untimely demands for payment were also improperly issued. Specifically, the contracting officers excluded the interest and deferment of payment notifications to the contractors and did not provide copies of the demand letters to the designated payment offices as required by FAR 32.608; AFARS 15.890; and the Director, Defense Procurement, guidance of January 13, 1995. The other two audit reports with improper demands were 3581-95R42097-001, MDHC and 3791-94L42030-003, Honeywell. Documentation made available for our review did not provide specific reasons why the contracting officers issued improper and untimely demands for payment.

Improper Interest Assessment and Processing

Understated Interest. Section 952 of the Defense Authorization Act of 1987 (10 U.S.C. 2306a[f]) makes contractors liable for interest from the time of overpayment to the time of repayment, using the rates prescribed by the Secretary of the Treasury under 26 U.S.C. 6621(a)(2). In the settlement of audit report number 3581-95R42097-001, May 8, 1995, on MDHC, the contracting officer did not properly assess interest calculations through receipt of the repayment check. Consequently, the interest was understated. The contracting officer assessed interest through July 30, 1995; issued the demand letter on August 8, 1995; and provided the MDHC an additional 30 days to repay the principal and interest. The contracting officer did not receive the repayment check for \$104,576 and interest check for \$16,791 until September 11, 1995. Thus, interest for the period July 31 to September 11, 1995, was not assessed. To prevent similar problems from recurring, the demand for payment should specify an agreed-to or anticipated repayment date for the principal and interest accrued through that date and should specify a daily interest amount that will continue to accrue until receipt of contractor

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repayment. This procedure allows for the daily update of the interest if the agreed-to repayment date is missed and prevents the underassessment and collection of applicable interest.

Disposition of Interest Payments. The DoD Accounting Manual 7220.9-M, chapter 33 E.3.a., requires that "Interest charges collected shall be deposited directly into Treasury receipt account 3210, General Fund Proprietary Receipts, Defense Military, Not Otherwise Classified." ATCOM contracting officers consistently identified for the payment or accounting and finance office the principal and interest portions of a refund so they could be posted to the proper accounts. However, of the 18 settlements we reviewed that involved repayment of principal and interest, 13 interest payment checks were not properly deposited to the 3210 Miscellaneous Receipts account by DFAS St. Louis and DFAS Columbus. To validate final disposition of recovered funds, we examined DD Forms 1131, "Cash Collection Vouchers," or electronic equivalents and determined that \$482,170 in interest was not properly credited to 3210 Miscellaneous Receipts account and that the U.S. Treasury lost the interest revenues. We notified ATCOM and requested the cognizant payment offices to reverse the transactions by transferring the interest payments to the 3210 Miscellaneous Receipts account of the U.S. Treasury. We provided DFAS St. Louis, Indianapolis, and Columbus copies of the DD Forms 1131. As of July 30, 1997, the payment offices have not properly credited the U.S. Treasury with the interest payments. We are continuing to follow up on the completion of those transactions. Our evaluation did not cover actual use of unappropriated funds by ATCOM officials; however, we cautioned them that if the interest payments were credited to individual contract appropriations, such action could result in illegal augmentation of appropriations if the funds are disbursed or expended.

Summary

The contracting officer has the primary responsibility for determining the amounts and collecting most contract debts, including debts resulting from defective cost or pricing data. A demand letter for payment must be issued as soon as the contracting officer or responsible official has calculated the amount of refund due, including applicable interest. To collect contract overpayments as a result of defective pricing, contracting officers shall comply with the requirements in FAR 32.610(b); FAR 15.804-7(b)(7); and the Director, Defense Procurement, guidance of January 13, 1995, for issuing demands for payment. Contracting officers need to work closely with auditors and payment or accounting and finance offices to protect the Government's interests. Contracting officers must ascertain the correct amount of the debt and any applicable interest, act promptly and effectively to collect the debt by issuing price-reduction modifications and proper demands for payments, administer deferment of collection agreements, and monitor status of collection until received. No DoD official shall authorize or create an obligation or make any expenditure beyond the amount permitted under any statutory limitation that modifies or restricts the availability of funds.

Recommendations, Management Comments, and Evaluation Response

B.1. We recommend that the Assistant Secretary of the Army, Research, Development, and Acquisition, through the Commander, Aviation and Missile Command:

a. Reemphasize to contracting officers responsible for the settlement of defective pricing audit reports the importance of full compliance with contract debt collection requirements, including proper assessment, collection, and disposition of interest.

b. Direct contracting officers to recalculate improperly assessed interest to fully comply with Federal Acquisition Regulation 15.804-7, "Defective cost or pricing data," and request additional interest due from the contractor.

c. Issue a policy memorandum to remind contracting officers to provide copies of official demand letters to payment offices designated in the contracts.

Army Comments: The Army concurred with all the recommendations and estimated that corrective action will be completed by June 4, 1998.

Evaluation Response. The Army comments are responsive and meet the intent of the recommendations.

B.2. We recommend that the Under Secretary of Defense (Comptroller), in coordination with the Director, Defense Finance and Accounting Service, direct the transfer of improperly credited interest payments to the 3210 Miscellaneous Receipts account of the U.S. Treasury to preclude illegal augmentation of individual contract appropriations.

Comptroller Comments. The Under Secretary of Defense (Comptroller) concurred in principle and has initiated a review to correct the accounting errors.

Evaluation Response. The Under Secretary of Defense (Comptroller) comments are responsive. However, we request that the Comptroller provide a target date for completion of corrective action in his response to the final report.

Finding C. Nonsustention of Recommended Price Adjustments

Contracting officers did not consistently sustain the DCAA recommended price adjustments. Factors contributing to nonsustention of questioned costs resulting from defective pricing audits included: reporting errors, untimely DCAA response to requests for followup audit support or withdrawal of defective pricing allegations, contracting officer disagreements with DCAA auditors, and bottom-line or global settlements. As a result, contracting officers were often limited in influencing the final disposition of audit questioned costs.

Factors Contributing to Nonsustention

Contracting officers are ultimately responsible for the resolution and disposition of defective pricing audit findings. Contracting officers are often, however, restricted in the action they may take in the disposition of audit recommendations that contribute to the nonsustention of audit findings. Moreover, reporting errors in the semiannual followup report can distort the actual sustention achieved which further affects the results of contracting officer settlements.

Factors affecting the nonsustention of recommended price adjustments are divided into two categories:

- o those related to the accuracy of questioned and sustained costs reported semiannually by ATCOM and
- o those related to the substantive reasons why contracting officers could not sustain questioned costs.

It is essential that the semiannual data be accurately reported, because they are used for several purposes, including calculation of sustention rates for DoD as a whole and for each of the DoD Components. The use of audit and other advice provided to contracting officers, as well as other circumstances affecting negotiations of postaward issues addressed in the defective pricing audit reports, are reflected by the semiannual data.

Reporting Errors Affecting Sustention Rates. DoD Directive 7640.2 requires DoD Components to track and report the status of all specified contract audit reports from date of receipt through final disposition. The Components are required to maintain the information on a current basis because the data serve as the source document for the semiannual followup status reports. While the

Finding C. Nonsustention of Recommended Price Adjustments

audit organization is responsible for initially identifying the reportable contract audit reports, the reporting activities are ultimately responsible for reporting the status of the audit reports meeting the Directive criteria.

