DID YOU KNOW?

One of the earliest recorded instances of a Termination for Convenience policy dates back to 1861.

Termination for Convenience in Government Contracts: Legal Framework, Contractor Rights, and Strategic Considerations

BY ZACHARY JONES, J.D. AND KELLY GILLIAM, J.D.

Government contract terminations have significant financial and operational implications for contractors. Among the forms of termination, termination for convenience (T4C) is one of the most powerful tools available to federal agencies.

Unlike termination for default,[1] which requires a failure in performance by the contractor,[2] T4C allows the government to unilaterally end a contract without cause when it is deemed in the government's interest.[3]

For government contractors, understanding the legal framework surrounding T4C is crucial to navigating its consequences effectively. This article explores the historical evolution, contractor rights, procedural aspects, and best practices associated with T4C.

Historical Development of Termination for Convenience

Origins in Military Procurement

The concept of T4C in government contracts can be traced back to wartime procurement policies when the government needed flexibility in managing contracts for essential supplies and services. During World War I, contracts were often terminated when military needs changed or supply chains shifted.

One of the earliest recorded policies allowing for contract termination at the government's discretion was Rule 1179 of the United States Army Regulations of 1861 (1863).

> 1179. Contracts for subsistence stores shall be made after due public notice, and on the lowest proposal received from a responsible person who produces the required article. These agreements shall expressly provide for their termination at such time as the Commissary-General may direct, and for the exclusion of any interest in them on the part of members of Congress, officers or agents of the Government, and all persons employed in the public service. (Forms 36 and 37.)[4]

That regulation was found to permit the commissary-general to terminate contracts for subsistence stores whenever it was deemed necessary for the government's interest.[5] Article One of Form 37 provides sample contract language that may have been subject to termination under this policy, as shown in Figure 1.

This regulation set an early precedent for the unilateral termination of contracts and established a foundational principle that the government could end agreements based on changing needs and priorities.

This principle was further reinforced in *United States v. Speed (1868)*,[6] where the U.S. Supreme Court recognized the government's inherent authority to modify or terminate certain contracts in response to shifting military needs, setting an early precedent for the broad discretion later granted under T4C clauses.[7]

Codification in Federal Procurement Regulations

The legislative foundations of modern termination for convenience policies emerged during World War I, when shifting military demands and supply-chain disruptions frequently required contract cancellations.

FIGURE 1. Sample Contract Language from the 1800s

> *First.* That the said ---------- shall deliver at ----------, fresh beef of a good and marketable quality, in equal proportion of fore and hind quarter meat (necks, shanks and kidney tallow to be excluded), in such quantities as may be from time to time required, and on such days as shall be designated by the commanding officer.

Source: U.S. War Department, Army Regulations, Form 37, First Article

The Dent Act of 1919 was one of the earliest legislative efforts to provide compensation for contractors whose agreements were terminated before completion.[8] This Act allowed contractors to recover costs for work performed up to the termination date, setting a precedent for later developments in termination policies.[9]

During World War II, the need for a structured termination policy became even more pressing. The Contract Settlement Act of 1944 was passed to provide a formal mechanism for settling claims when contracts were terminated for convenience.[10] This Act established administrative procedures that later became the foundation for modern termination clauses.[11]

Following the war, regulatory provisions began requiring termination clauses in contracts, ensuring consistency in government procurement practices.[12]

In 1950, the Armed Services Procurement Regulation (ASPR) mandated the inclusion of T4C clauses in most Department of Defense (DoD) contracts valued over $1,000.[13] In 1964, the Federal Procurement Regulations (FPR) provided optional termination clauses for use in contracts at the discretion of agencies.[14]

However, by 1967, the FPR was revised to make T4C clauses mandatory for most fixed-price supply contracts over $2,500 and fixed-price construction contracts over $100,000.[15] This expansion ensured that T4C provisions were widely applied across both military and civilian government contracts.

The broad discretion given to the government under T4C was later tested in key judicial decisions. For example, in *Torncello v. United States*, the Court of Claims ruled that the government could not invoke a termination for convenience to avoid paying anticipated profits unless there was a substantial change in circumstances between the time of contract award and termination.[19] The court emphasized that allowing unrestricted terminations could result in illusory contracts where the government retained complete discretion to abandon agreements at will.[20]

However, in *Krygoski Construction Co. v. United States*, the Federal Circuit clarified that the government retained broad termination rights unless there was evidence that it had entered the contract with no intention of fulfilling it.[21] This ruling reaffirmed the government's ability to terminate contracts for convenience while limiting challenges based on allegations of pretext or bad faith.[22]

In addition to defining the scope of T4C, courts have also expanded its application in certain contexts. One significant example is the use of T4C to uphold competition.[23] Courts have recognized that T4C can serve as a tool, along with the Competition in Contracting Act (CICA), to remedy improper contract awards and ensure compliance with competitive procurement requirements. While the CICA does not explicitly address T4C, courts have upheld its use as a means to prevent improper contract awards and promote fair competition.[24]

FIGURE 2. Judicial Development and Limitations on Termination for Convenience

CASE	HOLDING
Torncello v. United States	The government cannot invoke a termination for convenience clause to avoid liability for breach of contract when it enters into a contract knowing at the time of award that it will not honor the contract. Specifically, the court held that the government's use of the termination for convenience clause in such circumstances would render the contract void for lack of consideration, as the government's promise to perform would be illusory.[16]
Krygoski Construction Co. v. United States	A termination for convenience by the government is valid unless it is tainted by bad faith or constitutes a clear abuse of discretion. The court emphasized that the government's decision to terminate a contract for convenience is presumed to be made in good faith, and overcoming this presumption requires "well-nigh irrefragable proof" of bad faith or abuse of discretion.[17]
T&M Distribs., Inc. v. United States	A termination for convenience by the government will be upheld unless the contractor can establish bad faith or clear abuse of discretion. The court emphasized that the contracting officer's decision to terminate for convenience is conclusive in the absence of such proof. This standard reflects the strong presumption that government officials act in good faith, and overcoming this presumption requires clear and convincing evidence of bad faith or abuse of discretion.[18]

