



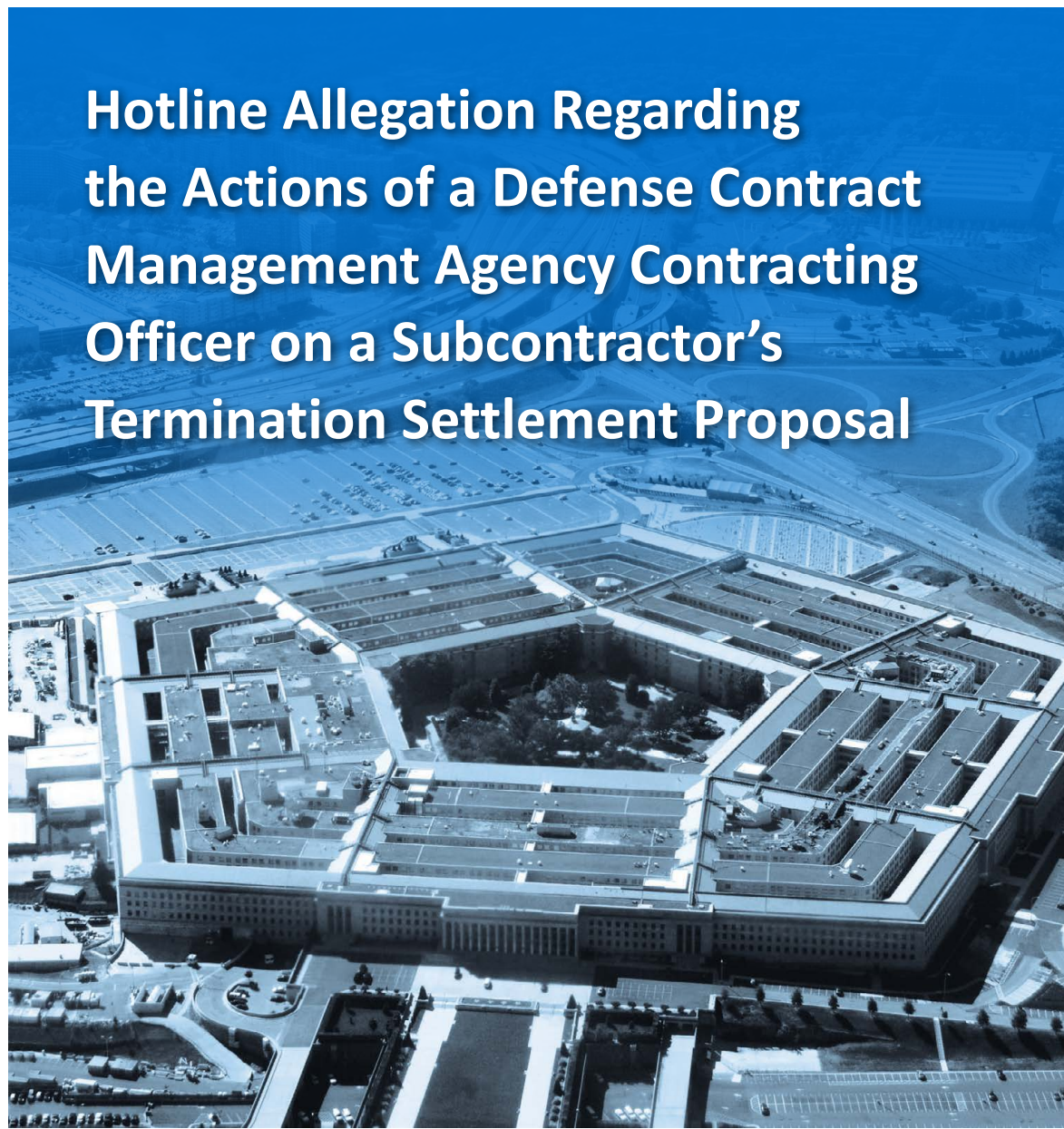
INSPECTOR GENERAL

U.S. Department of Defense

JUNE 21, 2018



Hotline Allegation Regarding the Actions of a Defense Contract Management Agency Contracting Officer on a Subcontractor's Termination Settlement Proposal