Reported Statistics. Although ATCOM has an adequate automated system for tracking the status of postaward audit reports, we tested the 42 audit reports to ensure reliability of reported data by validating costs questioned and costs sustained. We compared the reported amounts to the questioned and sustained amounts in the source documents, such as audit reports and disposition documents found in contract files. Reporting errors affecting sustention performance included improper reporting of a nonreportable audit report that did not meet the DoD Directive 7640.2 criteria and inaccurate reporting of questioned costs and costs sustained. Out of the 42 audit reports, 4 incorrectly reported the amount questioned or sustained which distorted the ATCOM reported data. For example, the ATCOM September 30, 1995, semiannual report erroneously included a nonreportable assist audit report, 4551-4B42000-2, August 6, 1987 (Honeywell), with an RPA of \$4,993,095 and zero costs sustained. The assist audit report should not have been reported because the RPA of \$4,993,095 had been previously incorporated and reported under a prime McDonnell Douglas report dispositioned in December 1990. The assist audit report should have been dispositioned with \$0 costs questioned and \$0 costs sustained when ATCOM discovered that the audit report was not reportable. Also, the composite RPA for DCAA audit report, 3771-92A42097-013-S1, (MDHC) was erroneously reported as \$5,285,087 instead of \$5,184,078. The March 31, 1995, and September 30, 1996, ATCOM semiannual reports also contained reporting errors that affected sustention rates. Under audit report 3581-88R42097-021-S2, (MDHC), issued February 24, 1994, the contracting officer reported an RPA of \$163,160 instead of the latest DCAA revised RPA or cost questioned of \$154,620 to reflect a 100-percent sustention. However, the March 31, 1996, ATCOM semiannual report to the Office of Inspector General, DoD, reported a sustention rate of 94.76-percent for that audit report. Similarly, the RPA for audit report 3771-91A42097-023, (MDHC), dated March 28, 1991, should have been reported as \$333,158 and costs sustained as \$149,921. However, the September 30, 1996, semiannual report erroneously reported the RPA as \$397,564 and costs sustained as \$133,741. Inaccurate reporting of questioned and sustained costs affects not only the sustention performance of the reporting agency, but also the overall Army and DoD sustention rates the Office of Inspector General, DoD, reports to the Secretary of Defense.

The nature of the reporting errors described above relates to policies and instructions stated in DoD Directive 7640.2. The errors relate to basic and long-standing concepts of the DoD policy on contract audit followup that have been reinforced continually during oversight reviews conducted by the CAFU staff since 1983. Contracting officers must have a clear understanding of the reporting requirements of DoD Directive 7640.2. Our prior reviews have directed specific recommendations related to these types of reporting errors to ATCOM management. Although the erroneous reporting of costs questioned and costs sustained did not significantly affect the overall DoD defective pricing sustention rate, erroneous reporting distorted the defective pricing sustention rates for ATCOM for the three sampled reporting periods. We adjusted the

Finding C. Nonsustention of Recommended Price Adjustments

ATCOM universe of closed defective pricing reports for the reporting errors and recalculated the sustention rates. Table 2 shows the reported sustention data and the actual sustention data.

Table 2 - ATCOM Sustention Data

Semiannual Report Elements	September 30, 1995		March 31, 1996		September 30, 1996	
	Reported	Actual	Reported	Actual	Reported	Actual
Reports Closed	13	20	13	13	9	9
Questioned Costs (\$000)	\$21,421	\$16,327	\$2,994	\$2,985	\$1,283	\$1,218
Sustained Costs (\$000)	1,214	1,214	1,220	1,220	941	957
Sustention Rate (Percent)	5.7	7.4	40.7	40.9	73.3	78.6

Other Factors Affecting Nonsustention. Our review and analysis of CAFU documentation for the 42 defective pricing audit reports identified several factors other than reporting errors that contributed to nonsustention of audit questioned costs. Those factors include untimely DCAA response or withdrawal of RPA, contracting officer and DCAA disagreements, bottom-line negotiations or settlements, and out-of-court or global settlements.

Documentation Requirements. The quality and completeness of the documentation were lacking for six reports, but we generally were able to track the disposition of the contract audit recommendations. Using available prenegotiation and post-business clearance memorandums, we identified other major factors that contributed to nonsustention of questioned costs. The FAR 15.807 and 15.808, DFARS 215.807 and 215.808, and DoD Directive 7640.2 require contracting officers to prepare prenegotiation and price negotiation memorandums that include reasons for any variances from the field pricing report or audit report recommendations. The Army has detailed review and clearance procedures and documentation requirements that apply to pricing actions, including resolution and disposition of postaward audit reports set forth in AFARS 15.807, 15.808, and 15.890. The U.S. Army Aviation and Missile Command management should remind its contracting officers to comply with those requirements to clearly document resolution and disposition actions on defective pricing reports and other reportable audits.

Nonsustained Costs. After correcting the reporting errors in our sample data base, we identified 21 defective pricing reports with nonsustained costs, that is, the reported amount questioned was greater than the reported amount sustained. The remaining reports had zero costs questioned and zero costs sustained or had 100 percent of the questioned costs or RPA sustained. We looked at each factor to determine the extent to which that factor contributed to nonsustention and made the necessary adjustments to the universe to accurately reflect the number of occurrences in which contracting officers did not fully sustain audit questioned costs. Of the 21 audit reports, 6 had more than 1

Finding C. Nonsustention of Recommended Price Adjustments

contributing factor to the nonsustention of questioned costs, for a total of 27 occurrences of nonsustention. A summary of the 27 occurrences by major factor, other than reporting error, is shown in Table 3.

Table 3 - Other Factors Contributing to Nonsustention

<u>Factor</u>	<u>No. of Occurrences</u>	<u>Percent of Total</u>
1. Untimely DCAA response or withdrawal of RPA	3	11
2. Contracting officer or DCAA disagreements	3	11
3. Bottom-line negotiations or settlements	8	30
4. Out-of-court or global settlements	<u>13</u>	<u>48</u>
Total	27	100

We evaluated the nonsustention factors and classified them into major categories according to the amount of discretion or latitude the contracting officer or DCAA had in influencing the final reporting or disposition of the questioned costs or RPA. We observed that the sustention rate was highest in cases in which contracting officers had the greatest latitude or discretion and lowest when contracting officers had the least latitude or discretion in deciding the technical merits of the case.

Factors 1 and 2. Untimely DCAA response and contracting officer disagreements affected the sustention rate, depending on the adequacy and effectiveness of communication and coordination between the contracting officers and the DCAA auditors. For example, in processing two Boeing and one Applied Companies audit reports, the contracting officers firmly disagreed with the defective pricing allegations and made every effort to convince the DCAA auditors to withdraw the audit findings. The lack of DCAA cooperation and untimely withdrawal of the defective pricing allegations resulted in no sustained costs for all three reports. The details are discussed in Finding A. According to the DCAA PLA, the FAOs subsequently withdrew the questioned RPAs; however, the FAOs did not communicate the defective pricing withdrawals to the contracting officers. Had there been open lines of communication and cooperation, the Army could have reported \$0 costs questioned and \$0 costs sustained. The contracting officers also disagreed with the DCAA audit position and clearly documented their position in the contract files. Reasons for disagreement included:

- o the procuring contracting officer did not rely on the defective cost or pricing data when negotiating the contract price; and

- o the contracting officer had evidence that the contractor adequately disclosed the cost or pricing data in question.

