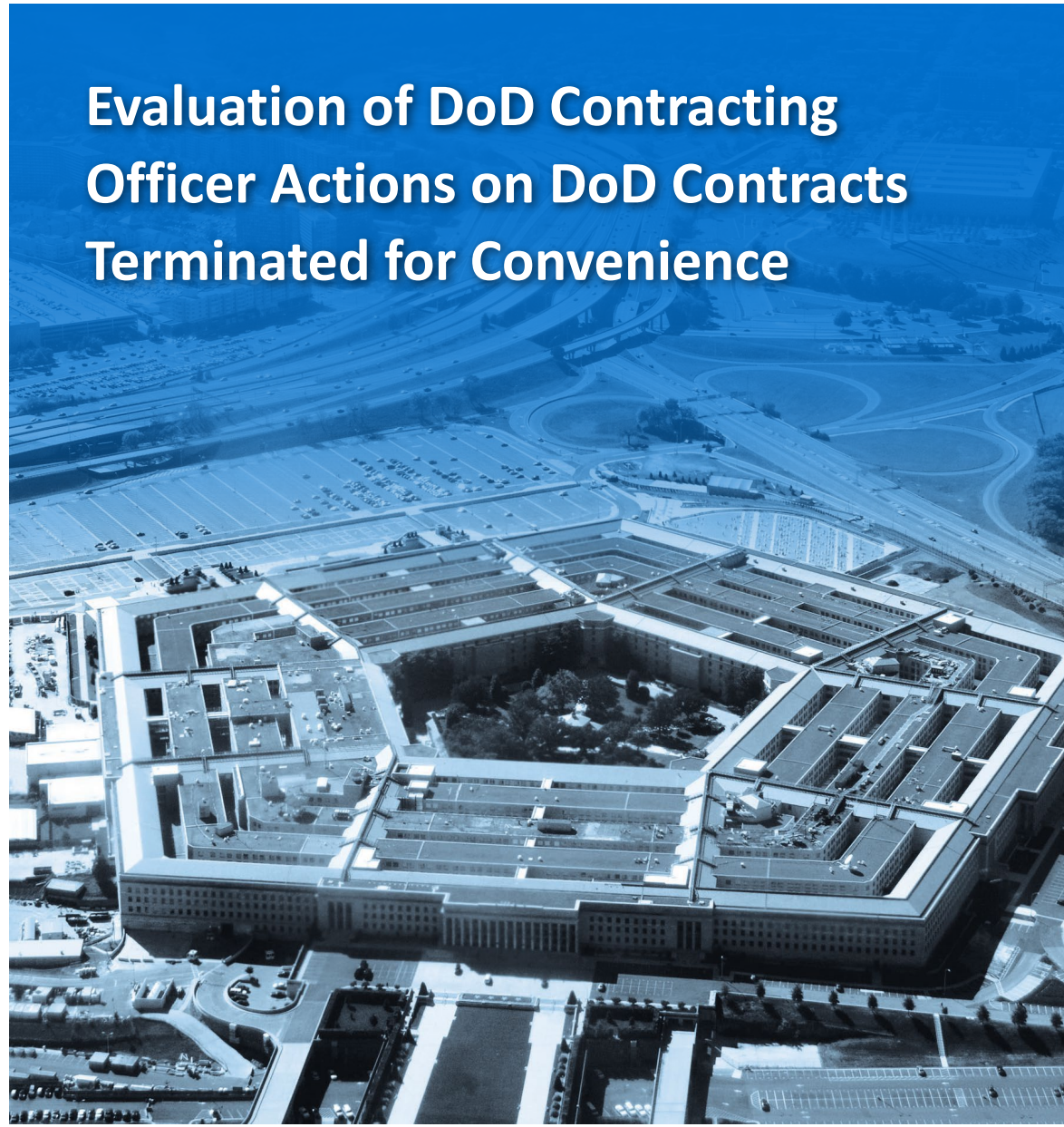




# INSPECTOR GENERAL

*U.S. Department of Defense*

MAY 9, 2023



## Evaluation of DoD Contracting Officer Actions on DoD Contracts Terminated for Convenience

INTEGRITY ★ INDEPENDENCE ★ EXCELLENCE





# Results in Brief

## *Evaluation of DoD Contracting Officer Actions on DoD Contracts Terminated for Convenience*

May 9, 2023

### Objective

The objective of this evaluation was to determine the extent to which DoD contracting officers complied with the Federal Acquisition Regulation (FAR), DoD policy, and DoD Component policy when they settled contractor proposed termination costs on DoD contracts that were terminated for convenience. We selected 63 contractor termination proposals totaling \$1 billion that DoD contracting officers settled from January 1, 2018, through December 31, 2021.

### Background

According to FAR Part 49, "Termination of Contracts," the Government can terminate a contract for convenience or for default. In a termination for convenience, the contractor is entitled to a negotiated settlement of costs it has incurred up to the effective date of the termination. For all 63 terminations we selected, the DoD contracting officer terminated the contract for convenience.

In addition, FAR Part 49 requires DoD contracting officers to prepare a negotiation memorandum that describes the principal elements of negotiating the termination settlement. DoD contracting officers must request an audit if the contractor termination proposal exceeds \$2 million. If an audit is requested by the DoD contracting officer, DoD Instruction 7640.02 requires that the DoD contracting officer provide rationale for any disagreement with the audit findings and recommendations.

### Findings

For 17 of 63 terminations, the DoD contracting officers did not document adequate rationale for settling termination costs as FAR Part 49 and DoD Instruction 7640.02 require. As a result, DoD contracting officers may have inappropriately reimbursed DoD contractors up to \$22.3 million in unallowable termination costs.

Additionally, for 21 of the 38 terminations that the DCAA audited, the DoD contracting officers did not complete the disposition of the DCAA audit report in a timely manner, as DoD Instruction 7640.02 requires.

Finally, for 45 of 63 terminations, DoD contracting officers did not perform an important duty, such as estimate funds required to settle the termination or release excess funds.

### Recommendations

Among the 28 recommendations, we recommend that the DCMA, Army, and Air Force:

- Determine the allowability of the \$22.3 million and take the necessary steps to recover any unallowable costs.
- Develop and implement a requirement to provide periodic training to DoD contracting officers on the FAR Part 49 requirements.

We recommend that the DCMA, Army, Navy, and Air Force develop and implement a requirement to provide periodic training to DoD contracting officers on the DoD Instruction 7640.02 requirements. In addition, we recommend that the Army, Navy, and Air Force establish procedures for implementing the reporting requirements of DoD Instruction 7640.02.



# Results in Brief

## *Evaluation of DoD Contracting Officer Actions on DoD Contracts Terminated for Convenience*

### **Management Comments and Our Response**

For 2 of the 28 recommendations, the comments from the Army and Air Force addressed the specifics of the recommendations, and we verified that the agreed-to actions were implemented. Therefore, we have closed the two recommendations.

For 14 of the recommendations, the comments from the DCMA, Army, and Air Force addressed the specifics of the recommendations. Therefore, the recommendations are considered resolved and open. We will close the 14 recommendations once we verify that the DoD Components have implemented the agreed-to actions.

Finally, for 12 of the recommendations, the comments from the Army, Navy, and Air Force did not fully address the recommendations. Therefore, we consider the 12 recommendations unresolved, and we request that, within 30 days, the DoD Components provide additional comments to this report that describe the specific actions they will take to address the unresolved recommendations.

Please see the Recommendations table on the next page for the status of recommendations.

## Recommendations Table

Management	Recommendations Unresolved	Recommendations Resolved	Recommendations Closed
Director, Defense Contract Management Agency	None	A.1.a, A.1.b, B.1.a, B.1.b, B.1.c, C.1.a, C.1.b, C.1.c	None
Deputy Assistant Secretary of the Army (Procurement)	A.2.b, A.2.c, A.2.d, B.2.a, C.2.a	A.2.a, B.2.b, C.2.b	B.2.c
Deputy Assistant Secretary of the Navy (Procurement)	B.3.a, B.3.b, C.3.a, C.3.b	None	None
Deputy Assistant Secretary of the Air Force (Contracting)	A.3.b, B.4.a, C.4	A.3.a, A.3.c, B.4.b	B.4.c

Please provide Management Comments by June 16, 2023.

**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** – DoD OIG verified that the agreed upon corrective actions were implemented.



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

May 9, 2023

MEMORANDUM FOR DIRECTOR, DEFENSE CONTRACT MANAGEMENT AGENCY  
AUDITOR GENERAL, DEPARTMENT OF THE ARMY  
AUDITOR GENERAL, DEPARTMENT OF THE NAVY  
AUDITOR GENERAL, DEPARTMENT OF THE AIR FORCE

SUBJECT: Evaluation of DoD Contracting Officer Actions on DoD Contracts Terminated for Convenience (Report No. DODIG-2023-069)

This final report provides the results of the DoD Office of Inspector General's evaluation. We previously provided copies of the draft report and requested written comments on the recommendations. We considered management's comments on the draft report when preparing the final report. These comments are included in the report.

Of the 28 recommendations, we have closed 1 Recommendation addressed to the Army (B.2.c) and 1 Recommendation addressed to the Air Force (B.4.c) because we verified that they implemented the agreed-to actions.

This report also contains 12 recommendations that are considered unresolved. Five recommendations for the Army are considered unresolved because the Deputy Assistant Secretary of the Army (Procurement) did not fully address the recommendations presented in the report. Four recommendations for the Navy are considered unresolved because the Deputy Assistant Secretary of the Navy (Procurement) did not address the recommendations presented in the report. Three recommendations for the Air Force are considered unresolved because the Deputy Assistant Secretary of the Air Force (Contracting) did not fully address the recommendations presented in the report.

Therefore, as discussed in the Recommendations, Management Comments, and Our Response sections of this report, the 12 recommendations remain open until we reach an agreement on the actions that you will take to address the recommendations, and you have submitted adequate documentation showing that all agreed-upon actions are completed.

DoD Instruction 7650.03 requires that recommendations be resolved promptly. Accordingly, within 30 days please provide us your response concerning specific actions in process or alternative corrective actions proposed on the recommendations. Send your response to [auditoversight@dodig.mil](mailto:auditoversight@dodig.mil).

Finally, the report includes 14 recommendations considered resolved and open, consisting of 8 recommendations for the DCMA, 3 recommendations for the Army, and 3 recommendations for the Air Force. As described in the Recommendations, Management Comments, and Our Response sections of this report, we will close the 14 recommendations when the DoD Components provide us documentation showing that all agreed-upon actions

to implement the recommendations are completed. Therefore, within 90 days please provide us your response concerning specific actions in process or completed on the 14 recommendations. Send your response to [followup@dodig.mil](mailto:followup@dodig.mil).

If you have any questions, please contact [REDACTED] at [REDACTED]. We appreciate the cooperation and assistance received during the evaluation.

FOR THE INSPECTOR GENERAL:

A handwritten signature in black ink, appearing to read 'Randolph R. Stone', with a stylized flourish extending to the right.

Randolph R. Stone  
Assistant Inspector General for Evaluations  
Space, Intelligence, Engineering, and Oversight

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# Introduction

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## Objective

The objective of this evaluation was to determine the extent to which DoD contracting officers complied with the Federal Acquisition Regulation (FAR), DoD policy, and DoD Component policy when they settled contractor proposed termination costs on DoD contracts that were terminated for convenience.

As part of the evaluation, we nonstatistically selected 63 contractor termination proposals (terminations) that DoD contracting officers terminated and settled for convenience from January 1, 2018, through December 31, 2021. The DoD contracting officers were responsible for settling approximately \$1 billion in contractor-proposed termination costs associated with the termination of these 63 contracts. See Appendix A for a discussion of our scope and methodology. See Appendix B for a list of the 63 selected terminations by DoD Component.

## Background

The FAR is the primary regulation that all Federal Executive agencies, including the DoD, must follow when they acquire supplies and services. FAR Part 49, “Termination of Contracts,” establishes duties and responsibilities for settling contractor termination proposals associated with Government contracts. FAR Part 49, states that the Government may terminate a contract for convenience or for default. In a termination for convenience, the Government exercises its contractual right to terminate a contract, even though the contractor has not defaulted on the contract. When a termination for convenience occurs, the contractor is entitled to a negotiated settlement of allowable costs it has incurred up to the effective date of the termination. In a termination for default, the Government exercises its contractual right to terminate a contract due to the contractor’s actual or anticipated failure to perform on the contract. In contrast to a termination for convenience, the contractor is not entitled to a settlement of costs it has incurred on undelivered work when the Government terminates a contract for default.

Our evaluation focused on the DoD contracting officers’ settlement of DoD contracts that they terminated for convenience. The 63 contracts terminated for conveniences we selected for this evaluation include fixed-price and cost-reimbursement type contracts. According to FAR Clause 52.249-2,

“Termination for Convenience of the Government (Fixed-Price),” and 52-249-6, “Termination (Cost-Reimbursement),” the Government may terminate a contract in whole or in part if the DoD contracting officer determines that a termination is in the Government’s interests. DoD contracting officers initiate a contract termination by issuing a Notice of Termination to the contractor that specifies the extent and the effective date of the contract termination. The contractor then submits a termination proposal to the Government to request reimbursement of allowable costs of undelivered work to the effective date of the termination. In FAR 52.249-2, for terminations of fixed-price contracts, and in FAR 52.249-6, for terminations of cost-reimbursement type contracts, FAR part 31, “Contract Cost Principles and Procedures,” governs the costs agreed to by the contractor and the Government.

### ***The FAR Requires the DoD Contracting Officer to Perform Several Important Duties after They Issue a Notice of Termination***

FAR Part 49 requires the DoD contracting officer to perform several important duties once they issue a notice of termination in a termination for convenience. Some of the more important duties include:

- determining the accuracy of the Government property account in accordance with FAR 49.109-3, “Government property,” before the DoD contracting officer executes a termination settlement agreement, and
- releasing excess funds on the terminated contract in accordance with FAR 49.105-2, “Release of Excess Funds,” after the DoD contracting officer executes a termination settlement agreement.<sup>1</sup>

### ***DoD Contracting Officers Must Request an Audit if the Contractor Termination Proposal Exceeds a Threshold***

When a DoD contracting officer terminates a contract for convenience, FAR 49.107(a), “Audit of Prime Contract Settlement Proposals and Subcontract Settlements,” requires the DoD contracting officer to request an audit of the contractor’s termination proposal if it exceeds the dollar threshold in FAR 15.403-4(a)(1). Effective July 2018, the threshold for requesting an audit increased from \$750,000 to \$2 million.<sup>2</sup> For 38 of the 63 terminations we

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<sup>1</sup> FAR Part 49, “Termination of Contracts,” Subpart 49.1, “General Principles,” section 49.109, “Settlement Agreements,” Subsection 49.109-3, “Government Property.” FAR 49.105, “Duties of Termination Contracting Officer After Issuance of Notice of Termination,” Subsection 49.105-2, “Release of Excess Funds.”

<sup>2</sup> FAR 49.107(a), “Audit of prime contract settlement proposals and subcontract settlements.” FAR Part 15, “Contracting by Negotiation,” Subpart 15.4, “Contract Pricing,” Section 15.403, “Obtaining certified cost or pricing data.” Subsection 15.403-4(a)(1), “Requiring certified cost or pricing data (10 U.S.C. chapter 271 and 41 U.S.C. chapter 35).”

selected for our review, the DoD contracting officer requested a DCAA audit of the contractor's termination proposal because the proposal exceeded the dollar threshold in FAR 15.403-4(a)(1).

### ***DoD Contracting Officers Must Document Prenegotiation Objectives and a Negotiation Memorandum***

FAR 15.406-1, "Prenegotiation Objectives," requires DoD contracting officers to document prenegotiation objectives before they negotiate a pricing action to establish the Government's initial negotiation position.<sup>3</sup> Documenting the prenegotiation objectives helps ensure that the DoD contracting officer is prepared to negotiate a fair and reasonable settlement on behalf of the Government. The FAR also states that the prenegotiation objectives should be based on the results of the DoD contracting officer's analysis of the contractor's termination proposal and consider all pertinent information, including field pricing assistance, audit reports, and technical analysis, to determine a fair and reasonable price.

Once the DoD contracting officer negotiates a tentative settlement on a contractor's termination proposal, FAR 49.110, "Settlement Negotiation Memorandum," requires DoD contracting officers to prepare a settlement negotiation memorandum (hereafter referred to as the "final negotiation memorandum").<sup>4</sup> The final negotiation memorandum describes the principal elements of negotiating the termination proposal and specifies the factors considered for each element, or supports the total amount of the settlement in reasonable detail.

FAR 15.406-3, "Documenting the Negotiation," states that, whenever field pricing assistance has been obtained (including an audit of a termination proposal), the DoD contracting officer must forward a copy of the final negotiation memorandum and other negotiation documentation to the offices that provided assistance.<sup>5</sup>

<sup>3</sup> FAR Part 15, "Contracting by Negotiation." Subpart 15.4, "Contract Pricing," Section 15.406, "Documentation." Subsection 15.406-1, "Prenegotiation objectives."

<sup>4</sup> FAR Part 49, "Termination of Contracts," Subpart 49.1, "General Principles," Section 49.110, "Settlement Negotiation Memorandum."

<sup>5</sup> FAR Part 15, "Contracting by Negotiation." Subpart 15.4, "Contract Pricing," Section 15.406, "Documentation." Subsection 15.406-3, "Documenting the negotiation."

## ***DoD Instruction 7640.02 Establishes Requirements for Taking Action on Audit Reports***

DoD Instruction 7640.02 establishes requirements for DoD contracting officers taking action on contract audit reports, including audit reports involving terminated contracts.<sup>6</sup> The Instruction requires DoD contracting officers to settle (referred to as “disposition”) all DCAA audit report findings and recommendations; and prepare a final negotiation memorandum within 12 months of the audit report date.<sup>7</sup> The final negotiation memorandum provides a written record of the DoD contracting officer’s decision on the DCAA audit report findings and recommendations, including the rationale for disagreeing with any part of the findings or recommendations. If the DoD contracting officer does not complete the disposition of the findings and recommendations in a DCAA audit report within 12 months, the Instruction requires DoD contracting officers to document, at least monthly, the actions they take to address the findings and recommendations.

In addition, the Instruction establishes requirements for maintaining accurate records of actions taken on contract audit reports. In support of the recordkeeping requirements, the DCMA maintains an automated database on behalf of the DoD, the Contract Audit Followup (CAFU) system. DoD Component management and DoD contracting officers use the CAFU system to track and record the actions they take to complete the disposition of DCAA audit reports.

For 38 of 63 terminations we selected, the DoD contracting officers requested an audit of the contractor’s termination proposal. Therefore, the DoD contracting officers who settled these 38 terminations were required to comply with the DoD Instruction 7640.02 requirements.

### ***Defense Contract Audit Agency***

The DCAA operates in accordance with DoD Directive 5105.36, “Defense Contract Audit Agency,” December 1, 2021, under the authority, direction, and control of the Under Secretary of Defense (Comptroller)/Chief Financial Officer, DoD. The DCAA provides audit and financial advisory services to the DoD and other Federal entities responsible for acquisition and contract administration.

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<sup>6</sup> DoD Instruction 7640.02, “Policy For Follow-Up On Contract Audit Reports,” April 15, 2015.

<sup>7</sup> DoD Instruction 7640.02, “Glossary,” defines “disposition” as the audit report status when the contracting officer prepared a signed and dated final negotiation memorandum and additional actions occurred including the contracting officer negotiated a settlement covering all audit issues with the contractor and executed any required contracting action.