INTEGRITY ★ INDEPENDENCE ★ EXCELLENCE





Results in Brief

Hotline Allegation Regarding the Actions of a Defense Contract Management Agency Contracting Officer on a Subcontractor's Termination Settlement Proposal

June 21, 2018

Objective

We evaluated a Defense Hotline allegation that a Defense Contract Management Agency (DCMA) termination contracting officer (hereafter referred to as "DCMA Contracting Officer") failed to comply with the Federal Acquisition Regulation (FAR) and the contract terms when she did not uphold any of the Defense Contract Audit Agency's (DCAA) questioned costs of \$825,910 identified in the DCAA audit of an Air Force subcontractor's termination settlement proposal of \$1,860,001. It was also alleged that the DCMA Contracting Officer authorized the full payment of \$1,860,001 to the subcontractor.¹

Background

On December 18, 2009, an Air Force termination contracting officer issued a notice of partial contract termination for convenience regarding the subcontract for the purchase of titanium for the F-22 aircraft fuselage.²

On November 5, 2012, the Air Force termination contracting officer requested that DCAA audit the subcontractor's termination settlement proposal. The audit objective was to examine the subcontractor's proposed termination costs for compliance with the FAR and the contract terms.

¹ A termination settlement proposal is a contractor's submission for costs incurred because the Government terminated or partially terminated the contract for convenience.

² A termination for convenience occurs when the Government exercises its right to terminate (either completely or partially) the performance of work under a contract when it is in the Government's interest.

Background (cont'd)

On April 29, 2014, DCAA issued the audit report to the Air Force termination contracting officer. The audit report stated that the subcontractor's termination settlement proposal and supporting data did not comply with the FAR and identified \$825,910 in unallowable costs.

In accordance with the FAR, DCMA was responsible for negotiating the subcontractor's termination settlement proposal and addressing the DCAA-questioned costs of \$825,910. On April 28, 2016, the DCMA Contracting Officer authorized the full amount of the termination settlement proposal of \$1,860,001 requested by the subcontractor. By authorizing full payment, the DCMA Contracting Officer did not uphold any of the DCAA-questioned costs.

Finding

We determined that the DCMA Contracting Officer failed to comply with the FAR and the contract terms when she did not uphold the DCAA-questioned costs of \$825,910. We also determined that the DCMA Contracting Officer did not take reasonable steps to ensure that only allowable costs were reimbursed to the subcontractor. Of the \$825,910, the DCMA Contracting Officer did not ensure that:

- \$353,577 in subcontract costs complied with FAR Clause 52.242-15, "Stop-Work Order," and
- \$472,333 in subcontract costs complied with FAR 31.201-2, "Allowability."

In addition, the DCMA Contracting Officer did not prepare a price negotiation memorandum to document the reason for not upholding the DCAA-questioned costs, as FAR 15.406-3, "Documenting the Negotiation" requires.

We also determined that the DCMA Contracting Officer lacked experience in negotiating DCAA-questioned costs. Additionally, the DCMA Contracting Officer was not adequately supervised. We concluded that the lack of experience and supervision contributed to her not complying with the FAR and reimbursing the subcontractor \$825,910 in termination costs.



Results in Brief

Hotline Allegation Regarding the Actions of a Defense Contract Management Agency Contracting Officer on a Subcontractor's Termination Settlement Proposal

Finding (cont'd)

During our review, DCMA took corrective actions. Specifically, the DCMA Contracting Officer's current supervisor:

- rescinded the DCMA Contracting Officer's warrant,
- conducted one-on-one coaching sessions with the DCMA Contracting Officer,
- conducted training to all DCMA Terminations Group contracting officers located in her area of responsibility, including the Dallas, Texas, and Carson, California, field offices, and
- verified that the DCMA Contracting Officer had not performed any other contract negotiations.

Recommendations

We recommend that the Defense Contract Management Agency Director, through the Terminations Group Director:

- determine the allowability of the subcontractor's costs questioned by Defense Contract Audit Agency and
- take reasonable steps to recover any unallowable costs reimbursed to the subcontractor.