Finding C. Nonsustention of Recommended Price Adjustments

To minimize disagreements between the contracting officer and the DCAA auditor, the DCAA auditor should confirm all significant findings with the procuring contracting officer as early in the audit as possible. Draft notes on the audit positions should be coordinated with the contracting officer before the formal audit report is issued. The contracting officers, in turn, should thoroughly research the preaward contract files and provide factual data to the DCAA auditors and assist them in obtaining contractor comments or rebuttals during the draft phase of the audit. Finally, the DCAA PLA should directly coordinate contracting officer requests for additional followup audit support for overage defective pricing reports to facilitate communications and resolution of contested findings and recommendations.

We are not making a separate recommendation on this subject because Recommendation A.2. already addresses the need for DCAA to improve its responsiveness to contracting officer requests for additional audit support and the need for maintaining open lines of communications before, during, and after the audit.

Factors 3 and 4. Bottom-line negotiations and out-of-court or global settlements provide contracting officers the least amount of latitude or discretion in affecting the amount sustained. Factors 3 and 4 included cases in which the contractor appealed the contracting officer final decision and a legal opinion advised against litigation because of high-litigative risks, the audit reports contained inaccurate or outdated information, or the sustained amount was part of a global settlement. The defective pricing cases were generally overage, the defective pricing issues were not clear, and the contracting parties had tried every course of action short of litigation. Those cases accounted for 70 percent of the total universe of reported nonsustention. The global settlement of the MDHC litigation project described in Appendix C is a prime example. The contractor and ATCOM reached a global agreement on 11 reports on July 24, 1995, resulting in price reductions to various Apache Helicopter contracts (Lots 3 through 7) for a total of \$2.4 million out of a total revised composite RPA of \$15.4 million. The composite RPA originally totaled \$50.3 million. Another example is the settlement of DCAA audit report 2460-91A42099-037, (General Electric), dated December 12, 1991. The ASBCA dismissed the case without prejudice on November 5, 1995, after the contracting parties agreed to an out-of-court settlement. The Government sustained only \$15,000 of the \$250,000 recommended price adjustment.

The defective pricing sustention performance of ATCOM has shown significant improvement since September 30, 1995, when ATCOM had an adjusted 7.4-percent sustention rate. Since that time, the rate has significantly improved and increased to 40.9 and 78.6 percent, respectively, during the semiannual reporting periods ended March 31 and September 30, 1996.

Finding C. Nonsustention of Recommended Price Adjustments

Summary

DoD Directive 7640.2 requires DoD Components to report the status of all specified contract audit reports from the date of receipt through final disposition semiannually to the Office of Inspector General, DoD, within 30 calendar days of the end of the 6-month periods ending March 31 and September 30. The Directive further requires that reportable data elements be maintained on a current basis. The Office of Inspector General, DoD, analyzes the reported data, consolidates them, and submits a report to the Congress. Congress views the semiannual report data as a reflection of the DoD contracting officers' and DCAA auditors' performance and track record in recovering funds owed the Government because of contractor defective pricing or contractor-deficient estimating systems that caused the Government to pay excess contract costs. Therefore, DoD Components must ensure the accuracy of their semiannual status reports.

Our evaluation illustrates the variability of sustention data and provides an indication of when DoD Component followup officials or the Office of Inspector General, DoD, should consider sustention data as anomalous and initiate further analysis to determine whether problem areas require corrective action. On the whole, however, the sustention rates experienced by ATCOM during the 18-month period indicate that contracting officers are improving their use of audit advice. To facilitate the improvement, DCAA and Aviation and Missile Command management need to recommit themselves toward supporting and maintaining open lines of communication to improve the quality of postaward audit reports and the Government's ability to sustain questioned costs.

Recommendations, Management Comments, and Evaluation Response

Revised and Deleted Recommendations. As a result of management comments from DCAA, we deleted draft Recommendation C.2. and combined the associated corrective actions into revised Recommendation A.2.

C. We recommend that the Assistant Secretary of the Army, Research, Development, and Acquisition, direct the Commander, Aviation and Missile Command to:

1. Maintain the centralized tracking and reporting system of contract audit reports at the Aviation and Missile Command and improve the accuracy and reliability of its semiannual data by requiring the contract audit followup monitor to review audit reports, resolution, and disposition documents and to validate reported data with source documents.

Finding C. Nonsustention of Recommended Price Adjustments

2. Reemphasize to contracting officers the need to maintain open lines of communication with Defense Contract Audit Agency field audit offices before and during the negotiation process and to provide assistance in obtaining timely contractor comments during and after the draft phase of the audit.

Army Comments. The Army concurred and stated that the contract audit followup monitor will review applicable documents to maintain an accurate reporting process. The Army also stated that the Aviation and Missile Command Standard Operating Procedures instruct its contracting officers to provide the DCAA PLA a copy of their Plan of Action to resolve and disposition audit reports.

Evaluation Response. The Army comments meet the intent of the recommendations.

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Part II - Additional Information

Appendix A. Evaluation Process

Scope

Work Performed. We conducted an evaluation of dispositioned defective pricing audit reports at the ATCOM, St. Louis, Missouri. ATCOM provides aircraft and weapon systems and supports the warfighter in the field by supplying generators, shelters, and other provisions. Those items are procured, fielded, and maintained by the ATCOM. We selected the ATCOM for our first field work because of its impending disestablishment and realignment with the U.S. Army Missile Command in Huntsville, Alabama, to form the new Aviation and Missile Command.

Limitations of Evaluation Scope. We limited our review to cover only defective pricing audit reports dispositioned during the semiannual reporting periods ended September 30, 1995, and March 31, and September 30, 1996. Prior reviews covered open and closed reports with special emphasis on defective pricing audit reports because they represented the bulk of reportable audits. The Contract Audit Followup staff conducted comprehensive contract audit followup reviews of major DoD buying commands and Defense agencies since 1983, in accordance with DoD Directive 7640.2.

Methodology

Use of Computer-Processed Data. We relied on computer-processed data from the Office of Inspector General, DoD, Contract Audit Reporting and Tracking System to determine the buying commands to visit and to determine the evaluation sample selection. The Contract Audit Reporting and Tracking System is a database comprised of semiannual reports submitted by the DoD Components to the Office of Inspector General, DoD. Although we did not initially perform a formal reliability assessment of the computer-processed data before sample selection, we ran the built-in error checks to test the reliability of the data. During the field work, we performed further data validation by tracing the sampled data from the Contract Audit Reporting and Tracking System to source documentation, such as audit reports, business clearance memorandums, and other contract file documentation. Where we found reporting errors, we adjusted the sampled universe to preclude statistics from being distorted.

Sample Universe. The sample initially covered 35 defective pricing audit reports that were reported closed by ATCOM contracting officers during the 18-month sampled period ended September 30, 1995, through September 30,

Appendix A. Evaluation Process

1996. After validating the reliability of reported data during our field work, we adjusted the sample universe to include seven other reports closed as a result of the July 24, 1995, global settlement with the MDHC (see Appendix C). ATCOM reported the global settlement litigation project involving 11 MDHC defective pricing reports under the 4 audit reports listed below instead of separately reporting the 11 audit reports.

- o Audit report 3771-90A42097-014-S2, dated May 28, 1993, consolidated the RPAs of five other defective pricing reports for a composite RPA of \$9,446,472 after applying offsets in the amount of \$5,447,446.

- o Audit report 3771-92A42097-013-S1, dated October 1, 1993, included the RPAs of two other defective pricing reports for a composite RPA of \$5,285,087 after applying offsets in the amount of \$239,376. However, as stated in Finding C, the composite RPA should have been \$5,184,078.

- o Audit report 3771-90A42097-010-S2, dated May 25, 1993, had an RPA of \$701,241.

