

Department of the Army
Headquarters, U.S. Army
Industrial Operations Command
Rock Island, IL 61299-6000

*IOCR 36-1

9 JUN 1994

Audit

PROCESSING DEFECTIVE PRICING AUDIT REPORTS

Applicability. This regulation applies to all HQ, AMCCOM/DESCOM elements and their subordinate installations.

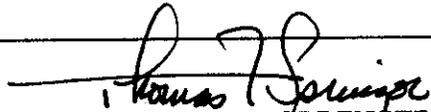
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FOR THE COMMANDER:

Official:


THOMAS F. SPRINGER
Colonel, GS
Chief of Staff

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*This regulation supersedes AMCCOMR 36-2, 26 December 1990

1. Purpose. This regulation prescribes responsibilities for processing defective pricing audit reports.

2. Acronyms/Terms. The following acronyms are used in this regulation.

PCO	Procuring Contracting Officer
DCAA	Defense Contract Audit Agency
MFR	Memorandum For Record
BCM	Business Clearance Memorandum
QOARB	Quarterly Overage Audit Review Board
DFAS	Defense Finance and Accounting Service

3. Responsibilities. The Procuring Contracting Officer (PCO) shall:

a. Staff the Defense Contract Audit Agency (DCAA) audit report through the cognizant pricing element for review/comment and send a copy of the report to the contractor. By sending a copy of the audit report to the contractor, the contracting officer is complying with the requirement in FAR 15.804-7(d). Figure 1 to this regulation is a sample transmittal letter. The contractor's response should then be forwarded to DCAA for review and comment; responses from contractor, pricing, and DCAA are then used to formulate the initial Government position. For procedural guidance, see paragraph 4b and 4c below.

b. Obtain legal opinion and prepare Business Clearance Memorandum (BCM) formally establishing Government's intended plan of action, either agreeing with DCAA findings or documenting disagreement with DCAA's finding (resolution). For procedural guidance, see paragraph 4d below.

c. Conduct negotiations with the contractor in an attempt to reach a mutually acceptable settlement; if ineffective, issue a final decision and a unilateral modification; however, if there are no monies to recoup on the contract (closed), transfer the debt in accordance with FAR 32.608(c), FAR 32.613, AFARS 32.606, and this regulation (disposition).

d. Prepare a monthly report for each audit stating chronology and milestones, submit the resolution and disposition documentation as it becomes available, and appear before the Quarterly Overaged Audit Review Board (QOARB) if the audit reaches overaged status.

4. Procedures (See - Figure 2).

a. Defective pricing audits must be tracked and reported

from receipt of the audit through resolution and disposition IAW DOD Directive 7640.2. Pursuant to the requirements of PL 96-304, resolution is the point at which the PCO has established what action the Government will take to resolve the audit, and shall be accomplished not later than 6 months from the date of this audit report. Disposition is the point at which the audit has been settled or requires no further action, and shall be accomplished not later than 12 months from the date of the audit report. Any audit which is not resolved within 6 months, or any audit which is not dispositioned within 12 months, will be considered overaged and subject to the additional reporting requirements of the QOARB.

b. When a defective pricing audit report is received furnish one copy to the cognizant contract pricing element to review, and one copy to the individual who is designated the responsibility for tracking reportable audits. The PCO shall also forward a copy of the audit with a cover letter (Figure 1), to the contractor and allow 30 days for response, thereby informing him in writing of the DCAA findings.

c. The contractor's response should then be sent to DCAA for review and comment (Figure 3). Upon receipt of DCAA's response to contractor comments, the contracting officer shall endeavor to review, analyze, and comprehend the factual basis of the defective pricing claim and the contractor's position. After review of pertinent documents in the contract files, ascertaining the facts and carefully considering the facts, the contracting officer shall prepare a Memorandum for Record (MFR) stating his/her position on the audit report which should include, at a minimum, a summarization and position taken on each basis of the recommended price adjustments. Also, the contracting officer shall state whether he believes that the submission of defective cost/pricing data was a "knowing submission" warranting application of the penalty provision of the Truth in Negotiations Act.

d. The defective pricing audit report must be submitted to the buying activity's legal office for review. The contracting officer shall submit a package to the buying activity's legal office consisting of the following documents:

- (1) Copy of the audit report.
- (2) Copy of the contractor's response to the audit report.
- (3) Copy of DCAA's rebuttal or rejoinder to the contractor's response.
- (4) Copy of the contracting officer's MFR (see, 4c above).