The DCAA performs several types of contract audits, including audits of contractor termination proposals. When requested by a DoD contracting officer, the DCAA audits a termination proposal to determine the extent of the proposal's compliance with the FAR and contract terms, including the extent to which the contractor's proposed termination costs are allowable in accordance with FAR 31.205.<sup>8</sup> FAR 31.205 addresses the allowability of selected costs charged on Government contracts, such as employee compensation, travel, rent, and legal costs.

### ***Defense Contract Management Agency***

The Defense Contract Management Agency (DCMA) operates in accordance with DoD Directive 5105.64, "Defense Contract Management Agency," January 10, 2013 (incorporating Change 1, March 2, 2023). The DCMA functions under the authority, direction, and control of the Under Secretary of Defense for Acquisition and Sustainment.<sup>9</sup> The 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. In addition, the DCMA performs contract administration services and contingency contract administration services.

As the designated contract administration office, the DCMA settled a majority of DoD contractor termination proposals from 2018 through 2021. The DCMA maintains a Terminations Group, which employed 23 DoD contracting officers as of November 28, 2022. The DoD contracting officers assigned to the DCMA Termination Group are responsible for evaluating termination proposals, obtaining audit assistance from DCAA if required, negotiating a settlement with the DoD contractor, disposing of excess inventories, and executing final contract modifications. From 2018 through 2021, the DCMA Termination Group settled 541 DoD contractor termination proposals. Of the 63 termination proposals we selected for review, the DCMA Termination Group settled 47 of them. DoD contracting officers from the Army, the Navy, and the Air Force settled the remaining 16 termination proposals. See Appendix B for a detailed list of the 63 selected proposals by DoD Component.

<sup>8</sup> FAR Part 31, "Contract Cost Principles and Procedures," Subpart 31.2, "Contracts with Commercial Organizations," Section 31.205, "Selected Costs."

<sup>9</sup> 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.

## ***The Army, Navy, and Air Force Also Maintain Termination Policies and Guidance***

The Army, Navy, and Air Force also maintain termination policies and guidance that implement or supplement the FAR. For example, the Army maintains the Army Federal Acquisition Regulation Supplement (AFARS). The AFARS Subpart 5101.602-2.90, “Legal Coordination,” requires DoD contracting officers to obtain a legal review and consider the legal advice in determining if the termination settlement is legally sufficient based on law, regulation, and policy.<sup>10</sup> Similarly, the Navy maintains the Navy Marine Corps Acquisition Regulation Supplement (NMCARS). The NMCARS Subpart 5215.406-1, “Pre negotiation Objectives,” and 5215.406-3 “Documenting the negotiation,” require the DoD contracting officer to develop pre negotiation objectives addressing each cost element.<sup>11</sup>

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<sup>10</sup> AFARS Part 5101, “Federal Acquisition Regulation System,” Subpart 5101.6, “Career Development, Contracting Authority and Responsibilities,” Section 5101.602, “Contracting officers.” Subsection 5101.602-2.90, “Legal coordination.”

<sup>11</sup> NMCARS Part 5215, “Contracting by Negotiation,” Subpart 5215.4, “Contract Pricing,” Section 5215.406, “Documentation.” Subsection 5215.406-1, “Pre negotiation Objectives.” and Subsection 5215.406-3, “Documenting the negotiation.”



## Finding A

### **DoD Contracting Officers for 17 of 63 Terminations Did Not Document Adequate Rationale for Reimbursing \$22.3 Million in Proposed Termination Costs**

For 17 of 63 terminations we selected, the DoD contracting officers did not document adequate rationale for reimbursing a total of \$22.3 million in contractor proposed termination costs, in noncompliance with FAR Part 49 and DoD Instruction 7640.02. This occurred because DoD contracting officers did not:

- maintain adequate documentation in the case file to support their settlement of the proposed costs;
- obtain a required legal review;
- obtain management approval of the final negotiation memorandum;
- receive related training on the FAR and DoD Instruction 7640.02; or
- request an audit of the contractor's termination proposal from the DCAA when required.

As a result, DoD contracting officers may have inappropriately reimbursed DoD contractors up to \$22.3 million in unallowable termination costs.

### **DoD Contracting Officers for 17 of the 63 Terminations Did Not Adequately Document Their Reimbursement of \$22.3 Million**

For 17 of the 63 terminations we reviewed, DoD contracting officers did not document adequate rationale to support their settlement and reimbursement of \$22.3 million in contractor proposed termination costs. Of the 17 contract terminations, 9 were settled by the DCMA, 5 were settled by the Army, and 3 were settled by the Air Force. The DoD contracting officers' actions did not comply with FAR Part 49 and DoD Instruction 7640.02 when they settled the terminations. Specifically, FAR 49.110, "Settlement Negotiation Memorandum," requires that DoD contracting officers prepare a final negotiation memorandum to be included in the termination case file for the use by reviewing authorities. The memorandum must describe the principal elements of the settlement and specify the factors considered for each item to support the settlement. In addition, DoD Instruction 7640.02, Enclosure 3, paragraph 3(b) requires DoD contracting officers to indicate whether

or not they agree to each audit finding or recommendation. If they disagree with a finding or recommendation, DoD contracting officers must document the rationale for their disagreement in the negotiation memorandum.

Of the 17 terminations, 7 were audited by the DCAA and 10 were not audited by the DCAA. In addition to FAR Part 49, the DoD contracting officers who settled the seven terminations also did not comply with DoD Instruction 7640.02, which requires that DoD contracting officers provide a rationale in the final negotiation memorandum for disagreeing with any part of the audit findings or recommendations.

Table 1 shows a breakdown of the 17 terminations by DoD Component, and those that were audited and not audited by the DCAA. Also see Appendix C for a listing by contract.

*Table 1. Inadequately Documented Terminations, by DoD Component*

DoD Component	Terminations Audited by the DCAA		Terminations Not Audited by the DCAA		Totals	
	Number	Amount (millions)	Number	Amount (millions)	Number	Amount (millions)
DCMA	5	\$6.8	4	\$2.4	9	\$9.2
Army	2	1.1	3	5.7	5	6.8
Air Force	0	0	3	6.3	3	6.3
<b>Totals</b>	<b>7</b>	<b>\$7.9</b>	<b>10</b>	<b>\$14.4</b>	<b>17</b>	<b>\$22.3</b>

Note: Totals may not equal the actual sum because of rounding.

Source: The DoD OIG, based on data received from DoD Components.

For the seven terminations that the DCAA audited, DoD contracting officers did not document adequate rationale for disagreeing with the DCAA on \$7.9 million in questioned termination costs, and for reimbursing the \$7.9 million to the contractor. For the 10 terminations that DCAA did not audit, DoD contracting officers did not document adequate rationale for reimbursing \$14.4 million in contractor termination costs.

For example, the DoD contracting officer who settled terminated contract ending in 14-C-6023 requested an audit of the contractor's termination proposal because the proposal exceeded the \$2 million dollar threshold in FAR 15.403-4(a)(1). The DoD contracting officer did not adequately document their rationale for not sustaining \$5.7 million of the \$37 million questioned by the DCAA in audit report number ending in 2016G17100001. Of the \$5.7 million, the DCAA questioned \$1.2 million in proposed pre-contract costs based on FAR 31.201-2(a)(4),

“Determining Allowability.”<sup>12</sup> The DCAA questioned the pre-contract costs based on a letter from the DoD procurement contracting officer stating that only costs incurred between January 18, 2013, and July 28, 2014, (the contract award date) were allowable. The \$1.2 million in questioned costs represented costs that the contractor incurred before January 18, 2013. The DCMA contracting officer disagreed with DCAA questioned costs and allowed the costs based on their interpretation of FAR 31.205-32, “Precontract Costs.”<sup>13</sup> However, in the negotiation memorandum, the DCMA contracting officer did not adequately explain why they disagreed with the DCAA questioned costs or how the questioned costs met the pre-contract cost requirements defined in FAR 31.205-32.

For the remaining 16 terminations, we similarly determined that the DoD contracting officers did not document adequate rationale for disagreeing with the DCAA questioned costs, or for explaining how they determined the settlement amount when the termination proposal was not audited by the DCAA.

## **We Identified Five Factors That Contributed to DoD Contracting Officers Not Documenting Adequate Rationale**

We identified five factors that contributed to DoD contracting officers not documenting adequate rationale on the 17 terminations. Specifically, we identified one or more of the following contributing factors for each of the 17 terminations.

- Inadequate or no documentation in the contract file to support their negotiation position.
- No consultation with legal counsel when required.
- No management reviews when required.
- No training provided on the FAR and DoD instruction requirements for preparing adequate final negotiation memorandums.
- No audit of the contractor’s termination proposal when required.

Appendix C identifies the 17 inadequately documented terminations and the contributing factors we found for each termination.

<sup>12</sup> FAR 31.201, “General,” 31.201-2, “Determining Allowability,” 31.201-2(a) states that a cost is allowable only when the cost complies with all of the following requirements: reasonableness, allocability, CAS if applicable, terms of the contract, and any limitations in FAR Subpart 31.2.

<sup>13</sup> FAR 31.205-32, “Precontract Costs,” states, “Precontract costs refers to costs that are incurred before the effective date of the contract directly pursuant to the negotiation and in anticipation of the contract award when such incurrence is necessary to comply with the proposed contract delivery schedule. These costs are allowable to the extent that they would have been allowable if incurred after the date of the contract.”

### ***DoD Contracting Officers for 10 of the 17 Terminations Did Not Maintain Adequate Case Files to Support Their Termination Settlements with DoD Contractors***

For 10 of the 17 terminations, we determined that the DoD contracting officers did not maintain adequate case files that contained relevant documents to support their termination settlements with DoD contractors. Of the 10 terminations, 5 were settled by the DCMA, 2 were settled by the Army, and 3 were settled by the Air Force. FAR 49.105-3, "Termination Case File," requires that DoD contracting officers establish a separate case file for each termination. The case file must include memorandums and records of all actions relative to the settlement, such as the negotiation memorandum and the contract termination modification. In addition, in accordance with FAR 4.805, "Storage, handling, and contract files," Table 4-1, "Retention Period," contract files and related records or documents (including termination case files) must be kept for at least 6 years.<sup>14</sup>

For 5 of the 10 terminations, the responsible DCMA contracting officers could not locate a termination case file. Therefore, the DCMA contracting officers could not provide us with any documents (such as a negotiation memorandum) that could have helped to demonstrate the appropriateness of the termination settlements, which totaled \$2.7 million. For example, the DCMA could not locate a case file or any documentation for the \$1.4 million settlement of terminated Contract number ending in 10-C-0003. DCMA management representatives told us that the case files for terminated contract number ending in 10-C-0003 and the other three terminations were lost during DCMA's migration to a new electronic filing system.

For the remaining five terminations, the assigned Army and Air Force contracting officers did not maintain a complete case file that contained all the key documents needed to fully demonstrate the appropriateness of the termination settlements, which totaled \$8.8 million. For example, for three terminations settled by the same Air Force contracting officer, the contracting officer did not maintain adequate case files that fully demonstrated the appropriateness of the termination settlements totaling \$6.3 million paid to the contractor for the three contracts ending in 14-F-0225, 14-F-0026, 14-F-0027. Specifically, the case files for the three contracts did not include contract modifications that were needed to fully understand the basis of the \$6.3 million settlement, as FAR 49.105-3 requires.

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<sup>14</sup> FAR Part 4, "Administrative and Information Matters," Subpart 4.8, "Government Contract Files," section 4.805, "Storage, Handling, and Contract Files."

Without complete case files, the DoD contracting officers for the 10 terminations could not demonstrate the appropriateness of their settlements totaling \$11.5 million. On December 14, 2022, the DCMA provided training on addressing the maintenance of termination case files in accordance with FAR 49.105-3. We determined that the training adequately addressed the termination case file requirements. However, the DCMA, Army, and Air Force have not established a requirement or plan to provide future periodic training.

### ***DoD Contracting Officers for 5 of the 17 Terminations Did Not Consult with Legal Counsel***

For 5 of the 17 terminations, the DoD contracting officers did not consult with legal counsel before issuing their termination settlements. Of the five terminations, three were settled by the DCMA and two were settled by the Army. The following instructions and DoD Component regulations require that DoD contracting officers consult with legal counsel.

- DoD Instruction 7640.02, Enclosure 3, paragraph 3<sup>15</sup>
- DCMA Manual 2201-04, paragraph 4.2<sup>16</sup>
- AFARS 5101.602-2.90<sup>17</sup>

Table 2 lists the five contracts where DoD contracting officers did not consult with legal counsel.

*Table 2. Terminations Where the DoD Contracting officer Did Not Consult with Legal Counsel*

DoD Component	Contract (Ending in)	Audit Report No. (Ending in)
DCMA	07-D-M112	2014P17100001
DCMA	14-C-6023	2016G17100001
DCMA	10-D-0046	2013B17100001
Army	11-D-0088	2017W17100001
Army	17-C-0010	N/A

Source: The DoD OIG, based on data received from DoD Components.

<sup>15</sup> DoD Instruction 7640.02, April 15, 2015, requires DoD contracting officers to consult with legal and document the legal basis if there is a disagreement with DCAA audit report findings.

<sup>16</sup> DCMA Manual 2201-04, "Contract Audit Follow Up," March 3, 2019, requires DCMA contracting officers to consult with management and legal counsel if there is a disagreement with DCAA audit report findings.

<sup>17</sup> AFARS Part 5101, "Federal Acquisition Regulation System," Subpart 5101.6, "Career Development, Contracting Authority and Responsibilities," Section 5101.602-2, "Responsibilities," Subsection 5101.602-2.90, "Legal Coordination."

Four of the five terminations were audited by the DCAA, and one was not audited by the DCAA. To illustrate one termination not audited by the DCAA, the DoD contracting officer who settled terminated Contract number ending in 17-C-0010 reimbursed all of the \$8.4 million in termination costs proposed by the contractor. However, the DoD contracting officer did not obtain a legal review of the final negotiation memorandum as required by AFARS 5101.602-2.90. The AFARS requires DoD contracting officers to obtain a legal review and consider the legal advice in determining whether the termination settlement is legally sufficient based on law, regulation, and policy.

Without obtaining legal reviews, the DoD contracting officers bypassed a key control to help ensure that they comply with applicable regulations and prevent unauthorized actions that may lead to increased costs paid by the Government.

On September 15, 2022, the DCMA provided training on establishing prenegotiation objectives, which also emphasized the need to consult with legal counsel for any legal matters. Additionally, on December 14, 2022, the DCMA provided training on preparing final negotiation memorandums and consulting with legal counsel. We determined that the DCMA training adequately addressed the requirement for obtaining legal reviews. However, neither the DCMA nor the Army have established a requirement to provide future periodic training.

### ***DoD Contracting Officers for 3 of the 17 Terminations Did Not Obtain a Management Review***

For 3 of the 17 terminations, DoD contracting officers could not provide evidence that they obtained required management reviews of their termination settlements. Of the three 3 terminations, two were settled by the DCMA and one was settled by the Army. Table 3 shows a breakdown of the three terminations by DoD Component when the DoD contracting officers did not obtain a management review.

*Table 3. Terminations When the DoD Contracting officer Did Not Obtain Management*

DoD Component	Contract No. (Ending in)	Audit Report No. (Ending in)
DCMA	07-D-M112	2014P17100001
Army	15-C-0004	2017G17100002
DCMA	10-C-0003	N/A

Source: The DoD OIG, based on data received from DoD Components.

For the two terminations settled by the DCMA, the DoD contracting officers could not provide evidence that they obtained management approval of the prenegotiation objectives and final negotiation memorandum. DCMA Manual 2501-06, paragraph 3.10, "Obtain Appropriate Clearance," requires the DoD contracting officer to

obtain the appropriate management level of review before entering negotiations.<sup>18</sup> Additionally, DCMA Manual 2201-04, 4.2 paragraph g, “Management Review,” requires management review of the final negotiation memorandum.<sup>19</sup>

For the one termination settled by the Army, the DoD contracting officer for Contract number ending in 15-C-0004 did not obtain management approval of the prenegotiation objectives, as AFARS 5115.406-1, “Prenegotiation Objectives,” requires. The AFARS requires the DoD contracting officers to prepare, review, and obtain approval of prenegotiation objectives memorandum in accordance with established procedures. We asked the DoD contracting officer whether the U.S. Army Corps of Engineers, Sacramento District maintains procedures to implement the AFARS. The DoD contracting officer stated, and we confirmed, that the Sacramento District does not have an established procedure for obtaining approval of the prenegotiation objectives.

On September 15, 2022, the DCMA did provide training on the preparation of the prenegotiation objectives, which also emphasized the requirements for obtaining management approval of the prenegotiation objectives. In addition, on December 14, 2022, the DCMA provided training on preparing the final negotiation memorandum, including the requirement to obtain management approval of the final negotiation memorandum. The DCMA training adequately addressed the requirement to obtain management approval. However neither the DCMA nor the Army have established a requirement to provide future periodic training.

### ***DoD Contracting Officers for 13 of the 17 Terminations Did Not Receive Training on the FAR and DoD Instruction Requirements for Preparing Adequate Final Negotiation Memorandums***

For 13 of 17 terminations, DoD contracting officers did not receive training on the preparation of final negotiation memorandums that comply with the requirements of FAR Part 49 and DoD Instruction 7640.02. Of the 13 terminations, 7 were settled by DCMA, 3 were settled by the Army, and 3 were settled by the Air Force.

<sup>18</sup> DCMA Manual 2501-06, “Terminations,” October 2, 2018 (incorporating Change 1, September 11, 2020). The DCMA contracting officer is required to obtain appropriate level of review before entering negotiations for proposed settlement amounts greater than \$1 million.

<sup>19</sup> DCMA Manual 2201-04, “Contract Audit Follow Up,” March 3, 2019. When a DCAA audit is requested, the DCMA contracting officer is required to obtain management review on the final decision of the negotiation memorandum.

In response to our findings, on December 14, 2022, the DCMA provided training on the FAR Part 49 and DoD Instruction 7640.02 requirements for preparing final negotiation memorandums. We determined that the DCMA training adequately addressed the requirements. However, the DCMA, Army, and Air Force have not established a requirement to provide future periodic training.

### ***DoD Contracting Officers for 3 of the 17 Terminations Did Not Request an Audit from the DCAA as Required***

For 3 of the 17 terminations, the DoD contracting officers did not request an audit from DCAA even though the contractor's termination proposal exceeded the \$2 million threshold in FAR 49.107(a) for requiring an audit.<sup>20</sup> Of the three terminations, one was settled by the Army and two were settled by the Air Force. Table 4 lists the three termination proposals that exceeded the \$2 million threshold for which the DoD contracting officers did not request an audit.

*Table 4. Termination Proposals Exceeded \$2 million*

DoD Component	Contract Number (Ending in)	Proposal Amount (millions)
Army	17-C-0010	\$8.5
Air Force	14-F-0226	2.3
Air Force	14-F-0227	3.3

Source: The DoD OIG, based on data received from DoD Components.

For example, a contractor submitted a termination settlement proposal for \$8.5 million on terminated Contract number ending in 17-C-0010. The DoD contracting officer did not request an audit of the termination proposal even though it exceeded the \$2 million threshold. The DoD contracting officer explained to us that they did not request an audit because the Army paid the contractor a net amount of only \$1.7 million to settle the \$8.5 million termination proposal. The DoD contracting officer further explained that the Army paid the contractor the proposed balance of \$6.8 million through previous progress payments resulting in paying the contractor \$8.5 million (the entire proposed termination amount). However, FAR 49.107(a) requires the DoD contracting officer to request an audit when the total amount of a termination proposal exceeds \$2 million, not when the net amount paid to the contractor exceeds \$2 million.