- o Audit report 3771-90A42097-016-S2, dated May 26, 1993, had an RPA of \$98,157.

Although we appreciate the ATCOM effort to reduce the number of overage count, this type of innovative reporting is contrary to the requirements of DoD Directive 7640.2. Each specific reportable audit should have been reported as a unique record in the semiannual report. ATCOM should have reported the additional 7 MDHC overage reports in its September 30, 1995, semiannual report.

Evaluation Type, Dates, and Standards. We performed this economy and efficiency evaluation of the defective pricing program at ATCOM from December 2, 1996, to February 28, 1996. Criteria for performing this evaluation are set forth in the OMB Circular A-50, "Policy for Audit Followup," as implemented by DoD Directive 7640.2. We ascertained whether DoD contracting officers fully complied with the provisions of the law and regulatory guidelines in processing defective pricing audit reports with positive findings. We also evaluated the adequacy of DCAA postaward coverage of ATCOM contracts and support of contracting officers; however, we did not observe significant indicators that warranted further review of specific DCAA FAOs. Our field visits and other followup actions included the review of the following:

- o existing statutory provisions, regulations, and ATCOM guidelines on defective pricing;

- o contract file documentation, such as price-reduction modifications, contracting officer final decisions, demand letters, prenegotiation and postnegotiation business clearances, followup correspondence, and memorandums for record;

- o method of recovery and the status of recovery actions;

Appendix A. Evaluation Process

- o assessment and collection of statutory interest and penalties and posting of recovered funds;

- o defective pricing audit reports, subcontractor assist audit reports, and supplements thereto; DCAA rejoinders; fraud referrals, if any, and other advisory memorandums; and

- o communications and correspondence between contracting officers, contractors, contract auditors, and payment or accounting and finance offices.

Contacts During the Evaluation. We visited or contacted individuals and organizations within the DoD. Further details are available on request.

Appendix B. Summary of Prior Coverage

Inspector General, DoD

Followup oversight reviews performed by the Contract Audit Followup staff in June 1991, April 1992, and September 1994 found serious deficiencies in the ATCOM CAFU program, specifically in the processing of defective pricing audit reports. The ATCOM was formerly known as the U.S. Army Aviation Systems Command (AVSCOM). Reports on the three reviews are summarized below.

Contract Audit Followup Review at the U.S. Army Aviation Systems Command (CAFR 92-16), February 5, 1992. This review determined whether AVSCOM adequately implemented DoD Directive 7640.2, "Policy for Followup on Contract Audit Reports." The review was made because of the extremely low sustention of audit questioned costs for defective pricing audits reported on the AVSCOM March 31, 1991, semiannual report to the Office of Inspector General, DoD. For that reporting period, the AVSCOM reported that it had closed 12 defective pricing audit reports with \$13.5 million in audit questioned costs and sustained only \$441,089 of those costs, resulting in a sustention rate of 3.3 percent--one of the lowest rates experienced by any DoD contracting activity. Aside from the poor sustention performance, the review also identified incomplete and inaccurate tracking and reporting of the status of defective pricing audit reports; inadequate processing of contract audit reports, particularly a reluctance by AVSCOM contracting personnel to support DCAA defective pricing allegations; disregard of legal and pricing nonconcurrence with the settlements negotiated; noncompliance with DoD and the AFARS business clearance procedures; and poor coordination with the DCAA FAOs. The review noted an unusually high incidence of documentation surfacing after issuance of the postaward audit reports that negated the recommended price adjustments. All of those factors resulted in the low sustention of defective pricing and an increasingly ineffectual working relationship among the Government team members. The Acting Deputy Acquisition Director disagreed that any of the indicators pointed out problems in the way that AVSCOM was handling the defective pricing issues. The report contained three recommendations that addressed the need for the Army to correct the deficiencies.

Actions Taken. The Deputy Assistant Secretary of the Army (Procurement) was responsive to the recommendations and directed senior AVSCOM management to initiate corrective action. The AVSCOM established significant changes in its management procedures and strengthened management controls for tracking and reporting contract audit reports. Management also met with DCAA headquarters to discuss how best to improve communications and the quality of defective pricing audit reports. As a result, DCAA headquarters

Appendix B. Summary of Prior Coverage

directed its FAOs to ensure that all significant factual issues were confirmed with the contracting officers as early in the audit as possible by coordinating draft notes on the audit position with the contracting officers before issuance of the final report. The AVSCOM management also established a special defective pricing team to intensify and expedite its efforts in resolving and dispositioning defective pricing audit reports, particularly the complex reports at the MDHC. In coordination with DCAA, the MDHC established procedures to respond within 30 days to allegations of defective pricing during the draft stages of the reports. In addition, the U.S. Army Materiel Command headquarters conducted an independent review of AVSCOM compliance with AFARS business clearance procedures. The results of that review confirmed the reported findings.

Results of Inquiry into Settlement of Defective Pricing Audit Reports by the U.S. Army Aviation Systems Command, August 10, 1992. The objectives of the review were to conduct a followup review to determine the events and circumstances that led to the contentious settlement of the 15 audit reports alleging defective pricing of \$50.3 million by the MDHC on the AH-46 Apache helicopter production contracts; to conduct an administrative inquiry to determine whether senior-level DoD or Army officials directed the AVSCOM to settle the 15 audit reports in December 1990; and to review the new AVSCOM procedures for resolving and closing defective pricing audit recommendations. The report summarizes the efforts by the Office of Inspector General, DoD, to resolve questions about the December 1990, settlement of defective pricing allegations involving MDHC. In 15 defective pricing audit reports issued from 1988 through 1990, the DCAA alleged that MDHC defectively priced AH-46 Apache production contracts by \$50.3 million. In December 1990, the AVSCOM globally settled the allegations for only \$2.4 million. The circumstances of the settlement, negotiated by an inexperienced AVSCOM military contracting officer, raised concerns in several respects.

- o The settlement occurred at the same time the Air Force and the Defense Logistics Agency took unusual actions with respect to the C-17 and the A-12 programs, both of which involved McDonnell Douglas as the contractor.
- o The contracting officer pursued the settlement during December 1990, despite objections by the AVSCOM legal office, Contract Cost Analysis Division, and the DCAA, in violation of required review and clearance requirements for a defective pricing contract audit action.
- o The contracting officer sent two conflicting letters to MDHC describing the settlement.
- o The contracting officer sustained very little of the total questioned costs recommended for recovery by the DCAA auditors.
- o After the settlement, AVSCOM management assigned a different contracting officer to prepare the required business clearance memorandum, raising the possibility that AVSCOM management was not aware of the settlement.

Appendix B. Summary of Prior Coverage

The report included the results of the CAFU review and administrative inquiry related to the settlement of the recommendations in the 15 defective pricing audit reports. The CAFU review identified irregularities that supported CAFU June 1991 opinions that contracting officers in the Bell/Apache Division and senior acquisition officials at the AVSCOM did not ensure that all requirements of law, regulations, and other procedures were met before finalizing a pricing action. Our administrative inquiry found no evidence that higher level DoD or Army officials directed AVSCOM officials to settle improperly the Apache defective pricing reports. The report included four recommendations to correct identified problems.

Actions Taken. The Army concurred with the recommendations, including the evaluation and investigation of the performance of three AVSCOM contracting officials. The investigation concluded that no criminal activity had occurred; however, all three individuals received official reprimands from the Commanding General in December 1993.