(5) Copy of pertinent pre-award documents such as the Pre and Post BCMs, and Price Negotiation Memorandum.

e. Upon receipt of the legal opinion, the contracting officer should revise or supplement the MFR, if necessary. If the contracting officer's position, as documented in the MFR, is in agreement with the audit report, a BCM must be prepared. The BCM is the RESOLUTION document and it establishes the Government's formal or official position. If the contracting officer's position as stated in the MFR does not agree with the audit report, DCAA should be informed, by letter, of the reasons or rationale for the disagreement(s). If the contracting officer believes that a conference between himself/herself and DCAA is prudent or necessary, a conference should be arranged. If agreement is not reached between the contracting officer and DCAA, the contracting officer will prepare another MFR providing the rationale or basis for not adopting DCAA's recommendation(s). Also, a BCM must be prepared except in cases where the determination is not to pursue an audit claim, the MFR (the second one) will serve as the RESOLUTION document. DISPOSITION of the audit will be accomplished upon sending a letter to the contractor stating that the Government will not pursue the claim. A copy of this letter should be sent to DCAA and two copies to the pricing element's reportable audit point of contact.

f. The PCO shall engage in discussions with the contractor in an attempt to negotiate a settlement of the defective pricing claim.

(1) If an agreement is reached, the Contracting Officer should seek counsel from the buying activities legal office for the purpose of drafting and executing a settlement agreement with the contractor. (It does not matter whether the contract is open or closed; a modification incorporating the settlement agreement or a modification containing the terms of the agreement needs to be issued.) The contracting officer is responsible for negotiating the terms of the settlement agreement and the legal office is responsible for drafting the language. If payment is not made IAW the terms of the settlement, the matter, which constitutes a DEBT to the Government, should be transferred to Director, Defense Finance and Accounting Service (DFAS), ATTN: DFAS-CO-FD, P.O. Box 182317, Columbus, OH 43218-2317 for collection (see para 4i below).

(2) If an agreement is not reached and:

(a) The contract is still open: (all the monies have not been paid) a final decision and unilateral modification shall be issued.

(b) The contract is closed: (all monies have been paid) a final decision/demand letter shall be issued. A modification shall be issued which administratively decreases the contract price but does not deobligate any funds. If after 45 days a check has not been received, the debt shall be transferred to DFAS in para 4f (1) above. A bilateral modification shall be issued if a check is received.

g. The PCO may determine that, based upon experience with the contractor and knowledge of the situation, it would be pointless to attempt negotiations; or, negotiations may fail to effect a settlement. The PCO will then issue a final decision. If the contract is still open, a unilateral modification will also be issued. If the contract is closed, the procedures in 4f(2)(b) and 4i apply. If the contract is closed, a demand letter will also be issued. If after 45 days, whether appealed or not, a check has not been received, the debt shall be transferred to DFAS, as in 4f(2)(B) above. A bilateral modification shall be issued if a check is received.

h. In 4f and 4g above, the audit report is considered closed if the contractor implements the PCO's final decision, or if 90 days elapse without the contractor appealing to the Armed Service Board of Contract Appeals. However, the audit must be reinstated as an open report in litigation if the contractor appeals to the U.S. Claims court within 12 months of the final decision.

i. The transfer of debt collection procedure is as follows:

(1) A memorandum and DA Form 1857 (Statement of Account) should be sent to the DFAS, ATTN: DFAS-CO-FD, P.O. Box 182317, Columbus, OH 43218-2317. Preparation of DA Form 1857 should be coordinated with cognizant finance and accounting office at the subordinate installation.