<sup>20</sup> FAR 49.107(a), "Audit of Prime Contract Settlement Proposals and Subcontract Settlements," states, "The termination contracting officer shall refer each prime contractor settlement proposal valued at or above the threshold for obtaining certified cost or pricing data set forth in FAR 15.403-4(a)(1) to the appropriate audit agency for review and recommendations." FAR 15.403-4(a)(1), "Requiring Certified Cost or Pricing Data," states, "The threshold for obtaining certified cost or pricing data is \$750,000 for prime contracts awarded before July 1, 2018, and \$2 million for prime contracts awarded on or after July 1, 2018."



In accordance with FAR 49.107, the DoD contracting officers had an obligation to request an audit from the DCAA to establish the allowability of the proposed costs. Without obtaining a DCAA audit, the DoD contracting officer bypassed a key FAR requirement designed to help ensure that DoD contracting officers reimburse only allowable termination costs in accordance with the FAR and contract terms.

## **DoD Contracting Officers May Have Reimbursed DoD Contractors Up To \$22.3 Million in Unallowable Termination Costs**

Because the DoD contracting officers did not document adequate rationale in the negotiation memorandum for accepting the contractor's proposed termination costs, DoD contracting officers may have reimbursed DoD contractors up to \$22.3 million in unallowable termination costs, in noncompliance with FAR 31.205, "Selected Costs."

## **Management Comments on Finding A and Our Response**

### ***Defense Contract Management Agency Director Comments***

As part of DCMA Director's response to Recommendation A.1, the DCMA Director expressed three concerns affecting Finding A. First, the Director stated that there is no indication that DCMA termination contracting officers paid contractors anything other than what was due under the contract.

Second, the DCMA Director stated that the report inaccurately concludes that legal and management review are required for all terminations.

Third, the DCMA Director stated that the report inaccurately concludes that DCMA termination contracting officers should reimburse contractors only for costs that are allowable in accordance with FAR Part 31 because this only applies for cost-reimbursement type contracts. For fixed-price contracts, the DoD contracting officer is to be guided by "fair compensation," while for commercial contracts, the FAR expressly makes the cost principles inapplicable in accordance with FAR Subpart 49.2 and FAR 12.403(d)(ii), respectively.<sup>21</sup>

<sup>21</sup> The FAR citation in DCMA's response is incomplete. The correct citation is FAR 12.403(d)(1)(ii).

### *Our Response*

We disagree with the DCMA Director's first concern that there is no indication that DCMA termination contracting officers paid contractors anything other than what was due under the contract. Since the DoD contracting officers did not document adequate rationale to support their settlement and reimbursement of contractor proposed termination costs, the DoD contracting officer was unable to demonstrate whether the reimbursed costs were allowable or the compensation was fair.

Without adequate supporting documentation, we could not rule out the possibility that DoD contracting officers reimbursed contractors for unallowable costs under FAR 31, or paid them unfair compensation under FAR 49.2. The FAR 49.2 "fair compensation" concept is not applicable to cost reimbursement type contracts.

Based on the DCMA Director's second concern, we clarified the DCMA requirements for obtaining legal and management reviews of terminations. We also removed three DCMA contract terminations from Table 2 because the DoD contracting officers were not required to obtain a legal review of the terminations. In addition, we removed two DCMA contract terminations from Table 3 because the DoD contracting officers were not required to obtain a management review of the terminations.

Based on the DCMA Director's third concern, we made changes to the background section of the report to clarify when FAR Part 31 governs the termination costs agreed to or determined by the DoD contracting officer. For fixed-price contracts, FAR 52.249-2 states that the cost principles and procedures of FAR Part 31 must govern all costs claimed, agreed to, or determined under this clause. Although the FAR 49.201 "fair compensation" concept is not mentioned in FAR 52.249-2, DoD contracting officers may, under FAR 49.201, use business judgment for termination settlements on fixed-price contracts. The FAR 49.2 "fair compensation" concept is not applicable to cost reimbursement type contracts. Although we agree that FAR Part 31 does not apply to the termination of commercial contracts, our sample of 63 terminations did not include any commercial contracts. Therefore, the DCMA Director's concern did not affect our overall determination in Finding A that DoD contracting officers for 17 of the 63 selected terminations did not document adequate rationale for reimbursing \$22.3 million in termination costs.

## Recommendations, Management Comments, and Our Response

### ***Recommendation A.1***

We recommend that the Defense Contract Management Agency Director:

- a. **Review the contracting officers' decision to reimburse the contractors \$9.2 million in termination costs and, based on the results of the review, take the necessary steps to recover any unallowable costs reimbursed to contractors.**
- b. **Develop and implement a requirement to provide periodic training to termination contracting officers in the following areas:**
  1. **Preparing final negotiation memorandums in accordance with Federal Acquisition Regulation 49.110.**
  2. **Maintaining adequate termination case files in accordance with Federal Acquisition Regulation 49.105-3.**
  3. **Documenting adequate rationale for disagreeing with Defense Contract Audit Agency findings and recommendations in final negotiation memorandums in accordance with DoD Instruction 7640.02, Enclosure 3, Paragraph 3 and Defense Contract Management Agency Manual 2201-04, Paragraph 4.2.**
  4. **Obtaining and documenting legal review and management approval of prenegotiation objectives and final negotiation memorandum in accordance with Defense Contract Management Agency Manual 2201-04, Paragraph 4.2, and Defense Contract Management Agency Manual 2501-06, Paragraph 3.10.**

### ***Defense Contract Management Agency Director Comments***

The DCMA Director agreed with the recommendations. For Recommendation A.1.a, the DCMA Director agreed to review the DoD contracting officer's decisions identified in the report to determine whether they were accurate and reasonable. The DCMA plans to complete the review by January 31, 2024. If the DCMA determines any of the termination costs were unallowable, the DCMA will request the contractor to voluntarily refund the Government for payments made for those costs.

For Recommendation A.1.b, the DCMA Director stated that the DCMA conducted training on the preparation of prenegotiation objective and final negotiation memorandums during our evaluation. Also, the DCMA has established a requirement for the DCMA Termination Group to take the refresher training every 2 years. The refresher training will be completed by September 15, 2024.

### ***Our Comments***

Comments from the DCMA addressed the specifics of the recommendations. Therefore, this Recommendation is resolved, but will remain open. We will close Recommendation A.1.a once the DCMA provides evidence that it has:

- reviewed the DoD contracting officers' decisions.
- taken the necessary steps to request a voluntary refund from the contractor for any costs determined to be unallowable, based on the results of the review.

For Recommendation A.1.b, during the evaluation we verified that the DCMA conducted adequate training on the prenegotiation objective memorandum and settlement negotiation memorandum that addressed the recommendation. On April 3, 2023, the DCMA provided a written training plan. We verified that the written training plan establishes a requirement for periodic training. However, the plan was not signed by management or incorporated in an official policy or procedure. Therefore, we will close Recommendation A.1.b once we have verified that the DCMA has implemented the training plan requirement to provide periodic training on the prenegotiation objective memorandum and settlement negotiation memorandum.

### ***Recommendation A.2***

**We recommend that the Deputy Assistant Secretary of the Army (Procurement):**

- a. Review the contracting officers' decision to reimburse the contractors \$6.8 million in termination costs and, based on the results of the review, take the necessary steps to recover any unallowable costs reimbursed to contractors.**
- b. Develop and implement a requirement to provide periodic training to termination contracting officers in the following areas:**
  - 1. Preparing final negotiation memorandums in accordance with Federal Acquisition Regulation 49.110.**
  - 2. Maintaining adequate termination case files in accordance with Federal Acquisition Regulation 49.105-3.**
  - 3. Documenting adequate rationale for disagreeing with Defense Contract Audit Agency findings and recommendations in final negotiation memorandums in accordance with DoD Instruction 7640.02, Enclosure 3, Paragraph 3.**
  - 4. Obtaining and documenting legal review and management approval of prenegotiation objectives and final negotiation memorandums in accordance with Army Federal Acquisition Regulation Supplement 5115.406-1.**

- c. **Issue guidance covering the Federal Acquisition Regulation 49.107 threshold for requesting an audit of contractor termination proposals.**
- d. **Direct the U.S. Army Corps of Engineers, Sacramento District, to develop procedures that implement the requirement in Army Federal Acquisition Regulation Supplement 5115.406-1 for obtaining management approval of prenegotiation objectives.**

### ***Deputy Assistant Secretary of the Army (Procurement) Comments***

The Deputy Assistant Secretary of the Army (Procurement) (DASA[P]) agreed with our recommendations. For Recommendation A.2.a, the Army will review the DoD contracting officer's decisions to reimburse the contractor's \$6.8 million in termination costs and forward recommendations to the senior contracting official, if necessary. The estimated completion date is third quarter FY 2023.

For Recommendation A.2.b, the Army developed a CAFU desk guide which provides guidance on available training from the Defense Acquisition University (DAU), including an introductory course on terminations.<sup>22</sup> In addition, the Army developed a review aid for managers to ensure that settlements comply with relevant policies and regulations.

For Recommendation A.2.c, the DASA(P) stated that the CAFU desk guide provides guidance on the thresholds for requesting audits.

Finally, for Recommendation A.2.d, the DASA(P) stated the Army will review incorporating the requirements of AFARS 5115.406-1 in the manager's review aid. In addition, training will be provided by third quarter FY 2023.

### ***Our Comments***

The comments from the DASA(P) addressed Recommendation A.2.a. Therefore, the Recommendation is resolved, but will remain open. We will close the Recommendation once we verify that the Army reviewed the DoD contracting officer's decisions to reimburse the contractors termination costs.

The comments from the DASA(P) partially addressed Recommendation A.2.b. Therefore, the Recommendation is unresolved. Although the CAFU desk guide states that training is available from the DAU, the desk guide does not require that training be completed on a periodic basis. In addition, the DASA(P) comments do not address whether the training on AFARS 5115.406-1 will

<sup>22</sup> Defense Acquisition University (DAU) course Contract Management Contract Administration and Pricing (CMC) 150, "Introduction to Terminations" (which was replaced with DAU course CMC 1500, "Introduction to Terminations").

be required on a periodic basis. We request that the DASA(P), describe specific actions the Army will take to require periodic training in all areas identified in Recommendation A.2.b.

The comments from the DASA(P) partially addressed Recommendation A.2.c. Therefore, the Recommendation is unresolved. Although the CAFU desk guide provides guidance on the thresholds for requesting audits, the desk guide does not reference FAR 49.107, or state that the threshold for requesting an audit of termination proposals is \$750,000 for prime contracts awarded before July 1, 2018, and \$2 million for prime contracts awarded after July 1, 2018. We request that the Army describe the specific actions they will take to issue guidance that specifically cites the FAR 49.107 threshold for requesting an audit of contractor termination proposals.

The comments from the DASA(P) did not address Recommendation A.2.d. Therefore, the Recommendation is unresolved. The proposed corrective actions do not address whether the U.S. Army Corps of Engineers, Sacramento District plans to develop procedures that implement the requirement in AFARS 5115.406-1 for obtaining management reviews. We request that the DASA(P) describe the specific actions they will take to direct the U.S. Army Corps of Engineers, Sacramento District to begin requiring management approval of prenegotiation objective memorandums. We request the DASA(P) provide additional comments in response to Recommendations A.2.b, A.2.c, and A.2.d within 30 days of the final report.

### ***Recommendation A.3***

**We recommend that the Deputy Assistant Secretary of the Air Force (Contracting):**

- a. Review the DoD contracting officers' decision to reimburse contractors \$6.3 million in termination costs and, based on the results of the review, take the necessary steps to recover any unallowable costs reimbursed to contractors.**
- b. Develop and implement a requirement to provide periodic training to termination contracting officers in the following areas:**
  - 1. Preparing final negotiation memorandums in accordance with Federal Acquisition Regulation 49.110.**
  - 2. Maintaining adequate termination case files in accordance with Federal Acquisition Regulation 49.105-3.**
- c. Issue guidance on the Federal Acquisition Regulation 49.107 threshold requiring an audit of contractor termination proposals.**

### ***Deputy Assistant Secretary of the Air Force (Contracting) Comments***

The Principal Deputy Assistance Secretary of the Air Force (Acquisition, Technology & Logistics), responding for the Deputy Assistant Secretary of the Air Force (Contracting) (DAS[C]), agreed with the recommendations. For Recommendation A.3.a, the DAS(C) will direct the responsible senior contracting official to review the decisions to reimburse contractors \$6.3 million and take appropriate action. The estimated completion date for this is October 1, 2023.

For Recommendations A.3.b and A.3.c, the DAS(C) will issue a memorandum to all senior contracting officials instructing them to require termination contracting officers to complete a DAU terminations course before performing termination contracting officer duties.<sup>23</sup> Additionally, the guidance will remind senior contracting officials of the FAR 49.107 requirement to refer settlement proposals above the threshold to the appropriate audit agency. The estimated completion date for these actions is July 1, 2023.

### ***Our Comments***

The DAS(C) comments partially addressed the recommendations. Recommendations A.3.a and A.3.c. are resolved but will remain open. We will close Recommendation A.3.a once we verify the resolution of the findings reported to DAS(C). We will close Recommendation A.3.c once we verify that the DAS(C) has provided guidance reminding contracting officials of the requirements of FAR 49.107.

For Recommendation A.3.b, we agree that the DAU course adequately covers the requirements in FAR 49.110 and FAR 49.105-3. However, the comments did not address whether the Air Force will implement the requirement to provide training periodically. Therefore, this Recommendation remains unresolved. We request that the DAS(C) describe the specific actions the Air Force will take to require periodic training. We request additional comments in response to Recommendation A.3.b. within 30 days of the final report.

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<sup>23</sup> Defense Acquisition University (DAU) course Contract (CLC) 006, "Contract Terminations."

## Finding B

### **DoD Contracting Officers Did Not Settle Terminations in a Timely Manner or Maintain Accurate Contract Audit Followup System Records**

For 38 of the 63 terminations we reviewed, the DoD contracting officers requested a DCAA audit of the DoD contractor's termination proposal and were therefore required to comply with DoD Instruction 7640.02, "Follow-up on Contract Audit Reports." For the remaining 25 of 63 terminations, the DoD contracting officers were not required to comply with DoD Instruction 7640.02, because they did not request an audit.

Of the 38 terminations, DoD contracting officers for 21 terminations did not comply with DoD Instruction 7640.02 by not:

- completing the disposition of the audit report findings within 12 months, or
- documenting the actions they took to achieve settlements monthly, if they did not settle or disposition the report within 12 months.

Furthermore, for 28 of the 38 terminations, the DoD contracting officers did not maintain accurate Contract Audit Followup (CAFU) system records in accordance with DoD Instruction 7640.02.

The DoD contracting officers did not maintain accurate CAFU system records because:

- the Army, Navy, and Air Force lacked CAFU-related policies and procedures;
- the DoD contracting officers did not receive training on entering and maintaining accurate CAFU system records; and
- four Army and Air Force contracting officers were not provided access to the CAFU system.

The untimely settlement of audit findings can result in the delayed recovery of unallowable costs due to the Government. The data inaccuracies in the CAFU system diminishes the reliability of it as a tool for management to monitor, and for DoD contracting officers to track, the status of actions taken in response to contract audit reports.



## DoD Contracting Officers Did Not Comply with DoD Instruction 7640.02

For the 38 terminations where the DoD contracting officer requested a DCAA audit, the DoD contracting officers for 21 did not settle the audit report findings within 12 months or document monthly the actions they took to complete the disposition. Also, for 28 of the 38 terminations, the DoD contracting officers did not maintain accurate CAFU system records.

### ***DoD Contracting Officers for 21 of the 38 Terminations Did Not Settle the DCAA Reports within 12 Months***

For 21 of the 38 terminations, the DoD contracting officers did not comply with the DoD Instruction 7640.02 requirement to settle audit report findings within 12 months or document monthly the actions they took to achieve disposition. Of the 21 terminations, 18 were settled by the DCMA; 2 were settled by the Army; and 1 was settled by the Air Force.

The DoD contracting officers' actions did not comply with DoD Instruction 7640.02 Enclosure 3 paragraph 3(a) and DCMA Manual 2201-04, paragraph 4.2(a). The DoD Instruction and the DCMA Manual require DoD contracting officers to complete the disposition of the audit report within 12 months. When they do not complete the disposition within 12 months, they must document their actions taken to achieve disposition at least monthly. Table 5 summarizes the number of terminations where DoD contracting officers exceeded the 12-month requirement, and the average number of months that they exceeded the requirement.

*Table 5. Number of DCAA Audit Reports That Were Not Settled in 12 Months*

DoD Component	Number of Reports Where DoD Contracting Officers Exceeded the 12-Month Requirement and Did Not Document Their Actions Monthly	Average Number of Months Past the 12-Month Requirement
DCMA	18	22
Army	2	6
Air Force	1	4
<b>Total/Average</b>	<b>21</b>	<b>19</b>

Source: The DoD OIG, based on data received from DoD Components.

Appendix D identifies instances, by audit report, where DoD contracting officers did not settle the audit reports within 12 months or document monthly the actions they took to settle the reports.

For the 21 terminations, the DoD contracting officers exceeded the 12-month requirement by an average of 19 months. The DCMA contracting officer who settled DCAA audit report number ending in 2014017100002 exceeded the 12-month settlement requirement by 47 months. In addition, the DCMA contracting officer did not document the reasons for the delay or their actions to achieve settlement on a monthly basis, as DoD Instruction 7640.02 requires.

The DCMA completed an internal review in April 2020, which similarly concluded that, for 18 of 23 terminations, the DoD contracting officers did not settle the DCAA audit reports within the 12-month requirement.

On May 21, 2020, the DCMA provided training to the DoD contracting officers who settled the 18 terminations late. The training emphasized the requirement to settle audit reports within 12 months and to document the actions monthly if they do not disposition them within 12 months. However, DCMA contracting officers had already settled 16 of the 18 DCMA terminations before they received the training.

### ***DoD Contracting Officers for 28 of the 38 Terminations Did Not Maintain Accurate Contract Audit Followup System Records***

For 28 of the 38 terminations, DoD contracting officers did not comply with the DoD Instruction 7640.02 requirement for maintaining accurate CAFU system records.

DoD Instruction 7640.02 states that DoD contracting officers must ensure the accuracy of CAFU data for audit reports assigned to them. Once they complete their actions, DoD contracting officers must enter key information in the CAFU system, such as the amount of questioned costs they sustain and the date they complete the disposition of the audit report.

We tested the 38 records to determine whether the DoD contracting officer had entered accurate information in the CAFU system in accordance with DoD Instruction 7640.02. The CAFU system record for each audit report includes up to 30 data fields that contain information about the DCAA audit report and the status of actions that the assigned DoD contracting officer took on the report.

We focused our testing on the following six key data fields:

- Audit Report Date
- Questioned Costs
- Questioned Costs Sustained

- Resolution Date
- Disposition Date
- Status

We verified the accuracy of the tested data fields by comparing them to supporting documentation kept in DoD Component contract files. We found a total of 62 data field inaccuracies among 28 of the 38 records. Of the 28 inaccurate records, 20 were settled by the DCMA; 5 were settled by the Army; 2 were settled by the Navy; and 1 was settled by the Air Force. The records contained inaccurate information in four of the six data fields we tested. Table 6 shows a breakout of the 62 inaccuracies by data field and DoD Component. Also see Appendix E for a listing by audit report.