Management Comments and Our Response

The DCMA Director agreed with our recommendation to determine the allowability of the subcontractor's costs questioned by DCAA. DCMA reviewed the DCAA audit information and the subcontractor's termination proposal and determined that the DCAA-questioned subcontract costs of \$825,910 were unallowable. Therefore, the recommendation is closed.

The DCMA Director also agreed with our recommendation to take reasonable steps to recover any unallowable cost reimbursed to the subcontractor. The DCMA Contracting Officer issued a request for a voluntarily refund to the prime contractor. However, the contractor declined the request because the signed contract modification settling the termination costs was final and because the contractor had already paid the subcontractor. DCMA determined that, because the DCMA Contracting Officer acted within the scope of her official duties, the Government is bound by the finality of her actions and, as a result, the funds cannot be recouped. Therefore, the recommendation is closed.

No further comments are required. Please see the Recommendations Table on the following page.

Recommendations Table

Management	Recommendations Unresolved	Recommendations Resolved	Recommendations Closed
Defense Contract Management Agency Director	None	1 and 2	1 and 2

Note: The following categories are used to describe agency management's comments to individual recommendations.

- **Unresolved** – Management has not agreed to implement the recommendation or has not proposed actions that will address the recommendation.
- **Resolved** – Management agreed to implement the recommendation or has proposed actions that will address the underlying finding that generated the recommendation.
- **Closed** – OIG verified that the agreed upon corrective actions were implemented.





**INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
4800 MARK CENTER DRIVE
ALEXANDRIA, VIRGINIA 22350-1500**

June 21, 2018

MEMORANDUM FOR DIRECTOR, DEFENSE CONTRACT MANAGEMENT AGENCY

SUBJECT: Hotline Allegation Regarding the Actions of a Defense Contract Management Agency
Contracting Officer on a Subcontractor's Termination Settlement Proposal
(Report No. DODIG-2018-128)

We are providing this report for your information and use. We conducted this evaluation in accordance with the "Quality Standards for Inspections and Evaluations," published in January 2012 by the Council of the Inspectors General on Integrity and Efficiency.

We considered management comments on the draft of this report when preparing the final report. Comments from the Defense Contract Management Agency Director addressed all specifics of the recommendations and conformed to the requirements of DoD Instruction 7650.03. Therefore, we do not require additional comments.

We appreciate the courtesies extended to the staff. Please direct any questions to Carolyn R. Hantz at (703) 604-8877 or Carolyn.Hantz@dodig.mil.

A handwritten signature in black ink, appearing to read "R. Stone", is positioned above the printed name of the Deputy Inspector General.

Randolph R. Stone
Deputy Inspector General
Policy and Oversight

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Introduction

Objective

We evaluated a Defense Hotline allegation that a Defense Contract Management Agency (DCMA) termination contracting officer (hereafter referred to as “DCMA Contracting Officer”) failed to comply with the Federal Acquisition Regulation (FAR) and the contract terms when she did not uphold any of the Defense Contract Audit Agency’s (DCAA) questioned costs of \$825,910 identified in the DCAA audit of an Air Force subcontractor’s termination settlement proposal of \$1,860,001. It was also alleged that the DCMA Contracting Officer authorized full payment of the \$1,860,001 subcontractor’s termination settlement proposal.³

Background

On December 18, 2009, an Air Force termination contracting officer issued a notice of partial contract termination for convenience regarding the subcontract for the purchase of titanium for the F-22 aircraft fuselage.⁴

On November 5, 2012, the Air Force termination contracting officer requested that DCAA audit the subcontractor’s termination settlement proposal. The audit objective was to examine the subcontractor’s proposed termination costs for compliance with the FAR and the contract terms.

On April 29, 2014, DCAA issued the audit report to the Air Force termination contracting officer. The audit report stated that the subcontractor’s termination settlement proposal and supporting data did not comply with the FAR and identified \$825,910 in unallowable costs.

In accordance with the FAR, DCMA was responsible for negotiating the subcontractor’s termination settlement proposal and addressing the DCAA-questioned costs of \$825,910. On April 28, 2016, the DCMA Contracting Officer authorized the full amount of the termination settlement proposal of \$1,860,001 requested by the subcontractor. By authorizing full payment, the DCMA Contracting Officer did not uphold any of the DCAA-questioned costs.