In *Torncello v. United States*, the Court of Claims suggested that T4C should not be used arbitrarily but acknowledged that the clause could be invoked where a legitimate change in circumstances justifies termination.[25] Later, in *Krygoski Constr. Co. v. United States*, the Federal Circuit reaffirmed that T4C could be used to terminate improperly awarded contracts, provided that the government did not act in bad faith or as a pretext for avoiding contractual obligations.[26]

Similarly, in *T&M Distribs., Inc. v. United States*, 185 F.3d 1279 (Fed. Cir. 1999), the court upheld the government's decision to terminate a contract for convenience after determining that the award process had not followed full and open competition requirements.[27] These cases illustrate how T4C serves as a safeguard to uphold the integrity of government contracting, ensuring that awards comply with federal procurement laws and do not unfairly disadvantage competing bidders.

Another critical expansion of T4C is the doctrine of constructive termination for convenience.

The doctrine of constructive termination for convenience allows the government to retroactively justify improper contract actions as a T4C, thereby avoiding breach of contract liability and limiting contractor recovery. Courts have repeatedly upheld this doctrine to prevent contractors from claiming damages for wrongful terminations when the government could have, but did not, formally invoke T4C.

In *John Reiner & Co. v. United States*, the Court of Claims held that if the government had the authority to terminate for convenience at the time of its improper action, it could later invoke T4C to shield itself from breach claims.[28] This principle was reaffirmed in *Diversified Energy, Inc. v. TVA*, where the court ruled that constructive termination does not expand contractor rights but rather limits them by justifying government actions retroactively.[29]

Similarly, in *Ulysses, Inc. v. United States*, the court found that the government constructively terminated a contract long before issuing a formal notice, as it had ceased performing its obligations.[30] Meanwhile, in *United Techs. Corp. v. United States*, the board rejected the government's attempt to use constructive termination when it failed to honor a contractual investment incentive clause, clarifying that the doctrine is not a blanket justification for all government nonperformance.[31]

Courts may also use the constructive termination doctrine to convert a termination for default into one for convenience where the government improperly defaults a contractor, effectively limiting the contractor's recovery.[32] However, once the government elects to terminate a contract for convenience, it is generally barred from later asserting a termination for default, even if there were grounds justifying a default at the time of the initial T4C.[33]

By applying constructive termination, courts ensure that contractors cannot claim anticipated profits or breach damages in cases where the government could have lawfully terminated for convenience. While beneficial to government agencies, this doctrine places a significant burden on contractors, requiring them to prove wrongful termination under strict legal standards and limiting their financial recovery options.

Lastly, courts have read T4C clauses into contracts even where the contract does not explicitly contain such a clause. The court in *G.L. Christian & Assocs. v. United States* affirmed that T4C was a mandatory clause in government contracts, even when omitted from the contract itself, *G.L. Christian & Assocs. v. United States*, affirmed that T4C was a mandatory clause in government contracts, even when omitted from the contract itself.[34]

The *G.L. Christian* case involved a dispute over a government contract that did not explicitly contain a T4C clause. When the government terminated the contract, the contractor challenged the termination, arguing that without such a clause, the termination was a breach of contract entitling them to full damages, including anticipated profits.

The U.S. Court of Claims ruled that even if a government contract does not explicitly include a T4C clause, the clause is read into the contract by operation of law based on § 8.703 of the Armed Services Procurement Regulations, which required the contract at issue to contain a T4C clause.[35] As a result, the contractor was only entitled to reimbursement for work performed and termination costs, but not anticipated profits on unperformed work.[36]

Legal Framework: Government's Rights and Contractor Protections

Impact on Modern Government Contracting

Today, T4C clauses remain an essential tool in government contracting, providing agencies with the flexibility to adjust procurement strategies in response to changing priorities and budget constraints. These provisions are now standardized in the *Federal Acquisition Regulation* (*FAR*) and its agency supplements, ensuring that contractors receive fair compensation while maintaining the government's ability to manage contracts efficiently.[37]

The *FAR* generally governs the acquisition of supplies and services by all federal agencies.[38] The evolution of T4C, shaped by

both regulatory developments and judicial interpretation, highlights the balance between protecting government interests and ensuring fairness to contractors.

FAR *Provisions Governing T4C*

The *FAR* establishes guidelines for T4C, ensuring that government and contractors understand their respective rights and responsibilities when a contract is unilaterally terminated. The *FAR* provides a framework for the process, outlining the obligations of the government and the remedies available to contractors.

FAR provisions such as FAR 52.249-1 through 52.249-5 detail the standard termination clauses applicable to different types of contracts. These clauses define what costs are eligible for reimbursement and the procedures contractors must follow to submit termination settlement proposals. Additionally, FAR 49.103 specifies the methods for settling termination claims, emphasizing negotiated agreements, determinations made by the termination contracting officer (TCO), and alternative dispute resolution methods.