*Table 6. CAFU Inaccuracies by Data Field and DoD Component*

CAFU Data Fields with Inaccuracies	Number of CAFU Data Field Inaccuracies by DoD Component				Total Inaccuracies	Total Sample	Inaccuracy Percent
	DCMA	Army	Navy	Air Force			
Questioned Costs Sustained	15	5	2	1	23	38	61
Resolution Date	16	3	0	1	20	38	53
Disposition Date	8	3	1	1	13	38	34
CAFU Status (Open or Closed)	3	2	0	1	6	38	16
<b>Total Inaccuracies</b>	<b>42</b>	<b>13</b>	<b>3</b>	<b>4</b>	<b>62</b>		

Source: The DoD OIG, based on CAFU system and DoD Component records.

### ***Questioned Costs Sustained***

The Questioned Costs data field generally reflects the DCAA questioned costs that the DoD contracting officer agreed were unallowable on the Government contract. Of the 38 CAFU records we tested, 23 had inaccuracies in the Questioned Costs Sustained data field.

For 16 of the 23 inaccurate data fields, the DoD contracting officers understated the Questioned Costs Sustained in the CAFU system by \$33.2 million. For the remaining 7 data records, DoD contracting officers overstated the Questioned Costs Sustained by \$19.7 million.

The 15 DCMA inaccuracies occurred because the DoD contracting officers either did not enter the questioned costs sustained in the CAFU system or misunderstood the purpose of the Questioned Cost Sustained field. For example, for DCAA audit

report number ending in 2017H17100001, the DCMA contracting officer entered a questioned cost sustained amount of \$0 in the CAFU system, even though the DCMA contracting officer final negotiation memorandum reflects \$5.8 million in actual questioned costs sustained.

For three of the five Questioned Costs Sustained data field inaccuracies we found at the Army, and for the one inaccuracy we found at the Air Force, the DoD contracting officers explained to us that they did not have access to the CAFU system to enter the necessary updates. For instance, the Army contracting officer for DCAA audit report number ending in 2019C17100001 explained that they did not enter a questioned cost sustained amount in the CAFU system because they did not have access to the CAFU system, even though they sustained \$4.9 million in DCAA questioned costs.

### ***Resolution and Disposition Dates***

Of the 38 records we tested, DoD contracting officers entered 20 inaccurate resolution dates and 13 inaccurate disposition dates. The resolution dates were inaccurate by an average of 15 months, and the disposition dates were inaccurate by an average of 11 months. For example, the Navy contracting officer who settled DCAA audit report number ending in 2017F17100001 entered a disposition date in the CAFU system that was approximately 1 year later than the actual disposition date. The Navy contracting officer could not provide us with an explanation for the inaccuracy.

For two of the inaccuracies in resolution and disposition dates we found at the Army, and one we found at the Air Force, we determined the inaccuracies occurred because the Army and Air Force contacting officers did not have access to the CAFU system. As a result, the resolution and disposition date fields were left blank in the CAFU record.

In addition to the resolution and disposition date inaccuracies reflected in Table 6, we could not determine the accuracy of six dates (consisting of four resolution dates and two disposition dates) because the DoD contracting officers could not locate the memorandums that would have identified the actual resolution and disposition dates. We did not include them as resolution or disposition date inaccuracies in Table 6.

### ***CAFU Status***

The CAFU system's status field reflects the status of actions taken to resolve and disposition reportable contract audit reports as either open or closed. Of the 38 CAFU records we tested, we identified 6 inaccuracies in the CAFU Status data

field. For this data field, DoD contracting officers have the option of entering the status of the audit report as “Assigned,” “Planned,” “Resolved,” “Deferred” (under litigation or investigation), “Dispositioned,” or “Forwarded” in the CAFU system.

For example, a DCMA contracting officer assigned to DCAA audit report numbers ending in 2017H17100001 and 2017H17100002 entered the status of these reports as “Pending Litigation” in the CAFU system, even though they had completed the disposition of them on October 2, 2018. The DCMA contracting officer explained that they entered “Pending Litigation” as the status because they anticipated the contractor would litigate their decisions on the audit reports. However, in accordance with DoD Instruction 7640.02, the DCMA contracting officer should not have entered “Pending Litigation” as the status unless the contractor actually litigates the decision. In this case, the contractor never litigated their decision.

### **We Identified Three Factors that Led to DoD Contracting Officers Not Completing the Disposition of Audit Reports in a Timely Manner or Maintaining Accurate Records**

We identified the following three factors that led to the DoD contracting officers not completing the disposition of audit reports in a timely manner or maintaining accurate records in the CAFU system.

- The Army, Navy, and Air Force lacked CAFU-related policies and procedures.
- The DoD contracting officers did not receive training on entering and maintaining accurate CAFU system records.
- Four Army and Air Force contracting officers were not provided access to the CAFU system.

#### ***The Army, Navy, and Air Force Lacked Procedures for Completing the Disposition of Audit Reports in a Timely Manner or Outlining Responsibilities for Maintaining Accurate Records***

We determined that the Army, Navy, and Air Force lacked procedures for ensuring that DoD contracting officers complete the disposition of audit reports in a timely manner or maintain accurate CAFU system records.

Specifically, we determined that the Army and the Air Force did not establish procedures for ensuring compliance with DoD Instruction 7640.02 Enclosure 3, paragraph 3.a. DoD Instruction 7640.02 Enclosure 3, paragraph 3.a states that if the disposition of the audit report is not completed within 12 months, the DoD

contracting officer should document the actions taken to complete the disposition at least monthly. We found three of six instances where Army and Air Force contracting officers did not document the actions they took to complete the disposition, even though they did not disposition the report within 12 months.

In addition, we determined that the Army, Navy, and Air Force did not establish adequate procedures for maintaining the accuracy of CAFU system records. DoD Instruction 7640.02 Enclosure 3, paragraph 1(b), "Tracking and Reporting Requirements," requires DoD Components to develop CAFU system procedures to ensure that DoD contracting officers take the following actions.

- Establish and update estimated target dates in the CAFU system for resolving and dispositioning each reportable contract audit report assigned to them.
- Promptly update the status of reportable contract audit reports as resolved, unresolved, dispositioned, or in litigation or investigation within the CAFU system.
- Ensure the accuracy of all data in the CAFU system.
- Report questioned cost and sustained amounts in the CAFU system.

### ***DoD Contracting Officers Did Not Receive Adequate Training on the Requirements for Entering and Maintaining Accurate CAFU System Records***

We determined that DoD contracting officers did not receive adequate training on the requirements for entering and maintaining accurate CAFU system records. DoD Instruction 7640.02, Enclosure 3, requires DoD contracting officers to ensure the accuracy of all data in the CAFU system, promptly update the status of contract audit reports as resolved or dispositioned, and report the questioned costs sustained in the CAFU system. Army, Navy, and Air Force contracting officers told us they had not received any training related to maintaining accurate CAFU system records. DCMA contracting officers told us they received training in May 2020 on the use of the CAFU system; however, the training did not adequately address what information they should enter for each data field in the CAFU system.

Therefore, the DoD contracting officers were unaware of several of the requirements for entering and maintaining accurate CAFU system records, including the requirement to document monthly their actions to achieve disposition when they exceed the 12-month disposition requirement. Adequate training would have helped to prevent the types of CAFU system inaccuracies we found.

## **Army and Air Force Contracting Officers Lacked Access to the CAFU System**

For the 38 CAFU system records we tested, we learned that the three responsible Army contracting officers and one responsible Air Force contracting officer did not have the ability to access and make updates to their assigned CAFU system records. As a result, for these four DoD contracting officers, we found 13 data field inaccuracies because the DoD contracting officers had not entered a value in a required data field.

DoD Instruction 7640.02, Enclosure 3, paragraph 1(b)(2) states that DoD Components must ensure that DoD contracting officers update the status of reportable contract audit reports within the CAFU system.

## **Noncompliances with DoD Instruction 7640.02 Impact the Government's Ability to Recover Funds and Monitor Actions on Contract Audit Reports**

Excessive delays in settling audit findings associated with terminations can result in the delayed recovery of unallowable costs due to the Government. For instance, if the audit discloses unallowable costs due to the Government, the Government would experience a delay in recovering the unallowable costs if the DoD contracting officer does not disposition the audit in a timely manner. As time passes without any action, the Government risks the expiration of the 6-year statute of limitation for recovering of unallowable costs paid to contractors.<sup>24</sup>

In addition, the CAFU system data inaccuracies affect the:

- reliability of the CAFU system as a tool for documenting DoD contracting officer actions on DCAA audit findings,
- DoD Component management's ability to effectively monitor the status of actions on DCAA audit reports, and
- reliability and accuracy of data reported in the Semiannual Reports to Congress.

<sup>24</sup> The Contract Disputes Act (Sections 7101 – 7109, title 41, United States Code) imposes a 6-year statute of limitations on all claims, whether they are asserted by the contractor or the Government.

## Recommendations, Management Comments, and Our Response

### **Recommendation B.1**

We recommend that the Defense Contract Management Agency Director develop and implement a requirement to provide periodic training on the DoD Instruction 7640.02 reporting requirements to contracting officials involved in Contract Audit Followup system reporting with an emphasis on:

- a. Describing the DoD contracting officer's responsibility to maintain Contract Audit Followup records.
- b. Entering accurate data in the Contract Audit Followup system data fields, including the Questioned Costs Sustained, Resolution Date, Disposition Date, and Status data fields.
- c. The importance of timely dispositioning audit reports within 12 months of the audit report date.

### ***Defense Contract Management Agency Director Comments***

The DCMA Director agreed and stated that the DCMA determined a DAU CAFU course adequately meets the recommendation.<sup>25</sup> The DCMA established a requirement for the DCMA Termination Group to take the DAU training every 2 years. New employees are required to complete the training within 6 months of onboarding. The requirement also states that the DCMA Termination Group will complete the first CAFU training by July 31, 2023.

### ***Our Comments***

Comments from the DCMA Director addressed the specifics of the recommendation. Therefore, this Recommendation is resolved, but will remain open. We agree that the DAU CAFU adequately covers the reporting requirements in DoD Instruction 7640.02. On April 3, 2023, the DCMA provided a written training plan. We verified that the written training plan established a requirement for periodic training. However, the plan was not signed by management or incorporated in an official policy or procedure. We will close Recommendation B.1 once we have verified that the DCMA Director has implemented the training plan requirement to complete the DAU CAFU course every 2 years.

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<sup>25</sup> Defense Acquisition University (DAU) Contract Management Contract Administration and Pricing (CMC) 210, "Contract Audit Follow-Up (CAFU)."



## **Recommendation B.2**

We recommend that the Deputy Assistant Secretary of the Army (Procurement) to:

- a. **Develop and implement a requirement to provide periodic training on the DoD Instruction 7640.02 reporting requirements to contracting officials involved in Contract Audit Followup system reporting with an emphasis on:**
  1. **Describing the DoD contracting officer’s responsibility to maintain Contract Audit Followup records.**
  2. **Entering accurate data in the Contract Audit Followup system data fields, including the Questioned Costs Sustained, Resolution Date, Disposition Date, and Status data fields.**
  3. **The importance of timely dispositioning audit reports within 12 months of the audit report date.**
- b. **Provide access to the Contract Audit Followup system to DoD contracting officers and management.**
- c. **Develop and implement procedures covering the record-keeping requirements in DoD Instruction 7640.02, Enclosure 3, paragraph (1)(b), “Reporting Requirements for Reportable Contract Audit Reports,” and the 12-month disposition requirement in DoD Instruction 7640.02, Enclosure 3, paragraph 3(a), “Disposition of Reportable Contract Audit Reports.”**

### ***Deputy Assistant Secretary of the Army (Procurement) Comments***

The DASA(P) agreed with our recommendations. For Recommendation B.2.a, the DASA(P) stated that the Army updated AFARS 5142.190 and developed a CAFU desk guide to describe the CAFU process.

For Recommendation B.2.b, the DASA(P) stated that the Army established CAFU monitors to maintain CAFU records. Additionally, the Army created a working group between CAFU monitors and DCMA representatives to track audits in the CAFU system and to ensure that CAFU monitors are able to obtain access to the CAFU system.

For Recommendation B.2.c., the DASA(P) stated that both the update to AFARS 5142.190 and the CAFU desk guide cover the timely disposition of audits within 12 months of the audit report date.

### ***Our Comments***

Comments from the DASA(P) did not address Recommendation B.2.a. Therefore, the Recommendation is unresolved. The CAFU desk guide provides guidance on available training from the DAU, but it does not require that contracting officials complete training periodically. We request that the DASA(P) describe the specific actions the Army plans to take to develop and implement a requirement to provide periodic training on DoD Instruction 7640.02. We request that the DASA(P) provide additional comments within 30 days of the final report.

Comments from the DASA(P) addressed Recommendation B.2.b. Therefore, the Recommendation is resolved, but will remain open. We will close the Recommendation once we verify that the CAFU monitors have access to the CAFU system.

Comments from the DASA(P) addressed Recommendation B.2.c. We verified that AFARS 5142.190-1 requires DoD contracting officers to disposition audit recommendations within 12 months in accordance with DoD Instruction 7640.02. Additionally, AFARS 5142.190-1 states that the CAFU monitor is responsible for maintaining the accuracy of the CAFU record. Therefore, the Recommendation is closed.

### ***Recommendation B.3***

**We recommend that the Deputy Assistant Secretary of the Navy (Procurement) to:**

- a. Develop and implement a requirement to provide periodic training on the DoD Instruction 7640.02 reporting requirements to contracting officials involved in Contract Audit Followup system reporting with an emphasis on:**
  - 1. Describing the DoD contracting officer's responsibility to maintain Contract Audit Followup records.**
  - 2. Entering accurate data in the Contract Audit Followup system data fields, including the Questioned Costs Sustained, Resolution Date, Disposition Date, and Status data fields.**
  - 3. The importance of timely dispositioning audit reports within 12 months of the audit report date.**
- b. Develop and implement procedures covering the record-keeping requirements in DoD Instruction 7640.02, Enclosure 3, paragraph (1)(b), "Reporting Requirements for Reportable Contract Audit Reports."**

### ***Deputy Assistant Secretary of the Navy (Procurement) Comments***

The Executive Director, Office of the Deputy Assistant Secretary of the Navy (Procurement), responding for the Deputy Assistant Secretary of the Navy (Procurement), partially agreed with the recommendation. The Executive Director stated that, because the other DoD Components received nearly identical recommendations, the responsibility for implementing the Recommendation would be better addressed to the DoD. In addition, the Executive Director stated that if the DoD issues guidance to address the recommendation, the Navy will evaluate its training needs.

Finally, the Executive Director stated that, without DoD-issued guidance, the Navy will recommend that the Navy heads of contracting activities provide periodic training on CAFU system reporting requirements.

### ***Our Comments***

Comments from the Executive Director did not address the intent of the recommendations; therefore, the recommendations are unresolved. We disagree that the implementation of the Recommendation is the responsibility of the DoD. DoD Instruction 7640.02 requires DoD Components to ensure their acquisition personnel are trained in resolving and dispositioning contract audit reports and complying with contract audit followup reporting requirements. Additionally, the DoD has already issued guidance through DoD Instruction 7640.02 and made training available to the DoD Components through the DAU. However, we determined that some contracting officials did not comply with the DoD Instruction or periodically receive DoD or Component-provided CAFU training. For example, the Navy contracting officials who settled the two terminations that we selected and identified in Finding B stated they had not received any CAFU training within the last 3 years. Therefore, we request that the Executive Director provide additional comments within 30 days of the final report, that identify specific actions the Navy will take in response to Recommendations B.3.a and B.3.b.

## ***Recommendation B.4***

We recommend that the Deputy Assistant Secretary of the Air Force (Contracting) to:

- a. **Develop and implement a requirement to provide periodic training on the DoD Instruction 7640.02 reporting requirements to contracting officials involved in Contract Audit Followup system reporting with an emphasis on:**
  1. **Describing the DoD contracting officer's responsibility to maintain Contract Audit Followup records.**
  2. **Entering accurate data in the Contract Audit Followup system data fields, including the Questioned Costs Sustained, Resolution Date, Disposition Date, and Status data fields.**
  3. **The importance of timely dispositioning audit reports within 12 months of the audit report date.**
- b. **Provide access to the Contract Audit Followup system to DoD contracting officers and management;**
- c. **Develop and implement procedures covering the recording keeping requirements in DoD Instruction 7640.02, Enclosure 3, paragraph (1)(b), "Reporting Requirements for Reportable Contract Audit Reports" and the 12-month disposition requirement in DoD Instruction 7640.02, Enclosure 3, paragraph 3(a), "Disposition of Reportable Contract Audit Reports."**

### ***Deputy Assistant Secretary of the Air Force (Contracting) Comments***

The Principal Deputy Assistance Secretary of the Air Force (Acquisition, Technology & Logistics), responding for the Deputy Assistant Secretary of the Air Force (Contracting) (DAS[C]), agreed with the recommendations. For Recommendations B.4.a and B.4.b, Air Force Federal Acquisition Regulation Supplement (AFFARS) Mandatory Procedure 5315.407-90 requires a CAFU focal point to maintain the CAFU system records. Additionally, the Air Force sends semi-annual reminders to the CAFU focal point on CAFU system reporting requirements. To address Recommendations B.4.a and B.4.b, the DAS(C) will issue a memorandum requiring all DoD contracting officers involved in CAFU reporting to complete a DAU CAFU course and coordinate with their CAFU focal point on their responsibilities.<sup>26</sup>

<sup>26</sup> Defense Acquisition University (DAU) Contract Management Contract Administration and Pricing (CMC) 210, "Contract Audit Follow-Up (CAFU)."

For Recommendation B.4.c, AFFARS Mandatory Procedure 5315.407-90 covers the record keeping and disposition requirements of DoD instruction 76040.02. To address Recommendation B.4.c, the DAS(C) memorandum will remind senior contracting officials of record keeping and disposition instructions. The estimated completion date is July 1, 2023.

### *Our Comments*

Comments from the Principal Deputy partially addressed Recommendation B.4.a. Therefore, this Recommendation is unresolved. We agree that the DAU CAFU course adequately covers the areas emphasized in Recommendation B.4.a. However, the Air Force comments did not address whether the Air Force plans to develop and implement a requirement to provide periodic CAFU training. Therefore, we request that the Air Force provide additional comments on Recommendation B.4.a within 30 days of the final report, that describe the Air Force's specific plans for developing and implementing a periodic CAFU training requirement.

Comments from the Principal Deputy fully addressed Recommendations B.4.b and B.4.c. Therefore, Recommendation B.4.b is resolved, but will remain open. We will close Recommendation B.4.b once we verify that DoD contracting officers and management have been provided access to the CAFU system. For Recommendation B.4.c, we agree that AFFARS Mandatory Procedure 5315.407-90 covers the record-keeping and disposition requirements of DoD Instruction 7640.02. Therefore, Recommendation B.4.c is closed.

## Finding C

### **DoD Contracting Officers for 45 of the 63 Terminations Did Not Perform Required Duties After Issuing Notices of Termination**

For 45 of the 63 terminations, DoD contracting officers did not perform one or more important duties after issuing the notice of termination in accordance with FAR Part 49, and FAR 15.406, "Documentation." In total, we found 75 instances among the 45 terminations where DoD contracting officers did not perform an important duty. Specifically, DoD contracting officers for:

- 33 terminations did not estimate funds required to settle the termination or recommend the release of excess funds of \$75 million, in accordance with FAR 49.105-2;
- 8 terminations did not determine the accuracy of the Government property account in accordance with FAR 49.109-3;
- 22 terminations did not document prenegotiation objectives in accordance with FAR 15.406-1(b); and
- 12 terminations did not provide the DCAA with a copy of the final negotiation memorandum in accordance with FAR 15.406-3 and DoD Instruction 7640.02.