Defense Contract Management Agency

DCMA operates in accordance with DoD Directive 5105.64, “Defense Contract Management Agency,” January 10, 2013. DCMA functions under the authority, direction, and control of the Under Secretary of Defense for Acquisition and

³ A termination settlement proposal is a contractor’s submission for costs incurred because the Government terminated or partially terminated the contract for convenience.

⁴ A termination for convenience occurs when the Government exercises its right to terminate (either completely or partially) the performance of work under a contract when it is in the Government’s interest.

Sustainment.⁵ In addition, DCMA performs contract administration services and contingency contract administration services for the DoD, other authorized Federal agencies, foreign governments, international organizations, and others as authorized. Finally, DCMA works directly with DoD contractors to ensure that DoD, Federal, and allied government supplies and services are delivered on time and at projected costs, and meet all performance requirements.

After contract award, DCMA monitors contractor's performance and management systems to ensure that costs, product performance, and delivery schedules comply with the terms and conditions of the contracts.

DCMA contracting officers are responsible for several contract administrative functions, such as approving or disapproving contractor business systems, determining final indirect cost rates on cost-reimbursement contracts, and evaluating contractor compliance with the Cost Accounting Standards. Contracting officers are authorized to terminate contracts for convenience, or for default, and to enter into settlement agreements. After a contracting officer issues a notice of termination, the termination contracting officer is responsible for negotiating any settlement with the contractor. The termination contracting officer uses the DCAA audit report and other expert advice in negotiating a settlement or issuing a unilateral determination.

Defense Contract Audit Agency

DCAA operates in accordance with DoD Directive 5105.36, "Defense Contract Audit Agency," January 4, 2010, under the authority, direction, and control of the Under Secretary of Defense (Comptroller)/Chief Financial Officer. DCAA provides audit and financial advisory services to the DoD and other Federal entities responsible for acquisition and contract administration. DCAA is responsible for performing all necessary contract audits for the DoD and providing accounting and financial advisory services regarding contracts and subcontracts to all DoD Components responsible for procurement and contract administration. These services are provided in connection with negotiation, administration, and settlement of contracts and subcontracts.

DCAA performs termination audits at the request of a contracting officer. The primary objective of the audit is to examine a contractor's proposed termination costs for compliance with the FAR and the contract terms and to advise the contracting officer of the results of the examination.

⁵ On February 1, 2018, the Office of the Under Secretary of Defense for Acquisition, Technology, and Logistics was restructured and the authority, direction, and control of DCMA transferred to the Office of the Under Secretary of Defense for Acquisition and Sustainment.

Chronology of Significant Events

The table below lists a chronology of key events relevant to this evaluation. Although this table does not contain every event, it provides a general timeline of key events that are relevant to the allegations evaluated.

Table. Chronology of Events

Date	Events
August 11, 2009	The Air Force termination contracting officer issued a stop-work order that directed the contractor to immediately stop work on all activities associated with the purchase of titanium for the F-22 Aircraft fuselage including subcontractors' work.
October 29, 2009	The contract was modified to establish a Contract Line Item Number (CLIN), which included a not-to-exceed price assuming a termination date no later than December 20, 2009.
December 18, 2009	The Air Force termination contracting officer terminated part of the contract concerning the CLIN established on October 29, 2009, including the subcontract, involving the purchase of titanium for the F-22.
August 27, 2010	The subcontractor submitted a termination settlement proposal of \$2,930,817 to the Air Force to claim costs that resulted from its subcontract termination.
May 20, 2011 and October 11, 2011	The subcontractor revised its termination settlement proposal. The May 20, 2011, revision reduced the costs originally proposed to \$1,860,001 to remove unallowable costs. The October 11, 2011, revision updated supporting documentation.
November 5, 2012	The Air Force termination contracting officer requested DCAA to audit the subcontractor's termination settlement proposal.
April 29, 2014	DCAA issued its audit report to the Air Force termination contracting officer questioning \$825,910 in proposed subcontractor termination settlement costs.
May 7, 2014	The DCMA Terminations Group, Carson, California, field office became responsible for the settlement of the subcontractor's termination proposal.
July 3, 2014	A DCMA Contracting Officer at the Carson, California, field office was assigned the subcontractor's termination settlement proposal.
February 23, 2016	The DCMA Contracting Officer signed the price negotiation memorandum, reflecting that the DCMA Contracting Officer planned to uphold DCAA-questioned costs of \$825,910.
March 7, 2016	The DCMA Contracting Officer's supervisor signed the price negotiation memorandum, agreeing with the DCMA Contracting Officer's negotiation position.
April 28, 2016	The DCMA Contracting Officer issued a contract modification to settle the subcontract termination and approve for reimbursement the full amount of the subcontractor's termination settlement proposal of \$1,860,001.
May 3, 2016	The DCMA Contracting Officer notified the DCAA auditor that she had completed her actions on the DCAA audit report.
August 22, 2016	The Defense Hotline received the complaint referenced in this report.