The role of the TCO is further defined under FAR 49.105, which grants the TCO authority to determine fair compensation for the terminated contractor. Among other things, the TCO is responsible for reviewing termination settlement proposals, ensuring compliance with applicable regulations, and finalizing settlements in a manner that is equitable to both the government and the contractor.[39]

For commercial item contracts, FAR Part 12 applies a different standard for termination. Under FAR 12.403, when a commercial item contract is terminated for convenience, the contractor's recovery is generally limited to work performed before termination and any reasonable charges incurred as a direct result of the termination. This differs from standard government contracts, where contractors may be entitled to additional cost recovery, such as profit on completed work and certain termination-related expenses. The limited nature of recovery under FAR 12.403 underscores the importance of understanding the distinctions between different contract types and their respective termination provisions.

The rules governing T4C operate differently for indefinite delivery, indefinite quantity (IDIQ) contracts than for standard procurement contracts. In *J. Cooper & Assocs., Inc. v. United States*, 53 Fed. Cl. 8 (2002), the court found that the government has no obligation to terminate an IDIQ contract for convenience once the minimum quantity has been ordered.[40] This means that while the government retains broad authority to terminate IDIQ contracts, it is still required to fulfill its minimum contractual obligations before doing so.

Similarly, blanket purchase agreements (BPAs) pose distinct considerations in T4C situations. In *BSG Constr. Servs., Inc*, the board ruled that a termination clause in a BPA did not create additional rights beyond what the agreement already allowed.[41] This underscores the importance of carefully structuring BPAs to account for termination scenarios and ensuring that expectations regarding termination rights and contractor compensation are explicitly defined.

FAR *Supplements*

In addition to the *FAR*, individual federal agencies issue supplemental regulations to address agency-specific policies, procedures, and requirements. These agency-specific supplements can introduce additional compliance requirements that contractors must understand and navigate to protect their interests in the event of a termination.

Two key agency-specific regulations governing T4C are the *Defense Federal Acquisition Regulation Supplement* (*DFARS*) and the *General Services Administration Acquisition Regulation (GSAR)*.[42] The *DFARS* provides additional termination procedures and policies for contracts with the DoD. These rules can impose stricter documentation requirements and require additional review processes before executing a termination for convenience.[43]

The *GSAR* governs contracts issued by the General Services Administration (GSA).[44] It includes provisions that address specific concerns related to commercial item contracts, information technology procurement, and government-wide acquisition contracts, which may impose additional hurdles for contractors seeking compensation following a T4C.[45]

Best Practices for Contractors Facing a Termination for Convenience

Pre-contract strategies are crucial in mitigating risks associated with T4Cs. Contractors should thoroughly review T4C clauses before entering into government contracts to understand the scope of termination rights granted to the government. Negotiating protective provisions in subcontractor agreements can provide additional security, ensuring that subcontractors can recover costs in the event of a termination. Additionally, maintaining robust documentation of incurred costs and anticipated expenses is essential, as comprehensive records strengthen a contractor's position in settlement negotiations and claims for reimbursement.

After a contract has been terminated for convenience, contractors should immediately assess the termination notice to

determine their obligations and potential recoveries. Many agencies impose stringent evidentiary and timeliness requirements for contractors seeking reimbursement under T4C, necessitating the maintenance of detailed cost records, subcontractor agreements, and proof of termination-related expenses.

The case of *Inca Contracting Co.*, ASBCA 52697, demonstrates the importance of timely action, as the board ruled that a contractor's appeal was untimely when it waited 33 months before claiming duress in a no-cost termination settlement.

If a contractor believes that the government has unfairly applied a termination for convenience or improperly calculated recoverable costs, appealing the decision may be necessary. Depending on the contract at issue, appeals may be filed with the Armed Services Board of Contract Appeals (ASBCA), Civilian Board of Contract Appeals (CBCA), or the U.S. Court of Federal Claims. However, contractors should assess the feasibility of filing an appeal before proceeding.

Alternative dispute resolution (ADR) methods such as mediation or arbitration may provide quicker and less costly resolution options. Additionally, contractors must be vigilant in meeting statutory deadlines for appeals, as missing these deadlines can forfeit their right to challenge the termination decision or seek additional compensation.

FIGURE 3. Five Takeaways on Termination for Convenience

1. Thoroughly review T4C clauses before entering into government contracts.
2. Assess termination notices to determine obligations and potential recoveries.
3. Gather documents related to the contract such as detailed cost records, subcontractor agreements, and proof of termination-related expenses.
4. Determine incurred costs and prepare a settlement proposal.
5. Evaluate whether appealing the T4C is necessary and feasible.

Conclusion

The concept of T4C plays a critical role in government contracting, allowing federal agencies to unilaterally end contracts without cause while ensuring contractors receive compensation for work performed. Regulatory frameworks such as the *FAR*, *DFARS*, and *GSAR* govern the application of T4C. These provisions dictate procedural requirements and compensation entitlements for contractors, ensuring that terminated parties can recover costs related to completed work, reasonable expenses, and settlement costs, but not anticipated profits.

Contractors facing a termination for convenience must be proactive in protecting their interests. Best practices emphasize pre-contract risk mitigation, meticulous documentation, strategic settlement negotiations, and exploring legal recourse when necessary.

Understanding contract clauses, maintaining strong financial records, and engaging with knowledgeable legal professionals can significantly impact the outcome of termination settlements. By taking a structured and informed approach, contractors can maximize their recovery and mitigate financial disruptions associated with T4C decisions.

Steps for Contractors Facing a Termination for Convenience

For contractors that have already had their contracts terminated for convenience, taking the right steps is crucial for financial recovery and long-term business stability. The first priority should be carefully reviewing the termination notice, ensuring a clear understanding of the government's reasoning and the specific terms outlined. A thorough analysis will help formulate an appropriate response strategy.