Contract Audit Followup Review of the U.S. Army Aviation and Troop Command, St. Louis, Missouri (CAFR 95-07), December 22, 1994. During the September 1994 review, we evaluated the ATCOM implementation of DoD Directive 7640.2 and management emphasis on the CAFU program. The review identified reporting inaccuracies, including failure to report correct reporting status, improper closure of audits, incorrect audit report numbers, and improper reporting of superseding reports; confusion regarding responsibility for resolving and dispositioning audits reports; untimely processing of audit reports; lack of high-level management visibility over the CAFU program; failure to evaluate appropriate contracting personnel on CAFU effectiveness; and failure to comply with DoD and AFARS guidance regarding recovery of funds. The report contained nine recommendations to correct the deficiencies.

Actions Taken. The ATCOM management concurred with the recommendations and took action to correct identified deficiencies, including reconvening the Army Overage Audit Review Board as required by AFARS 15.891-4.

Appendix C. Other Matters of Interest

Defective Pricing Issues in Litigation

Resolution and Disposition Affected by Litigation. The DoD Directive 7640.2 identifies three circumstances in which an audit report is considered to be involved in litigation:

- o when a contractor appeals a contracting officer final decision concerning specific contract issues identified in an audit report;
- o when the Government appeals a decision of the ASBCA, the U.S. Court of Federal Claims, or any other court; or
- o when other judicial action is ongoing that has a bearing on the issues identified in the report.

Under the first scenario, the contractor files the appeal with the ASBCA, the U.S. Court of Federal Claims, or any other Federal or State court. Under the second scenario, the Government appeals the court decision on a specific case. Under the third scenario, the contracting officer decides to hold disposition or settlement action of an audit report until the courts have ruled on an ongoing case that has bearing on issues identified in the report.

Lengthy and Complex Litigation. Lengthy and complex litigation involves processes largely beyond the control of contracting officers and is a well-known problem in the resolution and disposition of contract audit reports. Of the 42 audit reports we reviewed, 14 cases fit the first and third scenarios. Thirteen of the 14 defective pricing settlements were in litigation because the contractors appealed the contracting officer final decisions. The global settlement of the defective pricing reports for MDHC doing business as McDonnell Douglas Helicopter Systems (MDHS) is a prime example of this situation. The global settlement on July 24, 1995, is the culmination of the extensive efforts of the ATCOM to renegotiate the highly contentious December 1990, settlement of 15 defective pricing reports with MDHC wherein an inexperienced contracting officer sustained only \$2.4 million of the \$50.3 million RPA on Apache Helicopter contracts valued at about \$3 billion. Appendix B provides a brief background on the Office of Inspector General, DoD, role in disclosing serious irregularities and lack of compliance with acquisition regulations by acquisition officials in the December 21, 1990, MDHC settlement.

As a result of our August 1992 oversight review, AVSCOM management attempted to invalidate the December 21, 1990, settlement and reopened discussions to negotiate a "revised settlement" with MDHC. However, due to contractor resistance and lack of cooperation, the contracting officer issued

seven final decisions on February 18, 1994, and two final decisions on April 18, 1994. The contractor appealed the final decisions to the ASBCA (Docket numbers 47320 through 47326, 47561, and 47562). After lengthy discussions of facts and litigation risk assessment, Army management conceded that it had little chance of success in defeating the finality of the December 21, 1990, global settlement with the appellant and concluded that pursuit of a negotiated settlement would be in the best interest of the Army. The parties reached a global settlement agreement on July 24, 1995, wherein MDHS agreed to contract price reductions in the total amount of \$2.4 million. In satisfaction of the \$2.4 million amount, the parties agreed that MDHS will pay \$534,969 in principal and \$66,122 in interest for a total of \$601,091 within 30 days of the date of execution of the settlement agreement. The Government also agreed that MDHS was entitled to offsets totaling \$2,081,424 against the price reductions, which were applied to the balance of defective pricing remaining after the principal of \$534,969 was paid. The ASBCA subsequently dismissed the appeal without prejudice.

Under the third scenario, we reviewed only one case, audit report number 3771-91A42097-023, March 28, 1991, on MDHC, for which the contracting officer had to wait for the court decision on an ongoing case that had a bearing on issues identified in the report before pursuing final disposition on May 26, 1996,--5 years and 2 months later.

Alternative Disputes Resolution Procedures

DoD Directive 5145.5, "Alternative Disputes Resolution." DoD Directive 5145.5 implements Executive Order 12988, "Civil Justice Reform," February 5, 1996, and Report of the National Performance Review, "Creating a Government That Works Better and Costs Less," September 7, 1993. The Directive defines alternative disputes resolution (ADR) as any procedure that parties agree to use, instead of a formal adjudication, to resolve issues in controversy including, but not limited to, settlement negotiations, conciliation, facilitation, mediation, fact-finding, mini-trials, and arbitration or any combination thereof. The DoD ADR policy states the following.

- o Each DoD Component shall establish and implement ADR policies and programs. Each Component shall make use of existing Government ADR resources to avoid unnecessary expenditure of time and money.
- o All DoD Components shall use ADR techniques as an alternative to litigation or formal administrative proceedings whenever appropriate. Every dispute, regardless of subject matter, is a potential candidate for ADR.
- o Each DoD Component shall review its existing approaches to dispute resolution, and where feasible, foster increased use of ADR techniques. Components shall identify and eliminate unnecessary barriers to the use of ADR.

Appendix C. Other Matters of Interest

DoD Endorsement of Alternative Disputes Resolution. The DoD has endorsed increased use of ADR procedures to mitigate the results of lengthy and costly litigation. The Secretary of Defense issued an April 9, 1997, memorandum encouraging DoD senior management and executives to participate in a May 12, 1997, briefing on ADR. The Secretary stated, "We in the Department of Defense must make greater use of procedures that save time and money. ADR offers this prospect." The May 12 briefing, hosted by the Secretary, featured the U.S. Attorney General as the principal speaker. The Attorney General addressed why the DoD should be using ADR techniques to the maximum extent possible and how organizations can obtain the maximum benefits from the use of ADR. Use of ADR methods and techniques that do not require ASBCA participation, such as settlement negotiations, fact-finding conferences, mediation, or mini-trials that do not involve use of ASBCA personnel, are acceptable. Any method that brings the parties together in settlement or partial settlement of their disputes is a good method. Any method or combination of methods, including one that will result in a binding decision, may be selected by the parties without regard to the dollar amount in dispute.

The Office of Inspector General, DoD, supports carefully considered alternatives to the full litigation process and encourages Army leadership to ensure that contracting officers are knowledgeable of ADR procedures and consider their use in appropriate cases. Army attorneys should be fully versed in the conduct of ADR procedures and the types of cases in which they would be appropriate and should be prepared to advise contracting officers on the most appropriate method to use and the documentation required.

Appendix D. Memorandum for Regional Directors 90-OPD-253



IN REPLY REFER TO

DEFENSE CONTRACT AUDIT AGENCY
CAMERON STATION
ALEXANDRIA, VA 22304-6178



OPD 703.4.23

19 December 1990
90-OPD-253

MEMORANDUM FOR REGIONAL DIRECTORS, DCAA
DIRECTOR, FILED DETACHMENT

SUBJECT: Audit Guidance on Defective Pricing Audits - Communication of
Audit Findings to the PCO and Timeliness of Audit Followup/Support

During recent visits to major buying commands the Director has received many comments regarding the defective pricing program. These comments indicate that we often do not adequately discuss audit findings with the contractor and the PCO or allow them to respond to the findings before issuing our reports. The impact of poor communications shows up in the low substantiation rates of the defective pricing allegations. In order to better meet the needs of our customers, implement the following guidance immediately.