Finding

The DCMA Contracting Officer Did Not Ensure That Only Allowable Costs Were Reimbursed to the Contractor

We determined that the DCMA Contracting Officer failed to comply with the FAR and the contract terms when she did not uphold the DCAA-questioned costs of \$825,910. We also determined that the DCMA Contracting Officer did not take reasonable steps to ensure that only allowable costs were reimbursed to the subcontractor. Of the \$825,910, the DCMA Contracting Officer did not ensure that:

- \$353,577 in subcontract costs complied with FAR Clause 52.242-15(c), “Stop-Work Order,” and
- \$472,333 in subcontract costs complied with FAR 31.201-2, “Determining Allowability.”

Therefore, we substantiated the allegation.

In addition, the DCMA Contracting Officer did not prepare a price negotiation memorandum to document the reason for not upholding the DCAA-questioned costs, as FAR 15.406-3, “Documenting the Negotiation,” requires.

Allegation

A DCMA Contracting Officer failed to comply with the FAR and the contract terms when she did not uphold any of the DCAA-questioned costs of \$825,910 identified in the DCAA audit of an Air Force subcontractor’s termination settlement proposal of \$1,860,001. It was also alleged that the DCMA Contracting Officer authorized the full payment of \$1,860,001 to the subcontractor.

Questioned Costs in the DCAA Audit Report

On November 5, 2012, the Air Force termination contracting officer requested DCAA to audit the subcontractor’s termination settlement proposal. In the DCAA audit report, DCAA questioned \$825,910 of the subcontractor’s proposed termination settlement costs.

Stop-Work Order

The DCAA audit report questioned \$353,577 in subcontractor costs that were incurred up to 109 days after the Air Force termination contracting officer issued a stop-work order for all activities associated with the purchase of titanium for the F-22 aircraft.

FAR Clause 52.242-15(a) states that upon receipt of a stop-work order, the contractor shall immediately comply with the stop-work order terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage.

Cost Allowability

The DCAA report also questioned \$472,333 in subcontractor costs based on FAR 31.201-2, "Determining Allowability." FAR 31.201-2 states, in part, that costs are allowable when they are reasonable, allocable, and comply with the terms of the contract. Of the \$472,333, the DCAA audit report questioned:

- \$86,691 based on FAR 31.201-2(a)(1), "Reasonableness," because the proposed costs were not based on current market prices at the time of the settlement proposal.
- \$84,023 based on FAR 31.201-2(a)(2), "Allocability." The proposed costs were costs that the subcontractor:
 - did not incur as estimated at the time of the settlement proposal and
 - overstated when calculating the proposed direct costs.
- \$301,619 based on FAR 31.201-2(a)(4), "Terms of Contract," because the subcontractor purchased and processed raw materials before the Air Force contracting officer exercised a contract option to authorize the material.