Once the termination notice has been reviewed, contractors must assess incurred costs and prepare a comprehensive settlement proposal. This proposal should document all expenses, including subcontractor claims and any allowable profit on completed work. Accurate and well-supported financial records will strengthen a contractor's position in settlement discussions.

Engaging in proactive settlement negotiations with the TCO is key to ensuring a fair recovery of all recoverable costs. Contractors should be prepared to justify their claims with solid documentation and be open to negotiating reasonable settlements that reflect the work completed and costs incurred.

Leveraging legal and financial expertise can significantly impact the outcome of a termination settlement. Consulting with experienced government contract attorneys or financial professionals can help contractors navigate compliance with *FAR*-mandated procedures and agency-specific regulations such as *DFARS* and *GSAR*. These experts can

provide valuable insights into the negotiation process and identify potential areas of additional recovery.

If the termination settlement is perceived as unfair or inadequate, contractors should explore available dispute resolution mechanisms. This may involve filing an appeal with ASBCA or CBCA or pursuing legal action through the U.S. Court of Federal Claims. In some cases, ADR methods, such as mediation or arbitration, may offer a faster and more cost-effective resolution. Contractors must also be mindful of statutory deadlines to ensure they preserve their rights to challenge an unfavorable termination decision.

Final Thoughts

While T4C grants the government broad authority, contractors are not without recourse. By being proactive, documenting costs thoroughly, negotiating strategically, and utilizing available legal options, contractors can safeguard their financial interests and maintain their ability to compete for future government contracts. An informed and prepared approach to T4C ensures that businesses can recover appropriately and position themselves for long-term success in government contracting. **CM**

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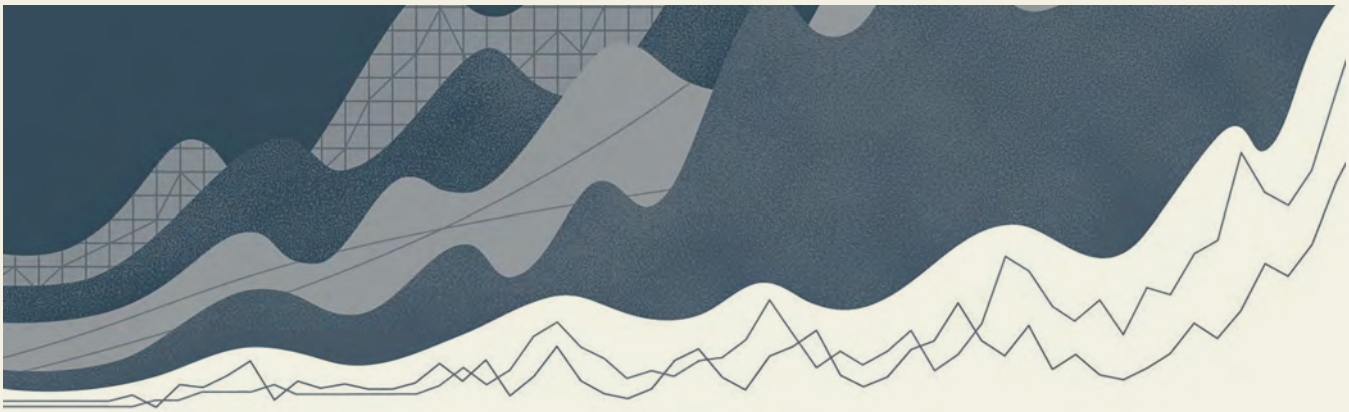
ENDNOTES

1 Terminations for default are also referred to as terminations for cause. See, *e.g.*, FAR 12.403 ("The clause at 52.212-4 permits the Government to terminate a contract for commercial products or commercial services either for the convenience of the Government or for cause.")
2 Under FAR 52.212-4(m), the Government may terminate "for cause in the event of any default by the Contractor, or if the Contractor fails to comply with any contract terms and conditions, or fails to provide the Government, upon request, with adequate assurances of future performance."
3 Under FAR 52.212-4(l), the Government may terminate "for its sole convenience."
4 U.S. War Dep't, Army Regulations No. 1179, at 241 (1863), available at Univ. of Mich. Library, Digital Collections, https://name.umdl.umich.edu/AGY4285.0001.001 (last visited Mar. 5, 2025).
5 *United States v. Speed*, 75 U.S. 77, 82.
6 *Id.*
7 *Id.*
8 Dent Act, ch. 94, 40 Stat. 1272 (1919), available at U.S. Dep't of Justice, https://www.justice.gov/jmd/ls/dent-act-1919-pl-65-322 (last visited Mar. 5, 2025).
9 *Id.* This Act also establishes both the principal that compensation for termination includes those "reasonable" and "necessary" (principles that remain in federal contracting today, see FAR Part 41, Contract Cost Principles and Procedures, *e.g.*, FAR 31.201-3) and that they not include prospective or lost profits from work or services not provided, where it provided.
> in no case shall any award . . . include prospective or possible profits on any part of the contract beyond the goods and supplies delivered to and accepted by the United States and a reasonable remuneration for expenditures and obligations or liabilities necessarily incurred in the performing or preparing to perform said contract or order . . . ."

10 Contract Settlement Act of 1944, ch. 358, 58 Stat. 649, 665 (codified as amended at 41 U.S.C.), available at GovInfo, https://www.govinfo.gov/content/pkg/USCODE-2009-title41/html/USCODE-2009-title41-chap2.htm (last visited Mar. 5, 2025).
11 The Act declared the policy of Congress was to, *inter alia*,
> assure . . . contractors . . . speedy and equitable final settlement of claims under terminated war contracts, and . . . uniformity among Government agencies in basic policies and administration with respect to such termination settlements and . . . to facilitate the efficient use of materials, manpower, and facilities for war and civilian purposes by providing . . . contractors . . . with notice of termination of their war contracts as far in advance of the cessation of work thereunder as is feasible and consistent with the national security . . . ."
> *Id.* § 101.