This occurred because:

- DoD contracting officers did not receive training on FAR 49.105, "Duties of Termination Contracting Officer After Issuance of Notice of Termination";
- the previous DCMA Termination Group Director did not enforce the requirement to document prenegotiation objectives in accordance with FAR 15.406-1(b) and DCMA Manual 2501-06, paragraph 3.9; and
- DCMA Manual 2501-06, paragraphs 3.3 and 3.6, which address the release of excess funds, are unclear.

As a result:

- \$75 million in excess funds were not available for use on other DoD contracts;
- DoD contracting officers may not have settled the termination for a fair and reasonable price because they did not verify the accuracy of the Government property account;

- DoD contracting officers may not have adequately planned to negotiate a fair and reasonable settlement because they did not document the prenegotiation objectives; and
- DCAA auditors were unaware of the details of negotiations, including the rationale for disagreeing with the DCAA findings or recommendations, because they did not receive a copy of the final negotiation memorandum.

## DoD Contracting Officers for 45 of 63 Terminations Did Not Perform Required Actions in Accordance with the Federal Acquisition Regulation and DoD Policies

For 45 of 63 terminations we reviewed, DoD contracting officers did not perform one or more required duties after issuing the notice of termination in accordance with the FAR Part 49, and FAR 15.406, “Documentation.” In total, we found 75 instances among the 45 terminations where DoD contracting officers did not perform an important duty. Table 7 shows a breakout of the 75 instances by DoD Component. Also see Appendix F for a listing by contract.

Table 7. Number of Important Duties Not Performed by DoD Contracting Officers

DoD Contracting Officer Duties	Number of Instances by DoD Component					Total Sample	Percent
	DCMA	Army	Navy	Air Force	Total		
Excess Funds Not Estimated and Released	28	3	1	1	33	63	52
Accuracy of Government Property Not Determined	8	0	0	0	8	63	13
Prenegotiation Objectives Not Documented	21	0	1	0	22	63	35
Final Negotiation Memorandum Not Provided to DCAA	9	3	0	0	12	38	32
<b>Total Instances</b>	<b>66</b>	<b>6</b>	<b>2</b>	<b>1</b>	<b>75</b>		

Source: The DoD OIG, based on data received from DoD Component.

As detailed in the following four sections, we determined that DoD contracting officers did not perform four important duties.

### ***DoD Contracting Officers for 33 of the 63 Terminations Did Not Estimate Funds and Recommend the Release of Excess Funds***

For 33 of 63 terminations, DoD contracting officers did not estimate funds required to settle the termination and recommend the release of excess funds, as required by FAR 49.105-2. FAR 49.105-2 states that the termination contracting officer “shall estimate the funds required to settle the termination, and within 30 days after the receipt of the termination notice, recommend the release of excess funds to the contracting officer.” Of the 33 terminations, 28 were settled by the DCMA, 3 were settled by the Army, 1 was settled by the Navy, and 1 was settled by the Air Force.

For instance, the DoD contracting officer for Contract number ending in 15-C-0022 terminated the contract on November 18, 2015. The DoD contracting officer issued an initial notification of excess funds on December 4, 2015, stating, “The amount of the proposal is indeterminate at this time. Therefore, there are no funds available for release as excess to the contract.” DCMA representatives could not explain why the DoD contracting officer could not estimate the funds required to settle the termination because the DoD contracting officer who issued the notification is no longer employed with the DCMA. Nevertheless, the termination contracting officer did not estimate the funds required to settle the termination within 30 days after the receipt of the termination notice in accordance with FAR 49.105-2. As a result, excess funds remained on the contract for more than 4 years, spanning from the contract termination date of November 18, 2015, to the termination settlement date of December 18, 2019. After settling the termination with the contractor, the termination contracting officer reduced contract funding from \$28.5 million to \$10.3 million, a reduction of \$18.2 million. If the DoD contracting officer had estimated the funds required for termination within 30 days in accordance with FAR 49.105-2, the excess funds of \$18.2 million could have been used up to 4 years earlier for other purposes, including the funding of other DoD contracts.

For the remaining 32 terminations, DoD contracting officers similarly did not estimate the funds required to terminate the contract, or release the excess funds. For all 33 terminations, \$75 million in excess funding was not available to use for other purposes for an average of approximately 4 years.



We identified two reasons for DoD contracting officers not estimating the contract funds required to settle a termination, or to calculate and release excess funds. First, DoD contracting officers did not receive training that covers the need to estimate funds required to settle the termination and to recommend the release of excess funds.

Second, we determined DCMA Manual 2501-06, paragraphs 3.3 and 3.6, state that the termination contracting officer is responsible for estimating the funds required to settle the termination after requesting the contractor to provide an estimate of reimbursable termination costs. However, the Manual does not establish that the DoD contracting officer is also responsible for estimating the funds required to settle a terminated contract even when the contractor does not provide an estimate. Further, the DCMA Manual does not contain steps DoD contracting officers must take to estimate the funds required when contractors do not provide an estimate.

Because DoD contracting officers did not recommend the release of excess funds in a timely manner for 33 of the selected terminations, \$75 million in funds was not available for use for other purposes in a timely manner.

### ***DCMA Contracting Officers for 8 of the 63 Terminations Did Not Determine the Accuracy of Government Property***

For 8 of the 63 terminations, DCMA contracting officers did not determine the accuracy of the Government property account before they settled the terminated contract, as FAR 49.109-3 requires. Appendix F identifies a list of terminations where the DCMA contracting officers did not determine the accuracy of the Government property account for the terminated contract.

FAR 49.109-3 states, “Before execution of a settlement agreement, the TCO [termination contracting officer] shall determine the accuracy of the Government property account for the terminated contract.”

One of the eight terminations involved Contract number ending in 15-C-0036. We reviewed the termination case file for Contract number ending in 15-C-0036, which reflected that Government property had been assigned to the contract. However, we found no evidence that the DCMA contracting officer had determined the accuracy of the Government property in accordance with FAR 49.109-3 before they settled the termination. The DCMA contracting officer stated that they had mistakenly not determined the accuracy of the Government property account before settling the termination.

We determined that the DoD contracting officers assigned to the DCMA Termination Group have not received any training on determining the accuracy of the Government property account before settling a termination.

When DoD contracting officers do not determine the accuracy of the Government property account for a terminated contract, they may not settle the termination for a fair and reasonable amount. If a DoD contracting officer identifies discrepancies in the Government property account, the DoD contracting officer must reserve the rights of the Government to the property or reduce the settlement amount in accordance with FAR 49.109-3.

### ***DoD Contracting Officers for 22 of the 63 Terminations Did Not Document the Prenegotiation Objectives***

For 22 of the 63 terminations, DoD contracting officers did not document the prenegotiation objectives in accordance with FAR 15.406-1(b), which states, “The contracting officer shall establish prenegotiation objectives before the negotiation of any pricing action.” Of the 22 terminations, 21 were settled by the DCMA and 1 was settled by the Navy. Appendix F identifies the 22 terminations and associated contracts where the DoD contracting officers did document the prenegotiation objectives.

For example, a DCMA contracting officer was originally assigned to settle the termination of Contract number ending in 09-C-0425, but it was later reassigned to a Navy contracting officer. The Navy contracting officer requested an audit of the \$3.5 million termination proposal, which exceeded the \$2 million dollar threshold. In audit report number ending in 2017T17100001, the DCAA questioned \$1.7 million (49 percent of the contractor’s proposed costs of \$3.5 million) as unallowable in accordance with FAR Part 31.2 and FAR 52.216-7, “Allowable Cost and Payment.” Despite the significant amount of DCAA questioned costs the Navy contracting officer had to address during negotiations, the termination case file did not include any evidence that the Navy contracting officer had documented prenegotiation objectives as required by FAR 15.406-1(b) and Navy Marine Corps Acquisition Regulation Supplement (NMCARS) Subpart 5215.406-1, “Prenegotiation Objectives.” We learned that the contracting officer is no longer employed with the Navy. A Navy representative stated that the DCMA contracting officer originally assigned to the termination should have documented prenegotiation objectives rather than the Navy contracting officer. We disagree because the Navy contracting officer requested the DCAA audit and became solely responsible for negotiating a fair and reasonable termination settlement on behalf of the Government. Therefore, the Navy contracting officer should have documented prenegotiation objectives for this termination.

The remaining 21 instances involved DCMA contracting officers who did not document prenegotiation objectives as required. The DCMA contracting officers told us that the previous DCMA Termination Group Director did not require them to document prenegotiation objectives unless the termination exceeds \$2 million. The previous Director's guidance contradicts the FAR 15.406-1 requirement for DoD contracting officers to establish prenegotiation objectives before entering into negotiations, regardless of dollar value.

Documenting prenegotiation objectives serves as the DoD contracting officer's action plan for negotiating the contractor's termination proposal. The objectives are critical for helping to ensure that DoD contracting officers are prepared to negotiate a fair and reasonable settlement on behalf of the Government.

### ***DCMA Management Took Corrective Action***

In response to our findings, on September 15, 2022, the DCMA provided training to all DoD contracting officers assigned to the DCMA Termination Group. The training focused on the requirement to document prenegotiation objectives on all terminations for convenience in accordance with FAR 15.406-1(b) and DFARS Procedures, Guidance, and Information 215.406-1. Finally, the current DCMA Termination Group Director confirmed to us that they now require all DoD contracting officers to document prenegotiation objectives for all terminations for convenience, regardless of dollar value, in accordance with FAR 15.406-1(b). We determined that the training adequately addressed the requirement for documenting prenegotiation objectives. However, the DCMA should also establish a requirement to provide future periodic training.

### ***DoD Contracting Officers for 12 of the 38 Terminations Did Not Provide the DCAA a Copy of the Negotiation Memorandum***

For 12 of the 38 terminations where DoD contracting officers obtained a DCAA audit, the DoD contracting officers did not provide a copy of the final negotiation memorandum to the DCAA, as required by FAR 15.406-3 and DoD Instruction 7640.02. FAR 15.406-3 states, "Whenever field pricing assistance has been obtained, the contracting officer shall forward a copy of the negotiation documentation to the office(s) providing assistance." Additionally, DoD Instruction 7640.02, Enclosure 3, paragraph 3(c), requires that DoD contracting officers provide a copy of the final negotiation memorandum to the DCAA when a DCAA audit is requested. Of the 12 terminations, 9 were settled by the DCMA and 3 were settled by the Army. Appendix F lists the 12 terminations and associated audit reports where DoD contracting officers did not provide a copy of the final negotiation memorandum to the DCAA.

For example, an Army contracting officer who settled Contract number ending in 12-D-0143 could not provide evidence that they provided a copy of the October 13, 2020 final negotiation memorandum to the DCAA, even though DCAA issued audit report number ending in 2019C17100001 in support of the Army contracting officer's termination settlement with the contractor. After we inquired with the Army contracting officer, they provided a copy of the final negotiation memorandum to the DCAA on May 3, 2022, nearly 1 year and 7 months after they signed the October 13, 2020 final negotiation memorandum. The Army contracting officer had an obligation to provide the DCAA a copy of the final negotiation memorandum in accordance with FAR 15.406-3 and DoD Instruction 7640.02.

In addition, we determined that Army contracting officers have not received training that emphasizes the need to provide a copy of the final negotiation memorandum to the DCAA.

In contrast to the Army, on May 21, 2020, and December 14, 2022, the DCMA did provide training to its termination contracting officers that emphasized the need to provide a copy of the final negotiation memorandum to the DCAA. However, the training took place after the DCMA contracting officers completed the settlements of the nine terminations. The DCMA contracting officers completed the settlements of the nine terminations from February 2018 through December 2018. We determined that the training adequately reinforced the requirement to provide a copy of the final negotiation memorandum to the DCAA. However, the DCMA should also establish a requirement to provide future periodic training.

When DoD contracting officers do not provide DCAA auditors with a copy of the final negotiation memorandum, the auditors are not notified of the outcome of negotiations, including the rationale for any DoD contracting officer disagreement with the DCAA audit findings. Providing final negotiation memorandums to the DCAA helps DCAA auditors record the negotiation results, perform audits of annual costs, and make future audit support more effective.

## Recommendations, Management Comments, and Our Response

### ***Recommendation C.1***

We recommend that the Defense Contract Management Agency Director:

- a. Develop and implement a requirement to provide periodic training to termination contracting officers that covers the requirement to:
  1. Estimate funds required to settle the termination and recommend the release of excess funds.
  2. Determine the accuracy of Government property accounts.
  3. Document prenegotiation objectives in accordance with Federal Acquisition Regulation 15.406-1(b).
  4. Provide a copy of the final negotiation memorandum to the DCAA.
- b. Revise Defense Contract Management Agency Manual 2501-06 to require that termination contracting officers estimate the funds required for a termination when contractors do not provide an estimate.
- c. Provide final negotiation memorandums to the Defense Contract Audit Agency for the following nine audit report numbers ending in:
  1. 2015P17100001
  2. 2016F17100003
  3. 2014P17100001
  4. 2016G17100001
  5. 2013B17100001
  6. 2017H17100001
  7. 2017H17100002
  8. 2018P17100001
  9. 2016C17100001

### ***Defense Contract Management Agency Director Comments***

The DCMA Director agreed with the recommendation. For Recommendations C.1.a.1 and C.1.a.2, the DCMA Director stated that the DCMA is currently developing the training, which will be completed by September 30, 2023. Additionally, the DCMA will require that the DCMA Termination Group take the training every 2 years.

For Recommendations C.1.a.3 and C.1.a.4, the DCMA Director stated that the DCMA conducted training on September 15, 2022, which addressed the requirement for documenting prenegotiation objectives and reinforced the requirement to provide a copy of the final negotiation memorandum to the DCAA. Also, the DCMA established a requirement for the DCMA Termination Group to take refresher training every 2 years. The next refresher training will be completed by September 15, 2024.

For Recommendation C.1.b, the DCMA Director stated that the DCMA is updating DCMA Manual 2501-06, "Termination for the Convenience of the Government" paragraphs 3.3 and 3.6, to clarify that the termination contracting officer is responsible for estimating the funds required to settle a terminated contract. In addition, the update will include the procedures termination contracting officers must perform when contractors do not provide an estimate. The estimated completion date is February 28, 2024.

For Recommendation C.1.c, the DCMA Director stated that the DCMA sent five of nine final negotiation memorandums to the DCAA during February 2023. The DCMA Director stated that the Army Contracting Command settled contract number ending in 07-D-M112. Therefore, the DCMA is not responsible for providing the final negotiation memorandum to the DCAA. The DCMA plans to send the remaining three final negotiation memorandums to the DCAA by July 31, 2023.

### ***Our Comments***

Comments from the DCMA Director addressed the specifics of the recommendation. Therefore, this Recommendation is resolved, but will remain open. On April 3, 2023, the DCMA provided a written training plan. We verified that the written training plan established a requirement for periodic training. However, the plan was not signed by management or incorporated in an official policy or procedure. We will close recommendations C.1.a.1 and C.1.a.2 once we verify that the DCMA has developed training for estimating funds required to settle the termination, recommending the release of excess funds, and determining the accuracy of Government property accounts; and the DCMA Director required periodic training. For Recommendations C.1.a.3 and C.1.a.4, we agree that the DCMA provided adequate training addressing the requirements. We will close Recommendations C.1.a.3 and C.1.a.4 once we verify that the DCMA Director implemented a requirement to provide periodic training.

We will close Recommendation C.1.b once we verify the DCMA Director updated the DCMA Manual 2501-06, "Termination for the Convenience of the Government," paragraphs 3.3 and 3.6, to clarify that the termination contracting officer is responsible for estimating the funds required to settle a terminated contract and to identify the procedures to perform when contractors do not provide an estimate.

We will close Recommendation C.1.c once we review evidence that the DCMA submitted final negotiation memorandums to the DCAA for the first eight audit reports listed in the recommendation. Concerning DCAA audit report number ending in 2014P17100001, we request that the DCMA provide evidence to support that the Army Contracting Command settled the contract number ending in 07-D-M112.

## ***Recommendation C.2***

**We recommend that the Deputy Assistant Secretary of the Army (Procurement):**

- a. Develop and implement a requirement to provide periodic training to termination contracting officers that covers the requirement to:
 
  - 1. Estimate funds required to settle the termination and recommend the release of excess funds.**
  - 2. Provide a copy of the final negotiation memorandum to the DCAA.****
- b. Provide final negotiation memorandums to the Defense Contract Audit Agency for the following two audit report numbers ending in
 
  - 1. 2017W17100001**
  - 2. 2020N17100001****

### ***Deputy Assistant Secretary of the Army (Procurement) Comments***

The DASA(P) agreed with our recommendation. For Recommendation C.2.a, the Army developed a CAFU desk guide, which identifies relevant regulations and available training. For Recommendation C.2.b, the Army developed a working group with the DCAA to share the status of assignments and to ensure that copies of final negotiation memorandums are provided to the DCAA.

### ***Our Comments***

Comments from the DASA(P) partially addressed Recommendation C.2.a. Therefore, the Recommendation is unresolved. The desk guide lists DAU courses, but it only mentions that the training is available. The desk guide does not require that training be completed or be completed periodically. We request additional

comments from the Army within 30 days of the final report that describe the specific actions the Army will take to develop and implement a requirement to provide periodic training covering the requirement to:

- estimate funds required to settle the termination and recommend the release of excess funds, and
- provide a copy of the final negotiation memorandum to the DCAA.

The comments from the DASA(P) addressed Recommendation C.2.b. Therefore, the Recommendation is resolved, but will remain open. We will close the Recommendation once we verify that the final negotiation memorandums for Audit Report numbers ending in 2017W17100001 and 2020N17100001 have been provided to the DCAA. Additionally, based on the comments from the DCMA Director in response to Recommendation C.1.c, we request that the DASA(P) coordinate with the DCMA Director to ensure the final negotiation memorandum for Audit Report number ending in 2014P17100001 is provided to the DCAA if the contract was settled by the Army Contracting Command.

### ***Recommendation C.3***

**We recommend that the Deputy Assistant Secretary of the Navy (Procurement), develop and implement a requirement to provide periodic training to termination contracting officers that covers the requirement to:**

- a. Estimate funds needed for settling the termination and recommend the release of excess funds.**
- b. Document prenegotiation objectives in accordance with Federal Acquisition Regulation 15.406-1(b).**

### ***Deputy Assistant Secretary of the Navy (Procurement) Comments***

The Executive Director, Deputy Assistant Secretary of the Navy (Procurement), responding for the DASN(P), partially agreed with the recommendations, stating the responsibility for implementing them was better placed with the DoD. The Executive Director stated that if the DoD issues guidance to address the recommendation, the Navy will evaluate its training needs. The Executive Director further stated that without DoD-issued guidance, the Navy may remind the contracting workforce of the requirements when terminating contracts.



### *Our Comments*

The comments from the Executive Director did not address the intent of the recommendation; therefore, the Recommendation is unresolved. We disagree that the suggested action requires guidance from the DoD. DoD Instruction 7640.02 requires DoD components to ensure acquisition personnel are trained in resolving and dispositioning contract audit reports and complying with contract audit followup reporting requirements. Additionally, the DAU provides continuous learning and support to the acquisition workforce. However, the Navy contracting officials who settled the two Navy terminations included in our sample did not take any CAFU or termination-related training within the last 3 years.