(2) Both documents should be forward by the contracting officer IAW Army FAR Supplement 32.606.

(3) The PCO will furnish the cognizant finance and accounting office a copy of the DA Form 1857 returned by DFAS-CO-FD.

j. Administration.

(1) The contract specialist will report monthly the chronology and milestones of each reportable audit, from the date of receipt of the audit through final disposition. This will be

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submitted to the cognizant individual at the subordinate installation who is assigned the responsibility of tracking reportable audits.

(2) Two copies of the resolution and disposition documentation and the modification must also be submitted to the cognizant individual in paragraph 4j(1) above. The resolution document is usually the pre-BCM; the disposition document is the document which effectively closes out the audit. This is usually the post-BCM; a bilateral or unilateral modification; a final decision/demand letter; a letter stating nonpursuit of a defective pricing audit; or a superseding audit.

(3) A QOARB is held at the subordinate installation level to review the status of open audits reported as overaged. Two of these boards are semi-annual boards held at the command level to review those audits overaged as of the period ending 30 March and 30 September IAW with AMCCOMR 15-8. Attendance by the PCO or contract specialist is required. A short narrative detailing the proposed plan of action shall also be submitted prior to the board for each audit included for review. The board provides expertise, guidance, and assistance to the contracting office in order to facilitate the resolution and disposition of overage audits.

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CERTIFIED MAIL - RETURN RECEIPT REQUESTED

AMSMC-WOW

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Only Game In Town Inc.
5555 Big Lincolns
Moneyville, Minnesota 55555-0000

Gentlemen:

Please reference the following:

- a. Contract No. DAAA09-XX-C-XXXX;
- b. Public Law 87-653, 10 U.S.C. 2306(f); and
- c. Defense Contract Audit Agency Report Number 03751- 92NXXXXXXXXX dated 25 December 1992.

The audit report referenced in (c) above is enclosed herewith. The audit report indicates that defective pricing exists on contract DAAA09-XX-C-XXXX.