12 John Cibinic, Jr., Ralph C. Nash, Jr. & James F. Nagle, *Administration of Government Contracts* 1049–1104 (5th ed. 2016).
13 DAR 8-701-705.
14 FPR 1-8.700-2.
15 32 Fed. Reg. 9683 (1967).
16 *Torncello v. United States*, 681 F.2d 756 (Ct. Cl. 1982); *See also Salsbury Industries v. United States*, 905 F.2d 1518, *Krygoski Constr. Co. v. United States*, 94 F.3d 1537; *JKB Sols. & Servs., LLC v. United States*, 18 F.4th 704.
17 *Krygoski Constr. Co. v. United States*, 94 F.3d 1537; *See also Questar Builders, Inc. v. CB Flooring, LLC*, 410 Md. 241; *Capital Safety, Inc. v. State, Div. of Bldgs. and Const.*, 369 N.J. Super. 295; *Gulf Group Gen. Enters. Co. W.L.L. v. United States*, 114 Fed. Cl. 258.
18 *T&M Distribs., Inc. v. United States*, 185 F.3d 1279 (Fed. Cir. 1999); *See also 4N Int'l, Inc. v. Metro. Transit Auth.*, 56 S.W.3d 860; *Securiforce Int'l Am., LLC v. United States*, 879 F.3d 1354; *Gulf Group Gen. Enters. Co. W.L.L. v. United States*, 114 Fed. Cl. 258.
19 *Torncello v. United States*, 681 F.2d 756, 760-766 (Ct. Cl. 1982).
20 *Id.*
21 *Krygoski Constr. Co. v. United States,* 94 F.3d 1537, 1545 (Fed. Cir. 1996).
22 *Id.*
23 *Id.* at 1538.
24 See *T&M Distribs., Inc. v. United States*, 185 F.3d 1279 (Fed Cir. 1999).
25 *Torncello v. United States*, 681 F.2d 756 (Ct. Cl. 1982).
26 *Krygoski Constr. Co. v. United States*, 94 F.3d 1537 (Fed. Cir. 1996).
27 *T&M Distribs., Inc. v. United States*, 185 F.3d 1279 (Fed. Cir. 1999).
28 *John Reiner & Co. v. United States*, 325 F.2d 438 (Ct. Cl. 1963), cert. denied, 377 U.S. 931 (1964).
29 *Diversified Energy, Inc. v. TVA*, 223 F.3d 328 (6th Cir. 2000).
30 *Ulysses, Inc. v. United States*, 110 Fed. Cl. 618 (2013).
31 *United Techs. Corp.*, ASBCA 46880, 97-1 BCA ¶28,818.
32 See *Specialty Constr. Co.*,ASBCA 21132, 78-2 BCA ¶13,348 (waiver of right to terminate for default); *Electro-Magnetic Refinishers,Inc.*, GSBCA 5035, 79-1 BCA ¶13,697 (failure to follow procedures—no written cure notice); and *Sayers Custom Mowing*, ENGBCA 3950, 79-1 BCA ¶13,695 (contractor excusably delayed).
33 *Roged, Inc.*, ASBCA 20702, 76-2 BCA ¶12,018. *See also ITT Def. Comm's Div.*, ASBCA 11858, 70-2 BCA ¶8415.
34 *G.L. Christian & Assocs. v. United States*, 312 F.2d 418 (Ct. Cl. 1963).
35 Id. at 424.
36 Id.
37 Federal Acquisition Regulation, 48 C.F.R. pts. 1–53 (2024).
38 *See Establishing the Federal Acquisition Regulation*, 48 Fed. Reg. 42,102-01-A (Sept. 19, 1983).
39 FAR 49.105.
40 *J. Cooper & Assocs., Inc. v. United States*, 53 Fed. Cl. 8 (2002).
41 *BSG Constr. Servs., Inc.*, ENGBCA 6127, 95-1 BCA ¶27,520.
42 *See* Department of Defense Federal Acquisition Regulation Supplement, 48 C.F.R pts. 201-253 (2024).
43 *Id.*
44 *See* General Services Administration Acquisition Regulation, 48 C.F.R. pts. 501–570 (2024).
45 *Id.*

COUNSEL COMMENTARY



Price Risk Assessments: A New Protest Ground?

Government Accountability Office (GAO) rules that DFARS 252.204-7024 mandates a reasonable evaluation of "price risk" based on a comparison of offers and historical prices.

BY STEPHEN L. BACON

A price realism analysis considers whether an offeror's proposed price is too low. This evaluation technique is used when low prices may create a risk of poor performance or indicate that the offeror does not adequately understand the contract's requirements.

However, agencies are generally not required to conduct a price realism evaluation for fixed-price contracts. In fact, agencies are *prohibited* from performing a price realism analysis for fixed-price contracts unless the solicitation expressly states that this type of evaluation will be conducted.

This means that unless a solicitation specifically calls for a price realism analysis, an unsuccessful offeror typically cannot challenge an awardee's price for being too low. However, a pair of recent bid protest decisions suggest that an awardee's price can be challenged as being too low if the agency fails to consider "price risk" pursuant to Defense Federal Acquisition Regulation Supplement (DFARS) clause 252.204-7024.