The DCMA Contracting Officer Did Not Uphold the DCAA-Questioned Costs

The DCMA Contracting Officer's Actions

In July 2014, the DCMA Contracting Officer was assigned to the subcontractor's termination settlement proposal for terminating part of a contract involving the purchase of titanium for the F-22 aircraft fuselage. FAR 15.406-3(a)(7) requires the contracting officer to prepare a price negotiation memorandum to document the justification of the settlement decision.⁶ FAR 15.406-3(a)(7) further

⁶ A price negotiation memorandum is a document that establishes the principal elements of the final negotiated agreement.

requires that the price negotiation memorandum include any pricing assistance recommendations (for example, DCAA-questioned costs) and the reasons for any variances from the pricing assistance recommendations.

In the price negotiation memorandum, the DCMA Contracting Officer indicated that she would uphold all of the DCAA-questioned costs totaling \$825,910. However, in another section of the price negotiation memorandum, the DCMA Contracting Officer authorized reimbursement of the full proposed amount of \$1,860,001 in subcontractor termination costs. The price negotiation memorandum did not address the inconsistency or explain why the DCMA Contracting Officer authorized full payment of the \$1,860,001 subcontractor's termination settlement proposal.

Factors That Contributed to the Contracting Officer's Actions

We interviewed the DCMA Contracting Officer and asked her to explain the inconsistency in the memorandum and why she awarded the full proposed amount of \$1,860,001 in subcontractor's termination costs, including the \$825,910 in costs questioned by DCAA. The DCMA Contracting Officer could not explain the inconsistency in the memorandum and acknowledged that she made a mistake due to her lack of knowledge and expertise. She told us that she:

- did not have any experience in negotiating DCAA-questioned costs and that prior to this termination settlement proposal, she performed only contract administrative tasks, such as maintaining spreadsheets of invoices billed by the contractor;
- did not have any experience with contracting actions greater than \$750,000 because prior to this termination, she only handled contracting actions below \$750,000, which did not require negotiations involving DCAA audits; and
- was not aware of the requirements for appropriately considering and documenting her actions on DCAA-questioned costs.

To determine whether her lack of knowledge was due to insufficient training, we reviewed the training requirements for DCMA termination contracting officers and found them to be adequate. We also reviewed the DCMA Contracting Officer's training file and determined that she fulfilled the DCMA training requirements. However, based on our interview of the DCMA Contracting Officer and documents we obtained from DCMA, we determined that the DCMA Contracting Officer's lack of experience contributed to her mistake.

Approval of the Contracting Officer's Actions

For contracting actions of more than \$750,000, DCMA policy at the time required the contracting officer to obtain supervisory approval of the price negotiation memorandum. We determined that the DCMA Contracting Officer's supervisor (hereafter referred to as "the Retired Supervisor") reviewed and approved the price negotiation memorandum that the DCMA Contracting Officer used as the basis to authorize reimbursement of the subcontractor's full proposed amount of termination costs. We reviewed the DCMA contract file and found that the Retired Supervisor did not:

- document why he approved the price negotiation memorandum, as required by DCMA policy, that included the significant inconsistency between the DCAA-questioned costs that the DCMA Contracting Officer planned to uphold and the full reimbursement of the subcontractor's proposed amount of termination costs she ultimately documented and authorized;
- document whether he advised the DCMA Contracting Officer to consult with or engage DCAA during negotiations with the subcontractor, as recommended by DCMA Instruction 126, "Contract Audit Follow Up," August 20, 2014;
- document whether he advised the DCMA Contracting Officer to seek legal counsel given her decision not to uphold the DCAA-questioned costs, as required by DoD Instruction 7640.02, "Policy for Follow up on Contract Audit Reports," April 15, 2015, and DCMA Instruction 126; and
- require the DCMA Contracting Officer to prepare a price negotiation memorandum, documenting the reasons for not upholding the DCAA-questioned costs, as required by FAR 15.406-3.

On December 31, 2016, the Retired Supervisor left Government service. Although we did not interview the Retired Supervisor, we interviewed the current supervisor. She acknowledged that the DCMA contract file should have included the Retired Supervisor's rationale for approving the price negotiation memorandum and the reimbursement of the full amount of the subcontractor's proposed termination costs.

DCMA Corrective Actions

On February 23, 2017, the DoD Office of Inspector General requested documentation regarding the allegation against the DCMA Contracting Officer. Later that day, the Director of the DCMA Terminations Group and the current supervisor initiated an internal assessment of the DCMA Contracting Officer's actions regarding the subcontractor's termination settlement proposal.