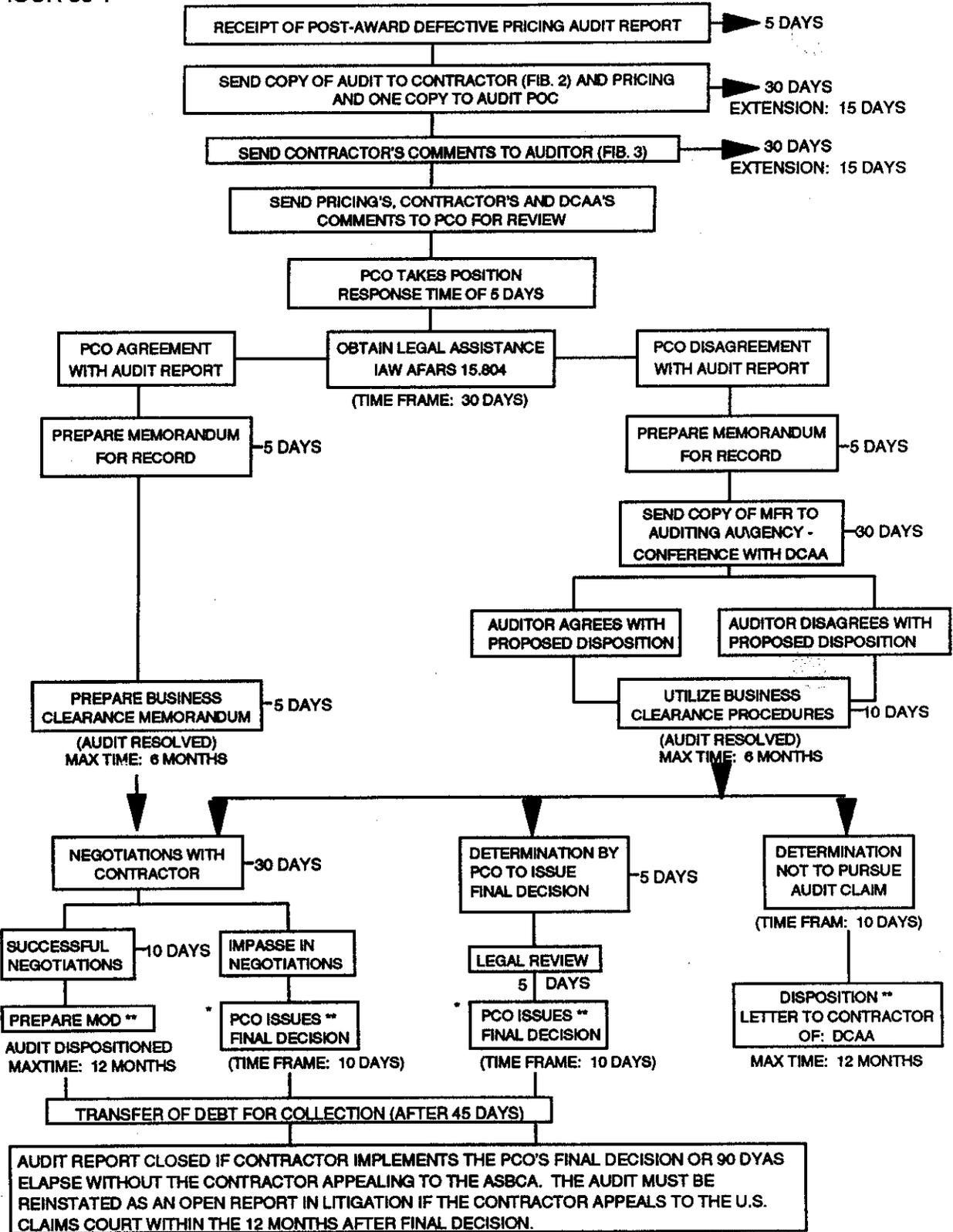
If you are in agreement with the Government's entitlement to a defective pricing adjustment in the amount of \$1,900,015, request that you acknowledge said entitlement in writing. In the event you disagree with the Government's entitlement, under the "Price Reduction for Defective Cost or Pricing Data" ("defective pricing") clause, to a contract price adjustment in the stated amount, please set forth the basis for your disagreement and provide all available data to support your position to the undersigned contracting officer.

If you fail to either acknowledge the Government's entitlement to a price adjustment or otherwise respond to this letter within 30 days from date of receipt of this letter, it will be assumed that you are disputing the Government's entitlement to the claimed contract price adjustment under the "defective pricing" clause of the contract and action as appropriate to protect the Government's interest will be taken. Further, please be advised that in the event you do not respond with your comments concerning the accuracy, completeness, and currency of the data in question, the undersigned shall make the determination required by FAR 15.804-7(d) without benefit of your input.

Sincerely,

Contracting Officer

FIGURE 1



*OBTAIN LEGAL CONCURRENCE ON FINAL DECISION
 **COPY OF "DISPOSITION" DOCUMENTATION TO AUDITOR (DODD 7640.2.F.5)

FIGURE 2 Procedural Flowchart

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AMSMC-XXX-XX ()

MEMORANDUM FOR: Commander, Auditing Agency, Somewhere Region,
ATTN: Ms./Mr. So and So, 2 Many Numbers
Street, Auditville, USA

SUBJECT: Defective Pricing Audit - Name of Contractor

1. Please reference the following documents:

- a. Contract No. _____,
- b. Audit Report No. _____,
dated _____, and
- c. Contractor's letter of _____.

2. The contractor's comments are enclosed herewith for your review.

3. Request that the letter be reviewed and each factual issue be addressed thoroughly. Be assured that your comments shall be given great consideration. Your response is requested within 30 days from receipt of this memorandum.

4. The POC at this Command is Contract Specialist, AMSMC-XXX-X, 309-782-XXXX.

Encl
as

Clint Wonderful
Procuring Contracting Officer

FIGURE 3