As a matter of first impression, the Government Accountability Office (GAO) ruled that DFARS 252.204-7024 (7024 clause)requires agencies to perform a reasonable "price risk" analysis. That analysis resembles a price realism assessment and must include a comparison of the offerors' proposed prices to historical prices paid for similar work.

Contractors and acquisition personnel for the Department of Defense (DoD) should understand this relatively new solicitation clause, which has broad application to DoD procurements and potentially significant implications for contractor pricing strategies and agency proposal evaluations.

SPRS Price Risk Assessments

The Supplier Performance Risk System (SPRS) is a DoD enterprise application used by the DoD acquisition community to retrieve supplier and product performance information. In 2020, DoD proposed to amend the *DFARS* "to enhance the use of SPRS in the evaluation of a supplier's performance through the introduction of SPRS system-generated item, price and supplier risk assessments."[1]

The proposed rule was intended to require "contracting officers to use the

supplier risk assessments available in SPRS as a factor in determining responsibility at DFARS 209.105-1."[2] This includes assessments for item risk, supplier risk, and price risk.

To support price risk assessments, "SPRS collects historical pricing data from government sources and applies a common statistical method to calculate the average price paid for a product or services."[3] The price risk assessment considers whether "a proposed price is consistent with historical prices paid for that item and is depicted as high, low, or within range."[4]

In March 2023, DoD issued a final rule to amend the *DFARS*.[5] Most notably, the final rule created the new solicitation provision at DFARS 252.204-7024, Notice on the Use of Supplier Performance Risk System.

The clause provides that "[t]he contracting officer will consider SPRS risk assessments during the evaluation of quotations or offers received in response to this solicitation" and, specifically, "[p]rice risk will be considered in determining if a proposed price is consistent with historical prices paid for a product or service or otherwise creates a risk to the government."[6]

The 7024 clause is broadly applicable to DoD solicitations for supplies and services, including solicitations for commercial products and services, except for a limited number of supplies and services exempted by DoD Instruction 5000.79.[7] The final rule added a section to the *DFARS* procedures related to responsibility determinations to require contracting officers to consider SPRS risk assessments when determining responsibility.[8]

GAO Decisions

GAO recently interpreted the requirement to assess "price risk" under DFARS 252.204-7024 in two separate protests filed by SMS Data Products Group, Inc. (SMS) and MicroTechnologies LLC (MicroTech) involving the same solicitation.[9] The protests challenged the U.S. Air Force's decision to award a task order to Trace Systems, Inc. (Trace) for communications support services.

The protesters challenged various aspects of the evaluation, including the price evaluation. The solicitation called for the evaluation of professional compensation plans in accordance with FAR 52.222-46 and it incorporated DFARS 252.204-7024.

Trace Systems proposed a price of $121,396,298, which was significantly lower than MicroTech's price of $151,254,337 and SMS' price of $199,589,312. Both protesters alleged that the agency violated FAR 52.222-46 and DFARS 252.204-7024.

Professional Compensation Plan Evaluation

GAO first concluded that the agency failed to evaluate the offerors' professional compensation plans in a manner consistent with FAR 52.222-46. That clause requires agencies to compare the offeror's proposed compensation to the compensation paid to the incumbent contractor's professional employees.

COUNSEL COMMENTARY (CONT.)

If an offeror proposes compensation levels that are below the incumbent's rates, the agency must evaluate whether the offeror's proposed compensation is sufficient to "maintain program continuity, uninterrupted high-quality work, and availability of required competent professional service employees."[10] Rates that are "unrealistically low or not in reasonable relationship to the various job categories...may be viewed as evidence of failure to comprehend the complexity of the contract requirements."[11]

GAO determined that the agency deviated from these requirements. In evaluating proposals, the agency flagged direct labor rates if they were more than 8% lower than the incumbent rates to determine if there was a concern about realism.

But the agency failed to analyze the potential impact on program continuity, high-quality work, and availability of employees if they were paid rates up to 8% less than what the incumbent employees were being paid. The agency also failed to compare the offerors' proposed fringe benefits to the incumbent's fringe benefits. Thus, GAO sustained the protesters' challenge to the agency's evaluation under FAR 52.222-46.

Price Risk Analysis Under DFARS 252.204-7024

GAO also agreed with the protesters that the agency's evaluation did not comply with the requirement to assess "price risk" under DFARS 252.204-7024. Given that "this is a relatively new requirement, GAO requested the parties to brief the mechanics of the *DFARS* risk assessment for services."[12]

The agency explained that SPRS does not include the data needed for a price risk assessment for services contracts. Although services are included within the requirement to consider "price risk" under DFARS 252.204-7024, the agency maintained that relevant data points do not currently exist in SPRS for services.[13]

Due to the lack of a price risk assessment generated by SPRS, the agency relied on the evaluation of professional compensation under FAR 52.222-46 and its price evaluation of non-professional employee rates to comply with DFARS 252.204-7024. But GAO concluded that the agency could not rely on its unreasonable price evaluations to satisfy the requirements of DFARS 252.204-7024 and sustained the protest on that basis.

Price Realism Requirement or Responsibility Matter?

GAO's decisions could be interpreted as treating DFARS 252.204-7024 as the equivalent of a requirement for the agency to evaluate price realism. But a closer examination of the 7024 clause and its origins show that the issue is perhaps more complicated.