We request that the DASN(P) provide additional comments to this Recommendation within 30 days of the final report that describe the specific actions the Navy will take to develop and implement a periodic training requirement to ensure contracting officials estimate funds needed for settling the termination and recommend the release of excess funds and document prenegotiation objectives.

### ***Recommendation C.4***

**We recommend that the Deputy Assistant Secretary of the Air Force (Contracting) develop and implement a requirement to provide periodic training to termination contracting officers that covers the requirement to estimate funds needed for settling the termination and recommend the release of excess funds.**

### ***Deputy Assistant Secretary of the Air Force (Contracting) Comments***

The Principal Deputy Assistance Secretary of the Air Force (Acquisition, Technology & Logistics), responding for the Deputy Assistant Secretary of the Air Force (Contracting) (DAS[C]), agreed with the recommendation. The DAS(C) will issue a memorandum to require that termination contracting officers complete a DAU course on terminations before performing termination contracting officer duties. Additionally, the memorandum will remind termination contracting officers of the requirement to estimate funds needed for settling terminations and recommend the release of excess funds. The estimated completion date for these actions is July 1, 2023.

### ***Our Comments***

Comments from the Principal Deputy Assistance Secretary of the Air Force (Acquisition, Technology & Logistics) partially addressed the recommendation. We reviewed the training materials and agree that the DAU terminations course covers the areas addressed in the recommendation. However, the comments did not address whether the Air Force will establish a requirement to provide periodic training. Therefore, this Recommendation remains unresolved and open. We request additional comments from the DAS(C) within 30 days of the final report that describe the specific actions the Air Force will take to require that termination contracting officers receive periodic training.

## Appendix A

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### Scope and Methodology

We evaluated the extent to which DoD contracting officers complied with the applicable FAR, DoD policy, and DoD Component policy when they settled proposed contractor termination costs on DoD contracts that were terminated for convenience. We evaluated a sample of DoD contracting officer actions on DoD contractor termination proposals settled from January 1, 2018, through December 31, 2021, including those audited and not audited by the DCAA.

We conducted this evaluation from April 2021 through January 2023 in accordance with the “Quality Standards for Inspection and Evaluation,” published in January 2012 by the Council of the Inspectors General on Integrity and Efficiency. Those standards require that we adequately plan the evaluation to ensure that we meet the objectives 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 we obtained was sufficient, competent, and relevant to lead a reasonable person to sustain the findings, conclusions, and recommendations.

To accomplish our evaluation objective, we:

- reviewed applicable FAR, DoD policy, and DoD Component policy that address the settlement of proposed termination costs;
- selected a nonstatistical sample of 63 DoD contractor termination proposals that were audited and not audited by the DCAA;
- reviewed the DCAA audit findings and recommendations, and associated supporting records;
- interviewed DCAA audit staff for clarification on reported questioned costs;
- gathered and analyzed records of DoD contracting officer actions taken on the settlement of the selected termination proposals;
- interviewed the DoD contracting officers to confirm our understanding of the actions they took to settle the selected contractor proposals; and
- evaluated the DoD contracting officer actions to determine whether they complied with FAR, DoD policy, and DoD Component policy.

## ***We Evaluated a Nonstatistical Sample of 63 Terminations***

To accomplish our objective, we evaluated a nonstatistical sample of 63 terminations settled by DoD contracting officers. The 63 selected terminations are listed in Appendix B. As discussed in the following two sections, our selection of 63 terminations comprises a reasonable cross-section of 38 contractor termination proposals that the DCAA audited and 25 proposals that the DCAA did not audit.

### ***Methodology for Selecting Termination Proposals That the DCAA Audited***

To select our nonstatistical sample of DoD terminations proposals that the DCAA audited, we obtained a universe of 56 DCAA audit reports on contractor termination proposals that DoD contracting officers settled from January 1, 2018, through December 31, 2021. We obtained the universe of DCAA audit reports from the Contract Audit Followup system. We nonstatistically selected 38 of the 56 reports. In choosing the 38 reports, we focused on selecting:

- a reasonable cross-section of DoD Component terminations; and
- terminations where the DCAA questioned the highest amount of questioned costs.

Table 8 identifies the number of selected terminations by DoD Component, along with the proposed and questioned termination costs.

*Table 8. Number of Select Terminations with DCAA Audit Reports by DoD Component*

<b>DoD Component</b>	<b>Number of Selected DCAA Audit Reports</b>	<b>Contractor Proposed Termination Costs (millions)</b>	<b>Questioned Termination Costs (millions)</b>
Army	5	\$60.4	\$14.0
Navy	2	4.4	2.4
Air Force	1	310.2	3.8
DCMA	30	659.8	89.0
<b>Total</b>	<b>38</b>	<b>\$1,034.8</b>	<b>\$109.2</b>

Source: The DoD OIG, based on CAFU system records and DCAA audit reports.

## ***Methodology for Selecting Termination Proposals That the DCAA Did Not Audit***

To select our non-statistical sample of DoD terminations proposals that the DCAA did not audit, the Army, Navy, and Air Force furnished us with a universe of 97 contractor termination proposals that DoD contracting officers settled from January 1, 2018, through December 31, 2020. We selected 25 of the 97 proposals, which represent a reasonable cross-section of DoD Component terminations. Table 9 identifies the number of selected terminations not audited by the DCAA by DoD Component, along with the total proposed termination costs.

*Table 9. Number of Selected Terminations without DCAA Audit Reports, by DoD Component*

<b>DoD Component</b>	<b>Number of Selected Termination Proposal without DCAA Audit Reports</b>	<b>Contractors' Total Proposed Termination Costs (millions)</b>
Army	4	\$27.1
Air Force	4	8.1
DCMA	17	9.0
<b>Total</b>	<b>25</b>	<b>\$44.2</b>

Source: The DoD OIG, based on data received from DoD Components.

## ***Criteria***

We reviewed criteria from Federal laws and regulations, DoD directives, instructions, and manuals. Also, we reviewed criteria from DoD Component policies established by the Army, Navy, Air Force, and DCMA. The following criteria were most pertinent to our evaluation and conclusions in this report.

### ***Laws and Regulations***

- FAR Part 49, "Termination of Contracts," May 31, 2018
- FAR Part 15, "Contracting by Negotiation," May 31, 2018
- FAR Part 31, "Contract Cost Principles and Procedures," May 31, 2018
- FAR Part 42, "Contract Administration and Audit Services," May 31, 2018

### ***DoD Directives, Instructions, Manuals, and Policy Memorandums***

- DoD Instruction 7640.02, "Policy for Follow-Up on Contract Audit Reports," April 15, 2015

### ***DCMA Instructions, Guidance, and Manuals***

- DCMA Manual 2501-06, “Terminations,” October 2, 2018 (incorporating Change 1, September 11, 2020)
- DCMA Manual 2201-04, “Contract Audit Follow-Up,” March 3, 2019

### ***Army Regulations***

- AFARS Subpart 5101.6, “Career Development, Contracting Authority and Responsibilities”
- AFARS Subpart 5115.4, “Contract Pricing”
- AFARS Subpart 5142.1, “Contract Audit Services”

### ***Navy Regulations***

- NMCARS Subpart 5215.4, “Contract Pricing”
- NMCARS Subpart 5242.1, “Contract Audit Services”

### ***Air Force Regulations and Guidance***

- AFFARS Subpart 5301.6, “Career Development, Contract Authority, and Responsibilities”
- AFFARS Subpart 5315.4, “Contract Pricing”
- Air Force Materiel Command Termination for Convenience Guide, July 2014

## **Use of Computer-Processed Data**

We used computer-processed data to compile the universe of terminations and select our sample of 63 terminations. For example, we obtained a computerized list of DCAA audit reports on contractor termination proposals that DoD contracting officers settled from January 2018 through December 2021. We generated the list of audit reports from the CAFU system. We tested the reliability of the computer-processed data we used to compile the universe by tracing selected data to source documents. We determined that the computer-processed data were sufficiently reliable.

## **Use of Technical Assistance**

We obtained assistance from the DoD OIG Quantitative Method Division in selecting our nonstatistical sample of terminations.

## Prior Coverage

During the last 5 years, the DoD OIG issued one report addressing DoD contracting officer actions on terminated DoD contracts. Unrestricted DoD OIG reports can be accessed at <http://www.dodig.mil/reports.html/>.

### ***DoD OIG***

Report No. DODIG-2018-128, “Hotline Allegation Regarding the Actions of a Defense Contract Management Agency Contracting Officer on a Subcontractor’s Termination Settlement Proposal,” June 21, 2018

The DoD OIG substantiated a Defense Hotline allegation that a DCMA termination contracting officer failed to comply with the FAR and the contract terms. Specifically, they did not uphold any of the questioned costs identified in the DCAA audit report of an Air Force subcontractor’s termination settlement proposal.

## Appendix B

This Appendix identifies, by DoD Component, the 63 selected DoD contracts that were terminated for convenience and the amount of contractor proposed termination costs.

*Table 10. List of the 63 DoD Contract Terminations Selected for Review*

Count	DoD Contract Number (Ending in)	DCAA Audit Report Number (Ending in)	Contractor Proposed Termination Costs
DCMA			
1	08-D-0004; VF60	2016P17100002	\$ 267,920
2	08-D-0004; VF1C	2016P17100003	60,087
3	09-D-0001; DO32	2015P17100001	11,798,055
4	13-C-0037	2016F17100003	2,848,211
5	12-D-0091	2016M17100002	2,939,285
6	15-C-0022	2018B17100002	1,828,941
7	06-D-0001	2012G17100001	2,016,367
8	07-D-M112	2014P17100001	4,578,059
9	12-D-0003	2016L17100002	52,437,221
10	14-C-6023	2016G17100001	171,953,779
11	15-D-0054; DO01	2019B17100001	2,370,371
12	15-D-0054; DO05	2019B17100002	5,698,403
13	15-D-0054; DO03	2019B17100003	2,812,364
14	15-D-0054; DO04	2019B17100005	1,620,020
15	10-D-0046	2013B17100001	866,175
16	07-D-5032; DO23	2015M17100001	52,230,384
17	09-C-0097	2015L17100001	120,921,464
18	09-D-0111, DO07	2014O17100002	3,051,975
19	10-D-0049; DO17	2015B17100003	19,212,218
20	06-G-0003, DO ZB63	2015B17100004	824,707
21	16-C-0001	2018P17100001	592,209
22	02-C-0003	2018K17100001	9,373,518
23	09-D-0001; DO0820	2016C17100001	19,081,324
24	10-D-0028; DO10	2018N17100001	961,111
25	11-G-0001	2019C17100001	2,655,446



Table 10. List of the 63 DoD Contract Terminations Selected for Review (cont'd)

Count	DoD Contract Number (Ending in)	DCAA Audit Report Number (Ending in)	Contractor Proposed Termination Costs
26	08-C-0032	2017M17100002	102,958,012
27	12-D-0046; DO02	2017H17100001	7,004,149
28	12-D-0046; DO 01	2017H17100002	35,888,089
29	16-C-0013	2020U17100001	20,074,923
30	08-D-0004, VF38	2014P17100002	831,805
31	11-C-H427	Audit Not Performed	657,928
32	10-C-0003	Audit Not Performed	1,383,271
33	09-C-0021	Audit Not Performed	397,365
34	16-C-0212	Audit Not Performed	631,901
35	08-D-0004	Audit Not Performed	284,981
36	12-D-9005	Audit Not Performed	843,028
37	13-C-0185	Audit Not Performed	309,588
38	15-C-0207	Audit Not Performed	722,769
39	15-C-W102	Audit Not Performed	221,921
40	15-D-0002	Audit Not Performed	397,277
41	14-C-0483	Audit Not Performed	281,860
42	18-C-0423	Audit Not Performed	381,518
43	15-C-0036	Audit Not Performed	826,806
44	15-C-0118	Audit Not Performed	228,970
45	08-D-0004, VF99	Audit Not Performed	423,431
46	08-D-0004, VF3V	Audit Not Performed	359,805
47	17-F-3006	Audit Not Performed	619,381
<b>Army</b>			
48	11-D-0088; DO01-03	2017W17100001	10,605,280
49	12-D-0143	2019C17100001	21,243,132
50	09-D-0021; DO02	2020N17100001	20,228,613
51	18-C-0014	2020Z17100001	6,857,791
52	15-C-0004	2017G17100002	1,484,547
53	20-C-0019	Audit Not Performed	2,637,590
54	14-C-0021	Audit Not Performed	2,845,529
55	17-C-0010	Audit Not Performed	1,657,384
56	19-C-0010	Audit Not Performed	19,968,535

Table 10. List of the 63 DoD Contract Terminations Selected for Review (cont'd)

Count	DoD Contract Number (Ending in)	DCAA Audit Report Number (Ending in)	Contractor Proposed Termination Costs
<b>Navy</b>			
57	11-D-3018	2017F17100001	908,152
58	09-C-0425	2017T17100001	3,515,688
<b>Air Force</b>			
59	12-C-0001	2018N17100002	310,203,599
60	14-F-0225	Audit Not Performed	1,272,993
61	14-F-0226	Audit Not Performed	2,277,957
62	14-F-0227	Audit Not Performed	3,250,000
63	19-C-0009	Audit Not Performed	1,339,065
<b>Total</b>			<b>\$1,079,024,247</b>

Source: The DoD OIG, based on data received from DoD Components.

## Appendix C

This Appendix identifies the 17 terminations where the DoD contracting officers did not document adequate rationale to support their settlement of the contractor's proposed termination costs.

Table 11. The 17 Terminations with Inadequate Rationale and Contributing Factors

Count	DoD Contract Number (Ending in)	DCAA Audit Report Number (Ending in)	Contributing Factors				
			Inadequate Case File	No Legal Review	Lack of Management Review	Lack of Training	Not Audited as Required
<b>DCMA</b>							
1	07-D-M112	2014P17100001	X	X	X	X	
2	14-C-6023	2016G17100001		X		X	
3	10-D-0046	2013B17100001		X		X	
4	09-D-0111; DO07	2014O17100002				X	
5	09-D-0001; DO0820	2016C17100001				X	
6	11-C-H427	N/A	X				
7	10-C-0003	N/A	X		X		
8	09-C-0021	N/A	X			X	
9	15-D-0002	N/A	X			X	
<b>Army</b>							
10	11-D-0088; DO01-03	2017W17100001		X		X	
11	15-C-0004	2017G17100002			X	X	
12	14-C-0021	N/A	X				
13	17-C-0010	N/A	X	X			X
14	19-C-0010	N/A				X	

Table 11. The 17 Terminations with Inadequate Rationale and Contributing Factors (cont'd)

			Contributing Factors				
Count	DoD Contract Number (Ending in)	DCAA Audit Report Number (Ending in)	Inadequate Case File	No Legal Review	Lack of Management Review	Lack of Training	Not Audited as Required
<b>Air Force</b>							
15	14-F-0225	N/A	X			X	
16	14-F-0226	N/A	X			X	X
17	14-F-0227	N/A	X			X	X
<b>Number of Instances</b>			<b>10</b>	<b>5</b>	<b>3</b>	<b>13</b>	<b>3</b>
<b>Total Sample</b>			<b>63</b>	<b>63</b>	<b>63</b>	<b>63</b>	<b>63</b>
<b>Percent</b>			<b>16%</b>	<b>8%</b>	<b>5%</b>	<b>21%</b>	<b>5%</b>

Source: The DoD OIG, based on data received from DoD Components.

## Appendix D

This Appendix identifies the 21 instances when DoD contracting officers did not disposition the DCAA audit report within 12 months and did not document actions to achieve disposition at least monthly.

*Table 12. Instances Where DoD Contracting Officers Did Not Disposition the Audit Report Within 12 Months or Document Monthly Their Actions to Achieve Disposition*

Count	DCAA Audit Report Number (Ending in)	DCAA Report Date	Disposition Date	Number of Months Exceeding the 12-month Requirement
<b>DCMA</b>				
1	2016P17100002	8/10/2016	7/13/2018	11
2	2016P17100003	7/21/2016	7/16/2018	12
3	2015P17100001	9/25/2015	3/29/2018	18
4	2016F17100003	10/14/2016	12/18/2018	14
5	2018B17100002	6/25/2018	2/10/2020	8
6	2012G17100001	9/27/2013	11/29/2016	26
7	2014P17100001	12/19/2014	10/23/2018	34
8	2016L17100002	2/27/2017	1/11/2019	11
9	2016G17100001	11/15/2016	10/29/2018	11
10	2013B17100001	1/27/2014	9/20/2018	44
11	2015L17100001	9/3/2015	6/9/2020	45
12	2014O17100002	9/26/2014	8/13/2019	47
13	2015B17100003	3/3/2016	8/5/2019	29
14	2015B17100004	3/21/2016	5/16/2019	26
15	2017M17100002	9/21/2017	6/29/2020	21
16	2017H17100001	7/20/2017	10/2/2018	2
17	2017H17100002	7/12/2017	10/2/2018	3
18	2014P17100002	3/17/2015	8/9/2018	29
<b>Army</b>				
19	2017W17100001	12/15/2017	9/3/2019	8
20	2019C17100001	7/15/2019	10/13/2020	3

*Table 12. Instances Where DoD Contracting Officers Did Not Disposition the Audit Report Within 12 Months or Document Monthly Their Actions to Achieve Disposition (cont'd)*

Count	DCAA Audit Report Number (Ending in)	DCAA Report Date	Disposition Date	Number of Months Exceeding the 12-month Requirement
<b>Air Force</b>				
21	2018N17100002	12/21/2018	4/7/2020	4
<b>Number of Instances</b>				<b>21</b>
<b>Total Sample with DCAA Audit Reports</b>				<b>38</b>
<b>Percent</b>				<b>55%</b>

Note: The number of months exceeding the 12 month requirement was rounded to the nearest month.

Source: The DoD OIG, based on CAFU system records.

## Appendix E

This Appendix identifies the 28 audit reports where the DoD contracting officer did not maintain accurate CAFU records for at least one or more data fields.

*Table 13. Audit Reports Where DoD Contracting Officers Did Not Maintain Accurate CAFU Records for One or More Data Fields*

Count	DCAA Audit Report Number (Ending in)	CAFU Data Field			
		Sustained Costs	Resolution Date	Disposition Date	CAFU Status
<b>DCMA</b>					
1	2015P17100001		X	X	
2	2016F17100003		X	X	
3	2018B17100002	X		X	
4	2012G17100001	X	X	X	
5	2016L17100002	X	X		
6	2016G17100001	X	X		
7	2019B17100001	X			
8	2019B17100002		X		
9	2013B17100001	X	X		
10	2015M17100001	X	X	X	
11	2015L17100001		X		
12	2014O17100002	X	X		
13	2015B17100003	X	X		
14	2018P17100001	X		X	
15	2016C17100001	X	X	X	
16	2017M17100002		X		
17	2017H17100001	X	X		X
18	2017H17100002	X	X		X
19	2020U17100001	X			
20	2014P17100002	X	X	X	X

Table 13. Audit Reports Where DoD Contracting Officers Did Not Maintain Accurate CAFU Records for One or More Data Fields (cont'd)

Count	DCAA Audit Report Number (Ending in)	CAFU Data Field			
		Sustained Costs	Resolution Date	Disposition Date	CAFU Status
<b>Army</b>					
21	2017W17100001	X		X	
22	2019C17100001	X	X	X	X
23	2020N17100001	X	X	X	X
24	2020Z17100001	X	X		
25	2017G17100002	X			
<b>Navy</b>					
26	2017F17100001	X		X	
27	2017T17100001	X			
<b>Air Force</b>					
28	2018N17100002	X	X	X	X
<b>Number of Inaccuracies</b>		<b>23</b>	<b>20</b>	<b>13</b>	<b>6</b>
<b>Total Sample</b>		<b>38</b>	<b>38</b>	<b>38</b>	<b>38</b>
<b>Inaccuracy Percentage</b>		<b>61%</b>	<b>53%</b>	<b>34%</b>	<b>16%</b>

Source: The DoD OIG, based on CAFU system records.