On April 3, 2017, the Director of the DCMA Terminations Group and the current supervisor concluded that the DCMA Contracting Officer should not have paid the \$825,910 in termination costs questioned by DCAA. Furthermore, they determined that the DCMA Contracting Officer did not possess the knowledge, skills, or business judgment necessary to perform her duties.

Therefore, the current supervisor:

- rescinded the DCMA Contracting Officer's warrant;
- conducted one-on-one coaching sessions with the DCMA Contracting Officer;
- conducted training for all DCMA Terminations Group contracting officers located in her area of responsibility including the Dallas, Texas, and Carson, California, field offices. The training included contracting officers' responsibilities when negotiating termination settlement proposals in accordance with FAR, DoD policies, and DCMA instructions; and
- verified that the DCMA Contracting Officer had not performed any other contract negotiations.

We determined that these corrective actions adequately addressed the deficiencies identified in our evaluation.

Conclusion

We determined that a DCMA Contracting Officer failed to comply with the FAR and the contract terms when she did not uphold any of the DCAA-questioned costs of \$825,910 identified in the DCAA audit of an Air Force subcontractor's termination settlement proposal of \$1,860,001. We also determined that the DCMA Contracting Officer did not ensure that only allowable costs were reimbursed to the subcontractor. Therefore, we substantiated the allegation. Further, we determined that the DCMA Contracting Officer's lack of experience and inadequate supervision resulted in her not complying with FAR and reimbursing the subcontractor \$825,910 in termination costs.

The Director of the DCMA Terminations Group and the current supervisor implemented corrective actions that adequately addressed the deficiencies identified in our evaluation. However, DCMA should determine the allowability of the subcontractor's termination costs questioned by DCAA and take reasonable steps to recover unallowable costs reimbursed to the subcontractor.

Recommendations, Management Comments, and Our Response

Recommendation 1

The Defense Contract Management Agency Director, through the Terminations Group Director, should determine the allowability of the subcontractor's costs questioned by the Defense Contract Audit Agency.

DCMA Comments

The DCMA Director agreed with our recommendation, stating that DCMA reviewed the DCAA audit information and the termination proposal and determined that the \$825,910 in termination costs should not have been allowable.

Our Response

Comments from the DCMA Director addressed all specifics of the recommendation. We verified that, on May 14, 2018, DCMA determined the allowability of the subcontractor's costs questioned by DCAA. Therefore, the recommendation is closed. No further comments are required.

Recommendation 2

The Defense Contract Management Agency Director, through the Terminations Group Director should take reasonable steps to recover any unallowable costs reimbursed to the subcontractor.

DCMA Comments

The DCMA Director agreed with our recommendation, stating that the DCMA Contracting Officer issued a request for a voluntarily refund to the prime contractor. However, the contractor declined the request because the signed contract modification settling the termination costs was final and the contractor had already paid the subcontractor. DCMA determined that, because the DCMA Contracting Officer acted within the scope of her official duties, the Government is bound by the finality of her actions and, as a result, the funds cannot be recouped.

Our Response

Comments from the DCMA Director addressed all specifics of the recommendation. We verified that the DCMA Contracting Officer issued a request for a voluntary refund and that the contractor declined the request based on the finality of the contract modification used to settle the termination costs and that the contractor had already paid the subcontractor. Therefore, the recommendation is closed. No further comments are required.

Appendix

Scope and Methodology

We conducted this evaluation from April 2017 through April 2018 in accordance with the “Quality Standards for Inspection and Evaluation,” published in January 2012 by the Council of Inspectors General on Integrity and Efficiency. Those standards require that we adequately plan the evaluation to ensure that objectives are met and that we perform the evaluation to obtain sufficient, competent, and relevant evidence to support the findings, conclusions, and recommendations. We believe that the evidence obtained was sufficient, competent, and relevant to lead a reasonable person to sustain the findings, conclusions, and recommendations.