Communication of Audit Findings to the PCO

CAM 14-114a and the concluding steps in the audit program provide information about discussing audit findings with the PCO. In many cases, however, significant or complex issues are being discussed with the PCO only after we have completed our audit work.

We must communicate significant or complex issues with the PCO during the audit to confirm reliance and disclosure of cost or pricing data. Also, significant factual issues should be confirmed with the PCO as early in the audit as possible to avoid wasted effort and incorrect conclusions. Use the guidance in 90-OPD-201 dated 12 October 1990 when communicating significant or complex issues with the PCO. Auditors can also coordinate the draft notes on audit positions regarding significant or complex issues to obtain the PCO's verification or reaction. This is especially important where the FM is the source for our audit opinion on reliance and disclosure. Note, coordination does not require that we provide a complete draft report to the PCO or obtain their approval for report issuance.

Timeliness of Audit Followup/Support

Currently, our guidance requires that followup/support effort be treated as demand assignments (88-OPD-098 dated 29 August 1988, CAM 14-105b, and DoDD 7640.2). In addition to the high priority we place on this effort, the acquisition community has suggested that we obtain the contractor's responses to our findings and include our comments to those responses in the audit reports.

Appendix D. Memorandum For Regional Directors 90-OPD-253

19 December 1990
90-OPD-253

OPD 703.4.23

SUBJECT: Audit Guidance on Defective Pricing Audits - Communication of Audit Findings to the POC and Timeliness of Audit Followup/Support

Obtaining the contractor's responses to the audit findings begins with the exit conference. A properly conducted exit conference with the contractor includes (i) providing a draft copy of the exhibits and explanatory notes, (ii) explaining the factual indicators that cost or pricing data may have been defective, and (iii) affording the contractor an opportunity to review these matters and provide any additional information for the auditor's consideration (normally up to 30 days after the exit conference). Under existing guidance, if the contractor doesn't respond in the time allotted we would then issue the report.

POCs have a difficult time in meeting the DoDD 7640.2 requirement for resolution of the audit findings within 6 months of the report date when we issue audit reports without the contractor's response to our findings. To minimize delays in the resolution of defective pricing audit reports we should notify the POC of the scheduled exit conference so the POC can request that the contractor respond to the findings within 30 days from the date of the exit conference. This increases our chances of obtaining the contractor's response so we can evaluate and include the response in the audit report.

Our goal is to meet the program plan and we emphasize that proper defective pricing program management includes time phasing the audits for completion throughout the program year. We also require quality reports that reflect the audit issues and provide the contracting officer with the necessary information to achieve contract price reductions. Therefore, we ask that the regions assess the impact this guidance may have on their defective pricing program plan and provide their opinions to Headquarters, ATTN: OPD, no later than 25 January 1991.

FAO personnel should direct any questions regarding this memorandum to personnel in the regional office. If regional personnel are unable to answer or have questions of their own, they should call Mark S. Doetal, Program Manager, Audit Programs Division, at (703) 274-7344.

for *Daniel J. Tucciarone*
ROY C. HEIDEMANN
Assistant Director
Operations

DISTRIBUTION: C

Appendix E. Report Distribution

Office of the Secretary of Defense

Under Secretary of Defense for Acquisition and Technology
Director, Defense Logistics Studies Information Exchange
Under Secretary of Defense (Comptroller)
Assistant Secretary of Defense (Public Affairs)
Director, Defense Procurement

Department of the Army

Assistant Secretary of the Army (Research, Development, and Acquisition)
Commander, Aviation and Missile Command
Auditor General, Department of the Army

Department of the Navy

Assistant Secretary of the Navy (Financial Management and Comptroller)
Assistant Secretary of the Navy (Research, Development, and Acquisition))
Auditor General, Department of the Navy

Department of the Air Force

Assistant Secretary of the Air Force (Acquisition)
Assistant Secretary of the Air Force (Financial Management and Comptroller)
Auditor General, Department of the Air Force

Other Defense Organization

Director, Defense Contract Audit Agency
Director, Defense Logistics Agency
Commander, Defense Contract Management Command

Appendix E. Report Distribution

Non-Defense Federal Organizations and Individuals

Office of Management and Budget
Technical Information Center, National Security and International Affairs Division,
General Accounting Office

Chairman and ranking minority member of each of the following congressional committees or subcommittees:

Senate Committee on Appropriations
Senate Subcommittee on Defense, Committee on Appropriations
Senate Committee on Armed Services
Senate Committee on Governmental Affairs
House Committee on Appropriations
House Subcommittee on National Security, Committee on Appropriations
House Committee on Government Reform and Oversight
House Subcommittee on Government Management, Information, and Technology,
Committee Government Reform and Oversight
House Subcommittee on National Security, International Affairs, and Criminal
Justice, Committee on Government Reform and Oversight
House Committee on National Security

Part III - Management Comments

Under Secretary of Defense (Comptroller) Comments



OFFICE OF THE UNDER SECRETARY OF DEFENSE
1100 DEFENSE PENTAGON
WASHINGTON, DC 20301-1100



OCT 16 1997

COMPTROLLER

MEMORANDUM FOR DEPUTY ASSISTANT INSPECTOR GENERAL FOR AUDIT
POLICY AND OVERSIGHT, OFFICE OF THE INSPECTOR
GENERAL, DEPARTMENT OF DEFENSE

SUBJECT: Evaluation Report on Dispositioned Defective Pricing Audit Reports at the
U.S. Army Aviation and Troop Command (Project No. 70C-9013.01)

The subject draft audit report states that, of 18 defective pricing settlements reviewed by the auditors, 13 resulted in interest payment checks from DoD contractors that were not properly credited by the DFAS-St. Louis office and the DFAS-Columbus Center. The report further states that these postings were contrary to DoD guidance contained in the "DoD Accounting Manual 7220.9-M, chapter 33 E.3.a." The applicable provision now is contained in paragraph 030503, Chapter 3, "Receivables," in Volume 4, "Accounting Policy and Procedures," of the DoD Financial Management Regulation (DoD 7000.14-R).

The draft report includes one recommendation addressed to the Under Secretary of Defense (Comptroller) as follows:

Recommendation for Corrective Action. We recommend that the Under Secretary of Defense (Comptroller), through the Director, Defense Finance and Accounting Service, direct the transfer of improperly credited interest payments to the 3210 Miscellaneous Receipts account of the U.S. Treasury to preclude illegal augmentation of individual contract appropriations.

OUSDC(C) Response. Concur in principle. Attached is a copy of a memorandum to the Director, DFAS, requesting that the DFAS initiate a review of transactions in order to correct the accounting errors identified in the subject draft audit report.

Our staff contact is Mr. Tom Summers. He may be reached via e-mail at: summerst@ousdc.osd.mil or by telephone at (703) 693-8343.


Nelson Toyer
Deputy Chief Financial Officer

Attachment



COMPTROLLER

OFFICE OF THE UNDER SECRETARY OF DEFENSE
1100 DEFENSE PENTAGON
WASHINGTON, DC 20301-1100



OCT 16 1997

MEMORANDUM FOR DIRECTOR, DEFENSE FINANCE AND ACCOUNTING SERVICE

SUBJECT: Evaluation Report on Dispositioned Defective Pricing Audit Reports at the
U.S. Army Aviation and Troop Command (Project No. 70C-9013.01)

The subject draft audit report states that, of 18 defective pricing settlements reviewed by the auditors, 13 resulted in interest payment checks from DoD contractors that were not properly credited by the DFAS-St. Louis office and the DFAS-Columbus Center. A copy of the report is attached. To avoid the possibility of a violation of the Antideficiency Act (Title 31, United States Code, section 1341), the OIG recommends that all improperly credited interest payments be transferred to Treasury receipt account 3210, "General Fund Proprietary Receipts, Defense Military, Not Otherwise Classified."