## Appendix F

This Appendix identifies the 45 selected terminations when DoD contracting officers did not perform one or more important duties in accordance with the FAR and applicable DoD Component policies.

Table 14. Instances Where DoD Contracting Officers Did Not Perform Important Duties after Issuing the Notice of Termination

			Duties Not Performed			
	DoD Contract Number (Ending in)	DCAA Audit Report Number (Ending in)	Estimate or Release Excess Funds	Determine Accuracy of Government Property	Document Prenegotiation Objectives	Provide Negotiation Memorandum to the DCAA
<b>DCMA</b>						
1	08-D-0004; VF60	2016P17100002	X		X	
2	08-D-0004; VF1C	2016P17100003			X	
3	09-D-0001; DO32	2015P17100001	X	X		X
4	13-C-0037	2016F17100003	X			X
5	15-C-0022	2018B17100002	X		X	
6	06-D-0001	2012G17100001	X			
7	07-D-M112	2014P17100001	X	X	X	X
8	14-C-6023	2016G17100001	X	X		X
9	10-D-0046	2013B17100001	X		X	X
10	07-D-5032; DO23	2015M17100001	X			
11	09-C-0097	2015L17100001	X			
12	10-D-0049; DO17	2015B17100003	X			
13	06-G-0003, DO ZB63	2015B17100004	X		X	
14	16-C-0001	2018P17100001				X

Table 14. Instances Where DoD Contracting Officers Did Not Perform Important Duties after Issuing the Notice of Termination (cont'd)

			Duties Not Performed			
	DoD Contract Number (Ending in)	DCAA Audit Report Number (Ending in)	Estimate or Release Excess Funds	Determine Accuracy of Government Property	Document Prenegotiation Objectives	Provide Negotiation Memorandum to the DCAA
15	02-C-0003	2018K17100001	X		X	
16	09-D-0001; DO0820	2016C17100001				X
17	10-D-0028; DO10	2018N17100001			X	
18	11-G-0001	2019C17100001	X			
19	12-D-0046; DO02	2017H17100001	X			X
20	12-D-0046; DO 01	2017H17100002	X			X
21	08-D-0004, VF38	2014P17100002	X			
22	11-C-H427	N/A	X	X	X	
23	10-C-0003	N/A	X	X	X	
24	09-C-0021	N/A	X	X	X	
25	16-C-0212	N/A			X	
26	08-D-0004, VF1C	N/A	X		X	
27	12-D-9005,53018	N/A	X			
28	13-C-0185	N/A	X			
29	15-C-0207	N/A	X			
30	15-C-W102	N/A			X	
31	15-D-0002,0001	N/A			X	
32	14-C-0483	N/A			X	
33	15-C-0036	N/A	X	X	X	
34	15-C-0118	N/A			X	

Table 14. Instances Where DoD Contracting Officers Did Not Perform Important Duties after Issuing the Notice of Termination (cont'd)

			Duties Not Performed			
	DoD Contract Number (Ending in)	DCAA Audit Report Number (Ending in)	Estimate or Release Excess Funds	Determine Accuracy of Government Property	Document Prenegotiation Objectives	Provide Negotiation Memorandum to the DCAA
35	08-D-0004, VF99	N/A	X		X	
36	08-D-0004, VF3V	N/A	X		X	
37	17-F-3006	N/A	X	X	X	
<b>Army</b>						
38	11-D-0088; DO01-03	2017W17100001				X
39	12-D-0143	2019C17100001	X			X
40	09-D-0021, DO02	2020N17100001				X
41	15-C-0004	2017G17100002	X			
42	14-C-0021	N/A	X			
<b>Navy</b>						
43	11-D-3018	2017F17100001	X			
44	09-C-0425	2017T17100001			X	
<b>Air Force</b>						
45	14-F-0227, P00019	N/A	X			
<b>Number of Inaccuracies</b>			<b>33</b>	<b>8</b>	<b>22</b>	<b>12</b>
<b>Total Sample</b>			<b>63</b>	<b>63</b>	<b>63</b>	<b>38</b>
<b>Inaccuracy Percentage</b>			<b>52%</b>	<b>13%</b>	<b>35%</b>	<b>32%</b>

Source: DoD OIG, based on data received from DoD Components.

# Management Comments

## Defense Contract Management Agency Director



**DEFENSE CONTRACT MANAGEMENT AGENCY**  
3901 A AVENUE, BUILDING 10500  
FORT LEE, VA 23801-1809

MEMORANDUM FOR DEPARTMENT OF DEFENSE, INSPECTOR GENERAL,  
EVALUATIONS DIVISION

SUBJECT: DCMA Comments on DoD OIG Draft Report "Evaluation of DoD Contracting  
Officer Actions on Terminated Contract Costs," January 31, 2023 (Project No.  
D2021-DEV0SO-0113.000)

Attached is the Defense Contract Management Agency's comments on DoD OIG subject  
draft report to address Recommendation A1, B1 and C1.

The point of contact for this response is [REDACTED]

BASSETT.DAVID.G Digitally signed by  
EORGE [REDACTED] BASSETT.DAVID.GEORGE [REDACTED]  
Date: 2023.03.14 10:46:51 -04'00'

David G. Bassett  
LTG, USA  
Director

Attachment(s):

TAB A. DCMA Comments on DoD OIG Draft Report Project No. D2021-DEV0SO-0113.000

Link(s):

None

## Defense Contract Management Agency Director (cont'd)

DCMA Management Comments for DoD OIG Draft Report "Evaluation of DoD Contracting Officer Actions on Terminated Contract Costs" (Project No. D2021-DEV0SO-0113.000)

### **Recommendation A.1**

DoD OIG recommended that the Defense Contract Management Agency Director:

- a. Review the contracting officers' decision to reimburse the contractors \$9.2 million in termination costs and, based on the results of the review, take the necessary steps to recover any unallowable costs reimbursed to contractors.
- b. Develop and implement a requirement to provide periodic training to termination contracting officers in the following areas:
  1. Preparing final negotiation memorandums in accordance with Federal Acquisition Regulation 49.110.
  2. Maintaining adequate termination case files in accordance with Federal Acquisition Regulation 49.105-3.
  3. Documenting adequate rationale for disagreeing with Defense Contract Audit Agency findings and recommendations in final negotiation memorandums in accordance with DoD Instruction 7640.02, Enclosure 3, Paragraph 3 and Defense Contract Management Agency Manual 2201-04, Paragraph 4.2.
  4. Obtaining and documenting legal review and management approval of pre-negotiation objectives and final negotiation memorandum in accordance with Defense Contract Management Agency Manual 2201-04, Paragraph 4.2, and Defense Contract Management Agency Manual 2501-06, Paragraph 3.10.

### **DCMA Management Comment:**

#### **A.1.a.**

DCMA agrees with the recommendation to review the contracting officer's decisions identified in the report. The review will include a search for any additional documentation identified as incomplete or missing in the report. Once all available information is assembled, the review will evaluate the original termination contracting officer (TCO) decision to determine, to the extent possible, whether it was accurate and reasonable. DCMA plans to complete the recommended actions by January 31, 2024.

However, DCMA notes several concerns with the conclusions reached in the report. First, the report asserts that a particular step in the process was ignored or that the documentation in the files is inadequate. While the report states that some of the DCMA termination files lack full documentation for \$9.2 million in termination settlement costs, there is no indication that any DCMA TCO paid a contractor anything other than what the contractor was due under the contracts.

Second, the report includes inaccuracies about the documentation required for termination settlements. For example, the report incorrectly concludes a legal review is required for all termination settlements. However, a legal review of a termination settlement is required only when DCAA conducts an audit of the settlement proposal and the TCO disagrees with the costs questioned in the DCAA audit report according to DoD Instruction 7640.02 and DCMA Manual

## Defense Contract Management Agency Director (cont'd)

DCMA Management Comments for DoD OIG Draft Report "Evaluation of DoD Contracting Officer Actions on Terminated Contract Costs" (Project No. D2021-DEV0SO-0113.000)

2201-04, "Contract Audit Follow Up," March 3, 2019. It therefore appears that many of the instances identified in the report as lacking a legal review did not actually require one. Similarly, the report appears to assert that a management review is required for all terminations. Again, as the guidance in DCMA Manual 2501-06, "Terminations," October 2, 2018 makes clear, supervisory and managerial review is only necessary for settlements over certain dollar thresholds. Therefore, instances where the report concludes that a management review was required may be incorrect. The report also concludes that TCOs should reimburse contractors only for costs that are allowable in accordance with the FAR cost principles outlined in FAR Part 31. This is only accurate for cost reimbursement type contracts. To the extent any of the contracts identified are fixed-price contracts or commercial contracts, this application is misplaced. For fixed-price contracts, the contracting officer is to be guided by "fair compensation," while for commercial contracts, the FAR expressly makes the cost principles inapplicable. See FAR Subpart 49.2 and FAR 12.403(d)(ii).

Finally, the recommendation asks DCMA to "take the necessary steps to recover any unallowable costs reimbursed to contractors." DCMA will review all of the terminations to determine whether adequate documentation exists and whether the TCO's determination was reasonable. If our review determines any of the termination costs were unallowable, DCMA will request the contractor to voluntarily refund the Government for those costs as under the doctrines of accord and satisfaction and estoppel, we do not have legal authority to undo these binding agreements and "recover" any payments made to the contractor pursuant to the settlement agreement.

### A.1.b.

DCMA agrees with the recommendation and states that DCMA took a proactive approach and conducted Pre-negotiation Objectives Memorandum (PNOM) training and the Settlement Negotiation Memorandum (SNM) training during the DoD OIG's audit in order to correct issues timely. The training presentations have been uploaded to the resource page for DCMA Manual 2501-06, "Termination for the Convenience of the Government" for reference. The DoD OIG draft report (page 10, 11 and 13) confirms that DCMA PNOM and SNM training adequately addressed this recommendation. Also, DCMA has established a requirement for the Termination Group to take the refresher training every two years. The next periodic PNOM and SNM refresher training will be completed by September 15, 2024.

### **Recommendation B.1**

DoD OIG recommended that the Defense Contract Management Agency Director develop and implement a requirement to provide periodic training on the DoD Instruction 7640.02 reporting requirements to contracting officials involved in Contract Audit Follow-Up system reporting with an emphasis on:

- a. Describing the contracting officer's responsibility to maintain Contract Audit Follow-Up records.
- b. Entering accurate data in the Contract Audit Follow-Up system data fields, including the Questioned Costs Sustained, Resolution Date, Disposition Date, and Status data fields.

## Defense Contract Management Agency Director (cont'd)

DCMA Management Comments for DoD OIG Draft Report "Evaluation of DoD Contracting Officer Actions on Terminated Contract Costs" (Project No. D2021-DEV0SO-0113.000)

- c. The importance of timely dispositioning audit reports within 12 months of the audit report date.

### **DCMA Management Comment:**

DCMA agrees with the recommendation and states that DCMA determined that the Defense Acquisition University CMC 210 Contract Audit Follow-Up (CAFU) training, updated in December 2022, adequately meets the DOD OIG recommended training requirements. Therefore, DCMA established a requirement for the Termination Group to take the DAU CMC 210 as the mandatory training every two years. New employees are required to complete the training within 6 months on board. The DAU CMC 210 training material has been uploaded to the resource page for DCMA Manual 2501-06, "Termination for the Convenience of the Government" resource page for reference. The requirement also states that the Termination Group will complete the first CMC 210 CAFU mandatory training by July 31, 2023.

### **Recommendation C.1**

DoD OIG recommended that the Defense Contract Management Agency Director:

- a. Develop and implement a requirement to provide periodic training to termination contracting officers that covers the requirement to:
  1. Estimate funds required to settle the termination and recommend the release of excess funds.
  2. Determine the accuracy of Government property accounts
  3. Document pre-negotiation objectives in accordance with Federal Acquisition Regulation 15.406-1(b).
  4. Provide a copy of the final negotiation memorandum to the DCAA.
- b. Revise Defense Contract Management Agency Manual 2501-06 to require that contracting officers estimate the funds required for a termination when contractors do not provide an estimate.
- c. Provide final negotiation memorandums to the Defense Contract Audit Agency for the following nine audit reports:
  1. Audit report number ending in 2015P17100001
  2. Audit report number ending in 2016F17100003
  3. Audit report number ending in 2014P17100001
  4. Audit report number ending in 2016G17100001
  5. Audit report number ending in 2013B17100001
  6. Audit report number ending in 2017H17100001
  7. Audit report number ending in 2017H17100002
  8. Audit report number ending in 2018P17100001
  9. Audit report number ending in 2016C17100001

### **DCMA Management Comment:**

C.1.a. 1 and 2

## Defense Contract Management Agency Director (cont'd)

DCMA Management Comments for DoD OIG Draft Report "Evaluation of DoD Contracting Officer Actions on Terminated Contract Costs" (Project No. D2021-DEV0SO-0113.000)

DCMA agrees with the recommendation. DCMA is currently developing the training for estimating funds required to settle the termination, recommending the release of excess funds, and determining the accuracy of Government property accounts. DCMA has established a requirement for the Termination Group to take the above trainings every two years. The first training will be completed by September 30, 2023.

### C.1.a. 3 and 4

DCMA agrees with the recommendation and states that DCMA took a proactive approach and conducted the Pre-negotiation Objectives Memorandum (PNOM) training during the DoD OIG's audit. The PNOM training presentation have been uploaded to the resource page for DCMA Manual 2501-06, "Termination for the Convenience of the Government" for reference. The DoD OIG draft report (page 34, 35 and 36) confirms that DCMA PNOM training conducted on September 15, 2022, adequately addressed the requirement for documenting pre-negotiation objectives and reinforced the requirement to provide a copy of the final negotiation memorandum to the DCAA. Also, DCMA has established a requirement for the Termination Group to take the PNOM refresher training every two years. The next periodic PNOM refresher training will be completed by September 15, 2024.

### C.1.b

DCMA agrees with the recommendation and states that DCMA is currently updating DCMA Manual 2501-06, "Termination for the Convenience of the Government" paragraphs 3.3 and 3.6 to establish that the termination contracting officer is responsible for estimating the funds required to settle a terminated contract within 30 days after the receipt of the termination notice in accordance with FAR 49.105-2, even when the contractor does not provide an estimate. The update will also include the steps that the termination contracting officers must take to estimate the funds required when contractors do not provide an estimate. DCMA is planning to complete DCMA Manual 2501-06, "Termination for the Convenience of the Government" republication by February 28, 2024.

### C.1.c

DCMA agrees with the recommendation and states that DCMA has sent five out of nine final negotiation memorandums to DCAA on February 3 and February 8, 2023, according to Appendix F on the draft report. Also, contract ending in 07-DM112 in Appendix F was settled by Army Contracting Command. Therefore, DCMA is not responsible for this settlement record. DCMA is currently searching its files to locate the last three negotiation memorandums and is planning to send them to DCAA by July 31, 2023.



## Defense Contract Management Agency Director (cont'd)

DCMA Management Comments for DoD OIG Draft Report "Evaluation of DoD Contracting Officer Actions on Terminated Contract Costs" (Project No. D2021-DEV0SO-0113.000)

The table below reflects the status for reference:

Contract	Audit Report	Final Negotiation Memorandum Date Sent to DCAA
Contract ending in 09-D-0001; DO0828	Audit report number ending in 2016C17100001	Sent SNM to DCAA on Feb 8, 2023
Contract ending in 13-C-0037	Audit report number ending in 2016F17100003	Sent SNM to DCAA on Feb 3, 2023
Contract ending in 10-D-0046	Audit report number ending in 2013B17100001	Sent SNM to DCAA on Feb 3, 2023
Contract ending in 12-D-0046; DO02	Audit report number ending in 2017H17100001	Sent SNM to DCAA on July 28, 2022 & Feb 3, 2023
Contract ending in 12-D-0046; DO01	Audit report number ending in 2017H17100002	Sent SNM to DCAA on July 28, 2022 & Feb 3, 2023
Contract ending in 09-D-0001; DO32	Audit report number ending in 2015P17100001	Searching SNM. ETC: July 31, 2023
Contract ending in 14-C-6023	Audit report number ending in 2016G17100001	Searching SNM. ETC: July 31, 2023
Contract ending in 16-C-0001	Audit report number ending in 2018P17100001	Searching SNM. ETC: July 31, 2023
Contract ending in -07-DM112	Audit report number ending in 2014P17100001	Settled by Army Contracting Command

## Deputy Assistant Secretary of the Army (Procurement)



**DEPARTMENT OF THE ARMY**  
OFFICE OF THE ASSISTANT SECRETARY OF THE ARMY  
ACQUISITION LOGISTICS AND TECHNOLOGY  
103 ARMY PENTAGON  
WASHINGTON DC 20310-0103

SAAL-ZP

MEMORANDUM FOR DEPARTMENT OF DEFENSE INSPECTOR GENERAL  
(DODIG), 4800 MARK CENTER DRIVE, ALEXANDRIA, VIRGINIA 22350-5000

SUBJECT: DODIG Draft Report: Evaluation of DoD Contracting Officer Actions on  
Terminated Contract Cost (Project No. D2021-DEVOSO-0113.000)

1. In accordance with Army Regulation 36-2, Audit Services in the Department of the Army, Section II, paragraph 1-9 (f), I am providing the official Army position for the enclosed recommendations. The Army concurs with the recommendations and has already taken actions to resolve them.

2. If there are any questions, please contact [REDACTED]

Encls

DAKE.MEGAN  
R [REDACTED]

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Date: 2023.03.06 10:54:14  
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Megan R. Dake  
Deputy Assistant Secretary of  
the Army (Procurement)

## Deputy Assistant Secretary of the Army (Procurement) cont'd

### Comments to the Recommendation DoD OIG Project No. D2021-DEV0SO-0113.000, Evaluation of DoD Contracting Officer Actions on Terminated Contract Costs

#### **Recommendation A2:** The Deputy Assistant Secretary of the Army (Procurement)

a. Review the contracting officers' decision to reimburse the contractors \$6.8 million in termination costs and, based on the results of the review, take the necessary steps to recover any unallowable costs reimbursed to contractors.

b. Develop and implement a requirement to provide periodic training to termination contracting officers in the following areas:

1. Preparing final negotiation memorandums in accordance with Federal Acquisition Regulation 49.110.
2. Maintaining adequate termination case files in accordance with Federal Acquisition Regulation 49.105-3.
3. Documenting adequate rationale for disagreeing with Defense Contract Audit Agency findings and recommendations in final negotiation memorandums in accordance with DoD Instruction 7640.02, Enclosure 3, Paragraph 3.
4. Obtaining and documenting legal review and management approval of pre-negotiation objectives and final negotiation memorandums in accordance with Army Federal Acquisition Regulation Supplement 5115.406-1.

c. Issue guidance covering the Federal Acquisition Regulation 49.107 threshold for requesting an audit of contractor termination proposals.

d. Direct the U.S. Army Corps of Engineers, Sacramento District, to develop procedures that implement the requirement in Army Federal Acquisition Regulation Supplement 5115.406-1 for obtaining management approval of pre-negotiation objectives.