To determine the validity of the Defense Hotline complaint referenced in this report, we:

- interviewed appropriate DCMA and DCAA personnel;
- obtained and reviewed files and correspondence relating to the complaint; and
- reviewed the DCMA Contracting Officer’s actions to determine if they complied with applicable procurement regulations, DoD instructions, and agency procedures.

Use of Computer-Processed Data

We did not use computer-processed data to perform evaluation.

Prior Coverage

During the last 5 years, we did not identify any reviews involving a contracting officer’s actions on a termination settlement proposal.

Management Comments

Defense Contract Management Agency

**DEFENSE CONTRACT MANAGEMENT AGENCY**

3901 A. AVENUE, BUILDING 10500
FORT LEE, VIRGINIA 23801-1809

MAY 31 2018

MEMORANDUM FOR DEPARTMENT OF DEFENSE INSPECTOR GENERAL

SUBJECT: DCMA Response to DoDIG Audit Report D2017-DAPOCM-0138.000, Hotline Allegation Regarding the Actions of Defense Contract Management Agency Contracting Officer on a Subcontractor's Termination Settlement Proposal

Recommendation 1: The DoD OIG recommended that the Director, Defense Contract Management Agency, assess the questioned costs to determine if they are allowable.

DCMA Response: We reviewed the DCAA audit information and the Termination Proposal and determined these costs should not have been allowable. The costs questioned involve the first-tier subcontractor, two second-tier subcontractors, and a third-tier subcontractor. The questioned costs for the first-tier subcontractor consist of indirect burdens applied to questioned costs for the second-tier subcontractors and estimated costs not incurred.

The questioned costs for the first of the second-tier subcontractors are for incorrectly applied G&A and material handling rates and factors and for questioned costs on a third-tier subcontractor consisting of scrap proceeds and unallowable profit.

The questioned costs on the other second-tier subcontractor consist of unallowable continuing costs following a stop-work order and for the incurrence of machining costs without authorization to proceed as well as burdens on these questioned base costs.

Recommendation 2: The DoD OIG recommended that the Director, Defense Contract Management Agency, take reasonable steps to recover these monies.

DCMA Response: The TCO issued a request for a voluntary refund however, the prime contractor has declined the request. The prime contractor received a signed modification including the \$825,910 in question and has paid its lower tier subcontractor. The government is bound by the acts of contracting officers made within the scope of fiduciary duties, and the finality attached to those acts. We have determined the funds cannot be recouped.

David H. Lewis
VADM, USN
Director

Attachment(s):
DCMA MFR

Links(s):
None

Acronyms and Abbreviations

CLIN	Contract Line Item Number
DCAA	Defense Contract Audit Agency
DCMA	Defense Contract Management Agency
FAR	Federal Acquisition Regulation

Glossary

Allocability. Characteristic of a cost that is assignable or chargeable to one or more cost objectives on the basis of relative benefits received or other equitable relationship.

Allowability. Characteristic of a costs that permits its inclusion in a contract, and depends on: (1) its reasonableness, (2) its allocability, (3) provisions of the Costs Accounting Standards Board, otherwise, generally accepted accounting principles and practices appropriate to the circumstances, (4) terms of the contract, and (5) any limitations set forth in FAR subpart 31.

Price Negotiation Memorandum. Document that establishes the principal elements of the final negotiated agreement.

Reasonableness. Characteristic of a cost that in nature and amount does not exceed that which would be incurred by a prudent person in the conduct of competitive business.

Termination Contracting Officer. Government official responsible for negotiating and settling the termination of an existing contract with a Government contractor.

Termination for Convenience. A termination for convenience occurs when the Government exercises its right to terminate (either completely or partially) the performance of work under a contract when it is in the Government's interest.

Warrant. Appointment or certificate of appointment of a contracting officer's authority, which includes entering into, administering, or terminating contracts on behalf of the Government.



Whistleblower Protection

U.S. DEPARTMENT OF DEFENSE

The Whistleblower Protection Ombudsman's role is to educate agency employees about prohibitions on retaliation and employees' rights and remedies available for reprisal. The DoD Hotline Director is the designated ombudsman. For more information, please visit the Whistleblower webpage at www.dodig.mil/Components/Administrative-Investigations/DoD-Hotline/.

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