As noted above, the 7024 clause was introduced as a mechanism to support the contracting officer's risk evaluation when determining contractor responsibility.[14] In the absence of a price realism requirement, whether an offeror can perform at its proposed price is addressed as a matter of responsibility.[15]

Importantly, an agency's affirmative responsibility determination is generally *not* subject to challenge in a bid protest at GAO.[16] As a result, for fixed-price contracts, GAO will generally not review an allegation that an awardee should have been deemed not responsible for proposing a price that was too low unless the solicitation contains a requirement to evaluate price realism.[17]

In the protests filed by SMS and MicroTech, the solicitation required an assessment of realism under FAR 52.222-46 for professional employee compensation and a separate realism

For fixed-price contracts, GAO will generally not review an allegation that an awardee should have been deemed not responsible for proposing a price that was too low unless the solicitation contains a requirement to evaluate price realism.

analysis for non-professional employee labor rates. It is not clear how the "price risk" assessment requirement under the 7024 clause would be interpreted in a fixed-price procurement where the solicitation does not contain an express price realism requirement.

Conceivably, in the absence of an express price realism requirement, the "price risk" assessment under the 7024 clause could be viewed as only part of the requirement to determine that the awardee is a responsible contractor.

Conclusion

Whether the price risk assessment requirement under the 7024 clause functions as the equivalent of a price realism requirement or is merely part of the requirement to assess contractor responsibility has significant consequences. If the clause is treated as imposing a price realism-like requirement, there will likely be many more protests challenging awards based on allegedly unrealistic low pricing.

On the other hand, if the price risk assessment requirement under the 7024 clause is confined to responsibility determinations, its impact on bid protests could be more limited because GAO generally does not review affirmative responsibility determinations absent special circumstances.

This issue may be resolved in future protests if GAO and the U.S. Court of Federal Claims have the opportunity to address the requirements of the 7024 clause in the context of different solicitations. Contractors and agencies should carefully monitor these developments, as the interpretation of this requirement could continue to evolve and may have substantial impacts on DoD procurements. **CM**

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The views expressed in this article are those of the author and do not necessarily reflect the views of Rogers Joseph O'Donnell or its clients. This article is for general information purposes and is not intended to be and should not be construed as legal advice.

ENDNOTES

1 85 Fed. Reg. 53748 (Aug. 31, 2020).
2 Id. at 53748-49.
3 Id. at 53748.
4 Id.
5 88 Fed. Reg. 17336 (Mar. 22, 2023)
6 88 Fed. Reg. at 17340 (codifying DFARS 252.204-7024(c)(2)).
7 DFARS 204.7604. DoD Instruction 5000.79 exempts cryptologic special component information systems and classified cryptographic products, DoD military treatment facilities, medical or dental, and DoD healthcare practitioners who are involved in the delivery of healthcare services to eligible beneficiaries, and bulk petroleum products, natural gas, and coal.
8 DFARS 209.105-1(2)(iii).
9 See SMS Data Products Group, Inc., B-423197.4, Mar. 4, 2025, 2025 CPD ¶ 64; MicroTechnologies LLC, B-423197.2, et al., Mar. 4, 2025, 2025 CPD ¶ 55.
10 FAR 52.222-46(b).
11 FAR 52.222-46(c).
12 MicroTechnologies, 2025 CPD ¶ 55 at 11.
13 Id.
14 88 Fed. Reg. 17336.
15 See, e.g., JCMCS, B-409407, Apr. 8, 2014, 2014 CPD ¶ 125.
16 4 C.F.R. § 21.5(c).
17 See, e.g, VetPride Services, Inc., B-419622, Jun. 7, 2021, 2021 CPD ¶ 226 at 5, n.5.