This office concurs in principle with the OIG's recommendation. Request that a review be initiated in order to correct the accounting errors identified in the subject draft audit report. Please provide a copy of your findings to this office upon completion of your review.

Our staff contact is Mr. Tom Summers. He may be reached via e-mail at: summerst@ousdc.osd.mil or by telephone at (703) 693-8343.


Nelson Toye
Deputy Chief Financial Officer

Attachment

Department of the Army Comments



DEPARTMENT OF THE ARMY
U.S. ARMY AUDIT AGENCY
ORGANIZATIONAL EFFECTIVENESS
3101 PARK CENTER DRIVE
ALEXANDRIA, VIRGINIA 22302-1596

SAAG-PMO-L

4 December 1997

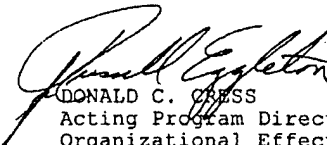
MEMORANDUM FOR INSPECTOR GENERAL, DEPARTMENT OF DEFENSE
ATTN: Audit Policy and Oversight
400 Army Navy Drive
Arlington, Virginia 22202-2884

SUBJECT: Evaluation Report on Dispositioned Defective Pricing
Audit Reports at the U.S. Army Aviation and Troop Command
(Project No. 7OC-9013.01)

1. Attached is the Army response to your memorandum dated 11 September 1997, subject as above.
2. For further information contact Ms. Debra Rinderknecht at DSN 224-9439, commercial (703) 614-9439, or e-mail at rinderkd@aaa.army.mil.

FOR THE DEPUTY AUDITOR GENERAL:

Encl


DONALD C. ORESS
Acting Program Director
Organizational Effectiveness



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
OFFICE OF THE ASSISTANT SECRETARY
RESEARCH DEVELOPMENT AND ACQUISITION
103 ARMY PENTAGON
WASHINGTON DC 20310-0103

25 NOV 1997

SARD-PC

MEMORANDUM FOR U.S. ARMY AUDIT AGENCY, ORGANIZATIONAL
EFFECTIVENESS, ATTN: SAAG-PMO-L,
3101 PARK CENTER DRIVE, ALEXANDRIA,
VA 22302-1596

SUBJECT: Evaluation Report on Dispositioned Defective Pricing Audit
Reports at the U.S. Army Aviation and Troop Command
(Project No. 70C-9013.01)

In response to your memorandum of September 11, 1997, subject as
above, the U.S. Army Aviation and Missile Command comments to the subject
report are attached.

Point of contact is Ms. Suellen Jeffress at (703) 681-1034, DSN 761-1034,
E-Mail jeffress@sarda.army.mil.

Edward G. Elgart
Acting Deputy Assistant Secretary of the
Army (Procurement)

Attachment

Department of the Army Comments



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
UNITED STATES ARMY AVIATION AND MISSILE COMMAND
REDSTONE ARSENAL, ALABAMA 36898-8000

19 Nov 97

AMSAM-IR (36-2c)

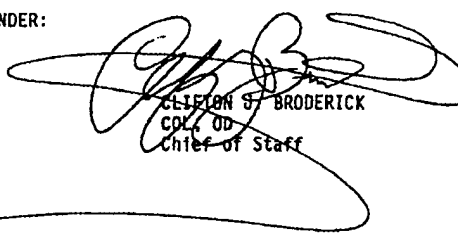
MEMORANDUM FOR Department of the Army, Office of the
Assistant Secretary, Research, Development
and Acquisition, 103 Army Pentagon,
Washington, D.C. 20310-0103

SUBJECT: Evaluation Report on Dispositioned Defective
Pricing Audit Reports at the U.S. Army Aviation and Troop
Command (Project No. 70C-9013.01) (AMCOM No. 03-1197-001)

1. Reference memorandum, SARD-PC, 29 Sep 97, subject as above.
2. In accordance with referenced memorandum, comments to the subject report are enclosed.
3. POC for this action is Mr. William Huseman at DSN 897-1785.

FOR THE COMMANDER:

Encl


CLAYTON J. BRODERICK
COL, OD
Chief of Staff

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COMMAND COMMENTS

Evaluation Report on Dispositioned Defective Pricing
Audit Reports at the U.S. Army Aviation and Troop Command
(Project No. 7OC-9013-01)

1. The U.S. Army Aviation and Missile Command (AMCOM)
submits the following comments to the subject report:

a. Additional Comments:

(1) The U.S. Army Aviation and Troop Command (ATCOM) apparently only held Overage Audit Review Board (OARB) meetings on a semiannual basis. However, AMCOM has held these meetings on a monthly basis and will continue to do so. The OARB members provide guidance and assistance to the contracting officers (CO) to facilitate resolution and disposition. This is an effective management tool for addressing the problems of overage audits.

(2) The AMCOM Acquisition Center (AC) Standing Operating Procedure (SOP) requires the CO to develop a Plan of Action within 60 days of receipt of an audit report. This plan must be approved by the directorate chief and a copy of the summary report must be furnished to the Contract Audit Follow-up (CAF) monitor/OARB administrator and the Defense Contracting Audit Agency (DCAA) Procurement Liaison Auditor (PLA). The OARB administrator provides a listing of these actions to the OARB members at each meeting. This process helps ensure that a plan of action is developed in a timely manner and that upper management is aware of these actions.

Recommendation A1. "We recommend that the Assistant Secretary of the Army, Research, Development, and Acquisition, through the Commander, Aviation and Missile Command, develop a comprehensive in-house training program

for contracting personnel at the Aviation and Missile Command on defective pricing to ensure compliance with regulatory and Army guidelines, including accurate reporting, timely resolution, followup, and disposition of defective pricing audit recommendations and documentation thereof; facilitating open-lines of communication with the contractor; timely and proper issuance of demands for payment; and proper assessment and collection of interest payments."

Action Taken. Concur. AMCOM will conduct a comprehensive defective pricing training program within 6 months to address issues of concern as expressed in this report. Additionally, the assistance of the DCAA PLA at AMCOM has been essential in obtaining quicker resolution, disposition, and higher sustention rates. AMCOM will continue to use the service of the DCAA PLA as an integral part of the process.

Recommendation #1. "We recommend that the Assistant Secretary of the Army, Research, Development, and Acquisition, through the Commander, Aviation and Missile Command:

a. Reemphasize to contracting officers responsible for the settlement of defective pricing audit reports the importance of full compliance with contract debt collection requirements, including proper assessment, collection and disposition of interest.

b. Direct COs to recalculate improperly assessed interest to fully comply with Federal Acquisition Regulation 15.804-7, 'Defective Cost or pricing data,' and request additional interest due from the contractor.

c. Issue a policy memorandum to remind contracting officers to provide copies of official demand letters to payment offices designated in the contracts."

Action Taken. Concur. The AMCOM AC's SOP 715-1 currently provides the necessary steps to ensure proper debt assessment and collection, to include providing copies of demand letters to paying offices. COs will be directed to

recalculate improperly assessed interest and request additional interest due as necessary, within the next 6 months.