#### **Army Response:**

a. The Army concurs with recommendation A2.a. The Office of the Deputy Assistant Secretary of the Army (Procurement) (ODASA(P)) will review the Contracting Officer's decisions and forward recommendations to the Senior Contracting Official, if necessary. Estimated completion date: 3QFY23.

b. The Army concurs with recommendation A2.b and considers this recommendation closed. The ODASA(P) published the attached Desk Guide, entitled "Contract Audit Follow Up (CAFU), Desk Guide Version 1.0, dated 13 February 2023. The guide covers training classes including, Defense Acquisition University CMC 1500, Introduction to Terminations. The course covers the foundational aspects of contract terminations. The course provides a working knowledge of the types of terminations, causes for

## Deputy Assistant Secretary of the Army (Procurement) cont'd

termination, the termination process, and handling settlement contracts in the best interest of the Government. Additionally, the recommendations outlined in A.2.b above, will be incorporated into the Army's Procurement Management Review (PMR) toolkit. The PMR toolkit functions as the enforcement mechanism to ensure compliance with regulations, policies and procedures.

c. The Army concurs with recommendation A2.c and considers this recommendation closed. As previously mentioned, the Army published a Desk Guide which covers the thresholds for requesting audits.

d. The Army concurs with recommendation A2.d. The Army Federal Acquisition Regulation Supplement (AFARS) is used to provide guidance to the field. Specifically, this guidance is covered in AFARS 5115.406-1. ODASA(P) will review incorporating question(s) regarding AFARS 5115.406-1 into the PMR toolkit to assist the field. Also, training will be provided during the Army's 3QFY23 HOT Topics Training Workshop. Estimated completion date: 3QFY23.

**Recommendation B2:** The Deputy Assistant Secretary of the Army (Procurement) to:

a. Develop and implement a requirement to provide periodic training on the DoD Instruction 7640.02 reporting requirements to contracting officials involved in Contract Audit Follow-Up system reporting with an emphasis on:

1. Describing the contracting officer's responsibility to maintain Contract Audit Follow-Up records.
2. Entering accurate data in the Contract Audit Follow-Up system data fields, including the Questioned Costs Sustained, Resolution Date, Disposition Date, and Status data fields.
3. The importance of timely dispositioning audit reports within 12 months of the audit report date.

b. Provide access to the Contract Audit Follow-Up system to contracting officers and management.

c. Develop and implement procedures covering the record-keeping requirements in DoD Instruction 7640, Enclosure 3, paragraph (1)(b), "Reporting Requirements for Reportable Contract Audit Reports," and the 12-month disposition requirement in DoD Instruction 7640, Enclosure 3, paragraph 3(a), "Disposition of Reportable Contract Audit Reports."

**Army Response:** The Army concur with recommendations B2.a, B2.b, and B2.c. The Army considers these recommendations closed. As previously mentioned, the ODASA(P) published the attached Desk Guide which covers the CAFU process. AFARS 5142.190 was updated as part of reviewing the Army's overage audit process. CAFU Monitors were established as a specific role in this process. IAW AFARS 5142.190-1(d) they have a direct responsibility to maintain current information and

## Deputy Assistant Secretary of the Army (Procurement) cont'd

status of the audits in the CAFU system. CAFU Monitors are then responsible for ensuring that the information in the CAFU system (as part of their maintenance) is current, accurate, and complete reflecting the latest status of the audit record. The timely disposition of audits, with an objective of 12 months, is highlighted multiple times in the AFARS and the Desk Guide.

The Army stood-up an Integrated Product Team (IPT) to address reportable and non-reportable audits assigned in the CAFU system. As part of IPT, CAFU Monitors were established at the component level, and the Army established a working group with Defence Contract Management Agency (DCMA). The working group with DCMA provides assistance when Army users are not granted CAFU access within a reasonable timeframe.

The Army maintains the position that CAFU Monitor access to the CAFU system is preferable to individual contracting officers. Focusing on a smaller group of individuals who are responsible for maintaining the data in the system will allow contracting officers to focus on the actual resolution and disposition of the audit findings. The CAFU Monitors can focus on ensuring timely and accurate entry of data into CAFU.

**Recommendation C2:** The Deputy Assistant Secretary of the Army (Procurement):

a. Develop and implement a requirement to provide periodic training to termination contracting officers that covers the requirement to:

1. Estimate funds required to settle the termination and recommend the release of excess funds.
2. Provide a copy of the final negotiation memorandum to the DCAA.

b. Provide final negotiation memorandums to the Defense Contract Audit Agency for the following two audit reports

1. 2017W17100001
2. 2020N17100001

**Army Response:** The Army concurs with recommendations C2.a and C2.b and considers the recommendations closed. As mentioned above, the ODASA(P) published a Desk Guide which identifies relevant regulations and training. Additionally, the IPT process has increased awareness regarding coordination with DCAA by the Contracting Officers and the CAFU Monitors. Finally, the Army has established a working group with DCAA. The working group shares information regarding status of all assigned audits and ensure that DCAA obtains documentation from the applicable contracting officer. The Army/DCAA coordination working group will work to ensure that copies of the relevant PNMs are provided to DCAA.

## Deputy Assistant Secretary of the Navy (Procurement)



DEPARTMENT OF THE NAVY  
OFFICE OF THE ASSISTANT SECRETARY  
RESEARCH, DEVELOPMENT AND ACQUISITION  
1000 NAVY PENTAGON  
WASHINGTON DC 20350-1000

From: Executive Director, Deputy Assistant Secretary of the Navy (Procurement)  
To: U.S. Department of Defense Inspector General

Subj: DEPARTMENT OF THE NAVY RESPONSE TO THE DRAFT AUDIT REPORT OF  
THE EVALUATION OF DEPARTMENT OF DEFENSE CONTRACTING OFFICER  
ACTIONS ON TERMINATED CONTRACT COSTS (PROJECT NO. D2021-  
DEV0SO-0113.000)

Ref: (a) [REDACTED] email, same subject, dated 31 January 2023 with attachment

1. The Department of Navy (DON) appreciates the opportunity to review the draft report, Evaluation of DoD Contracting Officer Actions on Terminated Contract Costs, dated 31 January 2023 (Project No. D2021-DEV0SO-0113.000), provided by Reference (a). The DON's responses to recommendations B.3 and C.3 are provided below, as required by Reference (a).

**Recommendation B.3.:** We recommend that the Deputy Assistant Secretary of the Navy (Procurement) to:

a. Develop and implement a requirement to provide periodic training on the DoD Instruction 7640.02 reporting requirements to contracting officials involved in Contract Audit Follow-Up system reporting with an emphasis on:

1. Describing the contracting officer's responsibility to maintain Contract Audit Follow up records
2. Entering accurate data in the Contract Audit Follow-up system data fields, including the Questioned Costs Sustained, Resolution Date, Disposition Date, and Status data fields.
3. The importance of timely dispositioning audit reports within 12 months of the audit report date.

b. Develop and implement procedures covering the record-keeping requirements in DoD Instruction 7640.02, Encluse 3, paragraph (1)(b), "Reporting Requirements for Reportable Contract Audit Reports."

**DON RESPONSE:** The DON partially agrees with the recommendation, as the suggested actions require coordination with and adherence to higher-level guidance from the DoD. Given that each of the three military departments are receiving near identical recommendations, the scope for establishing and implementing periodic training on the DoD Instruction 7640.02 would be better placed with the DoD. Should the DoD issue supplementing or implementing regulation or guidance to address what is a DoD-wide recommendation, the DON can determine what additional information, if any, needs to be provided relative to reporting requirements within the

## Deputy Assistant Secretary of the Navy (Procurement) cont'd

Subj: DEPARTMENT OF THE NAVY RESPONSE TO THE DRAFT AUDIT REPORT OF THE EVALUATION OF DEPARTMENT OF DEFENSE CONTRACTING OFFICER ACTIONS ON TERMINATED CONTRACT COSTS (PROJECT NO. D2021-DEV0SO-0113.000)

Contract Audit Follow-up system. Consistent with any DoD policy changes, the Deputy Assistant Secretary of the Navy (Procurement) (DASN(P)) Policy will distribute the changes to the contracting workforce. If any DON unique information needs to be disseminated to the contracting workforce, the DASN(P) Policy may utilize the “Policy Push” which is DASN(P)’s communication method to ensure near real-time availability of changes to policies, processes, procedures, and guidance affecting the DON contracting community.

In the absence of DoD-issued guidance or training, the DON will recommend to the Contract Audit Follow-up designated management officials at each of the DON Heads of Contracting Agencies that periodic training is provided on system reporting requirements to ensure compliance with DoD Instruction 7640.02.

**Recommendation C.3.:** We recommend that the Deputy Assistant Secretary of the Navy (Procurement), develop and implement a requirement to provide periodic training to termination contracting officers that covers the requirement to:

- a. Estimate funds needed for settling the termination and recommend the release of excess funds.
- b. Document pre-negotiation objectives in accordance with Federal Acquisition Regulation 15.406-1(b).

**DON RESPONSE:** The DON partially agrees with the recommendation, as the suggested actions require coordination with and adherence to higher-level regulation and guidance from the DoD. Given that each of the three military departments are receiving near identical recommendations, the scope for establishing and implementing periodic training to termination contracting officers would be better placed with the DoD. Should the DoD issue supplementing or implementing regulation or guidance to address what is a DoD-wide recommendation, the DON can determine what additional information, if any, needs to be provided relative to training termination contracting officers on estimating funds needed for settling the termination and recommending the release of excess funds and documenting pre-negotiation objectives in accordance with Federal Acquisition Regulation 15.406-1(b). Consistent with any Defense Federal Acquisition Regulation Supplement (DFARS) changes, the Deputy Assistant Secretary of the Navy (Procurement) Policy will distribute the changes to the contracting workforce. If any DON unique information needs to be disseminated to the contracting workforce, the DASN(P) Policy may utilize the “Policy Push” which is DASN(P)’s communication method to ensure near real-time availability of changes to policies, processes, procedures, and guidance affecting the DON contracting community.

## Deputy Assistant Secretary of the Navy (Procurement) cont'd

Subj: DEPARTMENT OF THE NAVY RESPONSE TO THE DRAFT AUDIT REPORT OF THE EVALUATION OF DEPARTMENT OF DEFENSE CONTRACTING OFFICER ACTIONS ON TERMINATED CONTRACT COSTS (PROJECT NO. D2021-DEV0SO-0113.000)

In the absence of DoD-issued guidance or supplemental or implementing regulation, DASN(P) Policy may utilize the "Policy Push" to provide reminders to the DON contracting workforce of regulatory requirements when terminating contracts, including the importance of estimating funds needed for settling terminations and recommending the release of excess funds, as well as documenting pre-negotiation objectives in accordance with Federal Acquisition Regulation 15.406-1(b).

2. If you have any questions on the above, my point of contact for this engagement is [REDACTED]

NICKLE.STEV  
EN.A. [REDACTED]  
[REDACTED]

Digitally signed by  
NICKLE.STEVEN.A [REDACTED]  
Date: 2023.03.15 10:58:07  
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Steven A. Nickle  
Executive Director  
Deputy Assistant Secretary of the Navy  
(Procurement)



## Deputy Assistant Secretary of the Air Force (Contracting)



DEPARTMENT OF THE AIR FORCE  
WASHINGTON, DC

03 MAR 2023

OFFICE OF THE ASSISTANT SECRETARY

MEMORANDUM FOR DEPARTMENT OF DEFENSE INSPECTOR GENERAL

FROM: SAF/AQ  
1160 Air Force Pentagon  
Washington, DC 20330

SUBJECT: Air Force Response to DoD Office of Inspector General Draft Report, "Evaluation of DoD Contracting Officer Actions on Terminated Contract Costs" (Project No. D2021-DEV0SO-0113.000)

1. This is the Department of the Air Force response to the DoDIG Draft Report, "Evaluation of DoD Contracting Officer Actions on Terminated Contract Costs (Project No. D2021-DEV0SO-0113.000)." I concur with comments to the draft report as written.
2. The Deputy Assistant Secretary for Contracting (DAS(C)), SAF/AQC, will correct issues identified in this report, and develop and implement a corrective action plan outlined in the following responses.

**RECOMMENDATION A.3:** The DoDIG recommends that the Associate Deputy Assistant Secretary of the Air Force (Contracting):

- a. Review the contracting officers' decision to reimburse contractors \$6.3 million in termination costs and, based on the results of the review, take the necessary steps to recover any unallowable costs reimbursed to contractors.
- b. Develop and implement a requirement to provide periodic training to termination contracting officers in the following areas:
  1. Preparing final negotiation memorandums in accordance with Federal Acquisition Regulation 49.110.
  2. Maintaining adequate termination case files in accordance with Federal Acquisition Regulation 49.105-3.
- c. Issue guidance on the Federal Acquisition Regulation 49.107 threshold requiring an audit of contractor termination proposals.

**DEPARTMENT OF THE AIR FORCE RESPONSE:** Concur, with comment.

A.3.a. DAS(C) will direct the responsible Senior Contracting Official (SCO) to review the

## Deputy Assistant Secretary of the Air Force (Contracting) cont'd

decision to reimburse contractors \$6.3 million dollars, document the results of the review in the official contract file(s), and take appropriate action. The SCO will also be instructed to report the finding of the review and a summary of actions taken to the DAS(C).

**Estimated Completion Date:** 1 Oct 23

A.3.b. / A.3.c. DAS(C) will issue guidance, in the form of a memorandum, to all SCOs, instructing them to require termination contracting officers (TCO) to complete Defense Acquisition University course CLC 006, "Contract Terminations," prior to performing TCO duties, including negotiating and agreeing to termination settlements.

This guidance will also remind all SCOs that FAR 49.107(a) requires the TCO to refer each prime contractor settlement proposal valued at or above the threshold for obtaining certified cost or pricing data set forth in FAR 15.403-4(a)(1) to the appropriate audit agency for review and recommendations. Additionally, the guidance will remind them that the TCO may submit settlement proposals of less than the threshold for obtaining certified cost or pricing data to the audit agency as deemed necessary.

**Estimated Completion Date:** 1 Jul 23

**RECOMMENDATION B.4:** The DoDIG recommends that the Deputy Assistant Secretary of the Air Force (Contracting):

a. Develop and implement a requirement to provide periodic training on the DoD instruction 7640.02 reporting requirements to contracting officials involved in Contract Audit Follow-Up system reporting with an emphasis on:

1. Describing the contracting officer's responsibility to maintain Contract Audit Follow-Up records.
2. Entering accurate data in the Contract Audit Follow-up system data fields, including the Questioned Costs Sustained, Resolution Date, Disposition Date, and Status data fields.
3. The importance of timely dispositioning audit reports within 12 months of the audit report date.

b. Provide access to the Contract Audit Follow-Up system to contracting officers and management.

c. Develop and implement procedures covering the recording keeping requirements in DoD Instruction 7640, Enclosure 3, paragraph (1)(b), "Reporting Requirements for Reportable Contract Audit Reports" and the 12-month disposition requirement in DoD Instruction 7640, Enclosure 3, paragraph 3(a), "Disposition of Reportable Contract Audit Reports."

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**DEPARTMENT OF THE AIR FORCE RESPONSE: Concur, with comment.**

B.4.a. / B.4.b The Air Force Federal Acquisition Regulation Supplement (AFFARS) Mandatory Procedure (MP) 5315.407-90 implements Department of Defense Instruction 7640.02 and requires SCOs to designate a Contract Audit Follow-Up (CAFU) focal point to manage each organization's CAFU program. Further, SAF/AQC sends a semi-annual reminder to the CAFU focal points to ensure compliance with CAFU status reporting requirements.

The guidance memorandum noted previously, will also direct SCOs to require all contracting officers involved with efforts subject to CAFU take Defense Acquisition University course CMC 210, "Contract Audit Follow-Up (CAFU)," and coordinate with their CAFU focal point on their responsibilities. The guidance will also describe requirements for maintaining CAFU records, the importance of entering and maintaining accurate data in the CAFU system, and the importance of timely dispositioning audit reports.

Per AFFARS MP 5315.407-90 3.c, TRACKING OF AUDIT REPORTS, each contracting activity's designated CAFU focal point is required to maintain CAFU information on a current basis in the CAFU on-line system. The guidance will direct SCOs to verify that they have appointed a CAFU focal point, and that their focal point has access to the CAFU system.

**Estimated Completion Date:** 1 Jul 23

B.4.c. AFFARS MP 5315.407-90 3.b. CONTRACTING OFFICER (CO) RESPONSIBILITIES, implements DoDI 7640.02, and covers record keeping requirements, including the 12-month disposition requirement in DoD Instruction 7640, Enclosure 3, paragraph 3(a), "Disposition of Reportable Contract Audit Reports." However, our guidance memorandum to SCOs will remind them of record keeping and disposition requirements.

**Estimated Completion Date:** 1 Jul 23

**RECOMMENDATION C.4:** The DoDIG recommends that the Deputy Assistant Secretary of the Air Force (Contracting) develop and implement a requirement to provide periodic training to termination contracting officers that covers the requirement to estimate funds needed for settling the termination and recommend the release of excess funds.

**DEPARTMENT OF THE AIR FORCE RESPONSE: Concur, with comment.**

C.4. As noted previously, DAS(C) will issue a guidance memorandum to all SCOs, instructing them to require termination contracting officers (TCO) to complete Defense Acquisition University course CLC 006, "Contract Terminations," prior to performing TCO duties, including negotiating and agreeing to termination settlements. Additionally, this guidance will remind TCOs of the requirement to estimate funds needed for settling terminations and recommend the release of excess funds.

## Deputy Assistant Secretary of the Air Force (Contracting) cont'd

**Estimated Completion Date:** 1 Jul 23

3. In addition to the measures and actions previously described, Department of the Air Force Contracting is developing additional measures to improve contracting actions related to terminated contract costs:

- DAS(C) will publish a Tactics, Techniques, and Procedures (TTP) document on contract terminations, which will cover all recommendations made by the DoDIG.
- To ensure the widest dissemination of this audit, a "What's New in Air Force Contracting" publication will be sent in a career-field wide notification and posted on the Air Force Contracting Central website.

4. The SAF/AQ point of contact is [REDACTED]



DARLENE J. COSTELLO  
Principal Deputy Assistant Secretary of the Air  
Force (Acquisition, Technology & Logistics)

## Acronyms and Abbreviations

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<b>AFARS</b>	Army Federal Acquisition Regulation Supplement
<b>AFFARS</b>	Air Force Federal Acquisition Regulation Supplement
<b>CAFU</b>	Contract Audit Followup
<b>CLC</b>	Contract
<b>CMC</b>	Contract Management-Contract Administration and Pricing
<b>DAS(C)</b>	Deputy Assistant Secretary of the Air Force (Contracting)
<b>DASA(P)</b>	Deputy Assistant Secretary of the Army (Procurement)
<b>DASN(P)</b>	Deputy Assistant Secretary of the Navy (Procurement)
<b>DAU</b>	Defense Acquisition University
<b>DCAA</b>	Defense Contract Audit Agency
<b>DCMA</b>	Defense Contract Management Agency
<b>DFARS</b>	Defense Federal Acquisition Regulation Supplement
<b>FAR</b>	Federal Acquisition Regulation
<b>NMCARS</b>	Navy Marine Corp Acquisition Regulation Supplement



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