Recommendation C1. "We recommend that the Assistant Secretary of the Army, Research, Development, and Acquisition, direct the Commander, Aviation and Missile Command to:

a. Maintain the centralized tracking and reporting system of contract audit reports at the Aviation and Missile Command and improve the accuracy and reliability of its semiannual data by requiring the contract audit followup monitor to review audit reports, resolution, and disposition documents and to validate reported data with source documents.

b. Reemphasize to COs the need to maintain open lines of communication with DCAA field audit offices before and during the negotiation process and to provide assistance in obtaining timely contractor comments during and after the draft phase of the audit."

Action Taken. Concur. The AC will continue to track and report all post-award audits under its CAF program as it has done successfully for years. The CAF monitor will continue to review applicable documents to maintain AMCOM's accurate reporting process. While ATCOM's procedures did not require this, the AMCOM AC SOP instructs the COs to provide the DCAA PLA a copy of their Plan of Action to resolve and disposition the audit report. Ensuring the PLA's involvement, even during the draft phase of the audit, has been an effective way of maintaining DCAA Field Audit Offices' communication lines.

Defense Contract Audit Agency Comments



IN REPLY REFER TO

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

PFC 225.4

25 September 1997

MEMORANDUM FOR ASSISTANT INSPECTOR GENERAL FOR POLICY AND
OVERSIGHT

SUBJECT: Response to DoDIG Draft Evaluation Report on Dispositioned Defective
Pricing Audit Reports at the U.S. Army Aviation and Troop Command
(Project No. 70C-9013.01)

We have reviewed the subject report, and our comments relative to
recommendations A.2 and C.2 are as follows:

Recommendation A.2: *We recommend that the Director, Defense Contract Audit Agency (DCAA), issue a policy memorandum to Field Audit Offices (FAOs) regarding the requirement to treat requests for additional audit support or assistance as demand assignments and to conduct periodic follow-up of open, overage defective pricing audit reports to assist contracting officers in meeting statutory and regulatory guidelines. In the event that the additional review or audit support will take longer than 30 days, the Field Audit Office shall advise the contracting officer accordingly.*

DCAA Response: Nonconcur. We believe that the existing guidance is clear that requests for additional audit support or assistance should be treated as demand assignments. CAM 14-125, Resolution of Audit Findings, paragraph a., states:

...In addition, the auditor should continuously offer assistance such as commenting on data received by the contracting officer after the audit report was issued and offer to attend negotiation conferences. When assistance is requested by the contracting officer, it should be given high priority.

We believe that the evidence found during your review further supports the clarity of our existing guidance. Your review showed that DCAA responded in less than 30 days on 38 of 42 (or 90.5%) of the audits. The draft report provides three examples of lengthy discussions between DCAA and the contracting officer resulting in a significant delay in disposition; however, the report is not specific as to when DCAA was untimely in responding to contracting officer requests for additional information.

Revised

PFC 225.4

SUBJECT: Response to DoDIG Draft Evaluation Report on Dispositioned Defective Pricing Audit Reports at the U.S. Army Aviation and Troop Command (Project No. 70C-9013.01)

Our own research on the first of these cases, Report 4271-91V42040-259-S1, does show that there were two DCAA delays of 8 months each that occurred during the lengthy resolution process. However, these delays occurred in 1991 and 1992, well before Section 14-125 was added to the CAM in January 1994. Subsequent requests for information on this case that were received in November 1994 and October 1995 were responded to in 44 days and 33 days respectively.

On the two Boeing audits referenced in the draft report, the FAO manager stated that the audit file shows that there was continuous communication with the contracting officer until the audit was dispositioned. In addition, your report was incorrect in stating that FAO personnel revised the recommended price adjustment in the FAO Management Information System (FMIS) to zero, without informing the contracting officer of a change in audit position. Audit assignments 6361-92A42040-003 and 6361-94A42098-001 were dispositioned with recommended price adjustments of \$44,000 and \$194,000, respectively, and with zero sustentation.

We also disagree that DCAA guidance needs to be reemphasized regarding follow-up of open overage defective pricing audits. FAO managers have a responsibility to periodically review the status of all unsettled audits. The guidance in CAM 14-125 was added to emphasize this general responsibility as it relates to defective pricing, because DCAA recognizes that the defective pricing resolution process is occasionally lengthy and contentious. Nevertheless, the primary responsibility for compliance with DoD Directive 7640.2, "Policy for Follow-up of Contract Audit Reports" rests with the contracting activity. DCAA's role, as clearly stated in CAM 15-604, is to help the buying command achieve its goal through additional audit support and assistance as needed. DCAA has never required auditors to establish a formal tracking or follow-up system under DoDD 7640.2, and CAM 14-125 should not be read as suggesting that such a formal follow-up mechanism exists for defective pricing. Informal audit follow-up can be accomplished through either written or oral communication, and therefore it may be difficult to determine whether or not such communications have taken place. The draft report is unclear as to whether the DoDIG reviewers examined DCAA audit files or relied solely on the contracting officer's files to make their determination.

Recommendation C.2: *We recommend that the Director, DCAA, reemphasize to field audit offices the importance of maintaining open lines of communication with contracting officers before, during, and after the audit and providing timely follow-up support and assistance, including participation and support during negotiations. The Procurement Liaison Auditor (PLA) should directly coordinate contracting officers' requests for additional follow-up support for outstanding defective pricing reports to ensure that the requests are acted on in a timely manner.*

Deleted,
actions now
in Recommendation A.2.

Defense Contract Audit Agency Comments

PFC 225.4

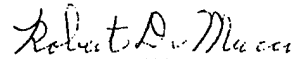
SUBJECT: Response to DoDIG Draft Evaluation Report on Dispositioned Defective Pricing Audit Reports at the U.S. Army Aviation and Troop Command (Project No. 70C-9013.01)

DCAA Response: Nonconcur. We do not believe a reemphasis of the guidance is necessary. As stated above, DCAA responded within 30 days in 90.5 percent of the cases reviewed. The cited exceptions were either prior to the change in DCAA guidance or have been incorrectly reported in the draft report. We also do not agree that the PLA should be tasked with coordinating on all requests for follow-up audit support. Since requests for audit follow-up are to be given high priority, we believe that they should be treated similarly to proposal review requests. CAM 15-305.4, Coordination of Requests for Audit Review of Price Proposals, Paragraph e., discusses the role of the PLA on proposal requests. It states:

Responsibility for the submittal of a timely audit report rests with the cognizant field auditor; responsibility of the PLA in this matter is to facilitate the use of audit service. The PLA shall look into any inquiry made either orally or in writing by the procuring activity where it is stated that a specific advisory audit report is overdue or was not received on a timely basis. On each such matter the PLA shall discuss the matter with the FAO and the procuring activity in an effort to assure timely reporting or more practicable due dates for future requests.

It is FAO management's responsibility, not the PLA's, to ensure all requests, including follow-up support, are acted on in a timely manner. The PLA will get involved when he/she receives an oral or written inquiry from the procuring activity. Therefore, the PLA will be involved as needed. Also, implementing this recommendation would place an unspecified requirement on the contracting officer to coordinate all requests for additional information with the PLA.

If you have any questions, please contact Susan B. Quinlan, Program Manager; Pricing, Finance, and Claims Division, at (703) 767-3262.



FOR: Lawrence P. Uhlfelder
Assistant Director
Policy and Plans

Evaluation Team Members

This report was prepared by the Contract Audit Directorate, Office of the Assistant Inspector General for Policy and Oversight, DoD.

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