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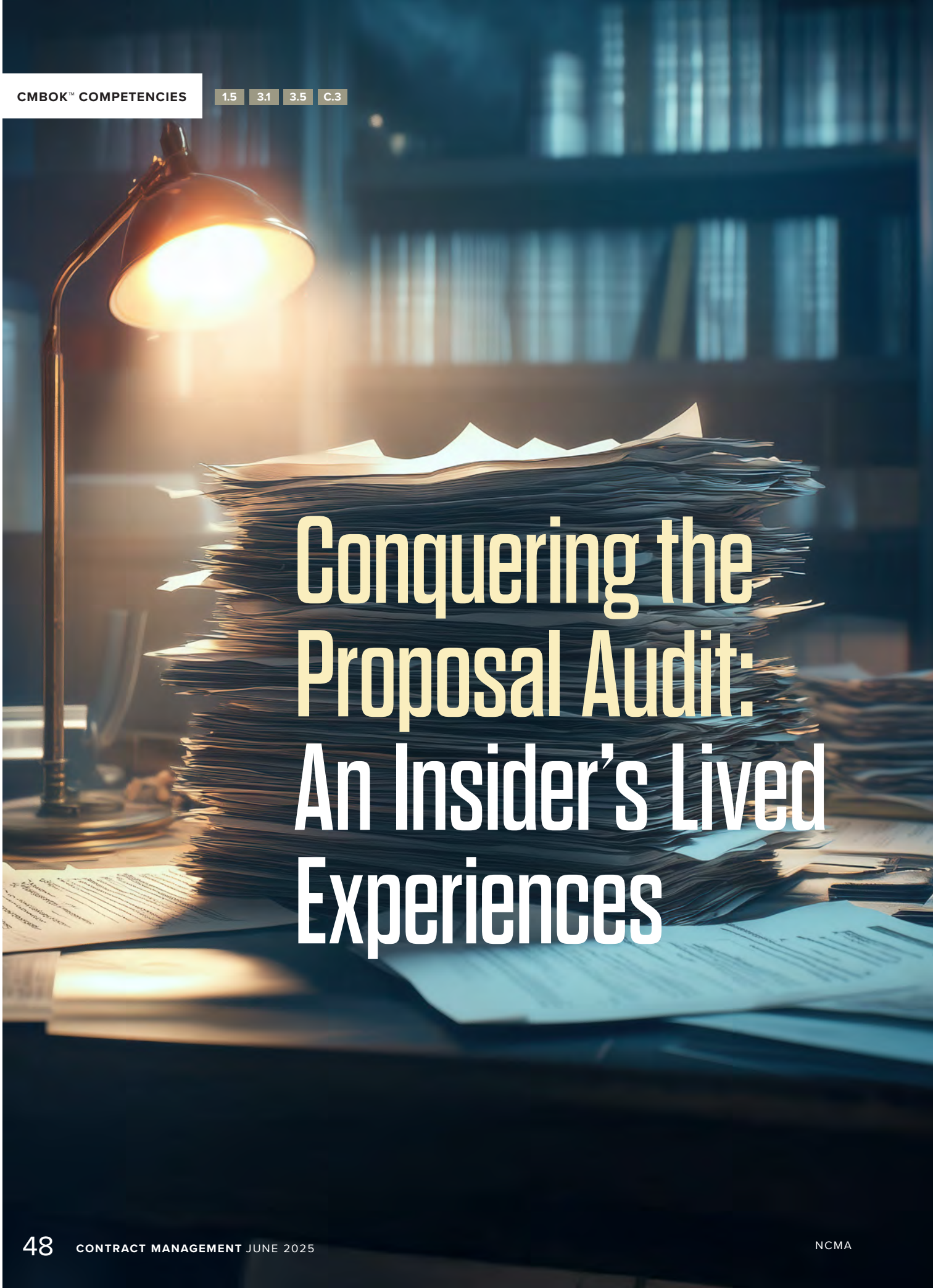
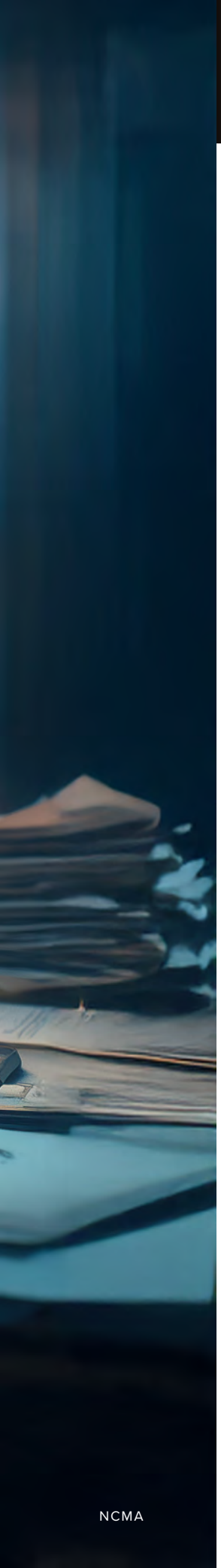


Conquering the Proposal Audit: An Insider's Lived Experiences



No one wants to be audited, but the proposal audit is an important piece to the accountability puzzle within the federal acquisition space. Being partners in the proposal process with acquisition officers and their delegates, including auditors, is a key part of making this strategy successful.

By Jeff Shapiro, CPA

The expectations around federal contractor cost efficiency, compliance, and effectiveness have become seemingly higher than ever. This article will draw from my over 20-year career conducting a wide variety of federal contract audits within the government and as an independent public accountant.

It will discuss the importance of contractor preparedness for proposal audits and how acquisition officers utilize those audits throughout the federal government to negotiate fair and reasonable prices.

What Is an Audit?

The term "audit" has a long history of having a negative connotation. People rarely look forward to their next audit. However, independent assessments against agreed-upon criteria, whether financial, regulatory, or another metric, are critical to achieving proper accountability.

This is particularly true when programs involve taxpayer dollars. The proposal audit is just one tool within the toolbox that acquisition officials have to help ensure their federal agency is paying a fair and reasonable price for the goods and/or services they are buying.

Proposal Audits: An Origin Story

The *Federal Acquisition Regulation* (*FAR*) contains the procedures that executive branch acquisition officials must follow when purchasing goods and services. The Truthful Cost or Pricing Data Act (formerly known as the Truth in Negotiations Act[1]) requires federal contractors to submit current, accurate, and complete cost information for most non-competitive procurements to allow both sides of the negotiation to have

access to the same level of information.

The *FAR* references this statutory requirement within FAR 15.403-4 and FAR 15.404-1(a)(5), which encourages contracting officers to utilize specialists as necessary to conduct proposal analyses to arrive at fair and reasonable prices. Cost and pricing analysts sometimes work side-by-side with acquisition officials to perform this work.

However, the more complex, larger-dollar proposals are audited by professionals who specialize in reviewing proposal costs. In the U.S. Department of Defense (DoD), this more complex work is generally conducted by the Defense Contract Audit Agency (DCAA), and the less complex work is done within the Defense Contract Management Agency (DCMA) by its cost and pricing analysts.

Outside DoD, contracting officers may request assistance from their own cost/price analysts, DCAA, other federal audit components, or independent public accounting firms to conduct these critical audits and analyses.

You may ask, "How do I know if my proposal has been selected for audit?"

If your proposal includes a certificate of current cost or pricing data, that will increase the chances of an audit. If your proposal is chosen for audit, you will receive a notification from the auditors. Sometimes, contracting officers will give you a heads-up that the audit is coming, but it is not a requirement to do so.

Ready Or Not, Here They Come

When a federal contractor receives its proposal audit notification, it may already be too late for the contractor to have prepared itself for the audit. Readiness begins upon the earliest steps of the cost volume preparation within the contractor's estimating system. Before you start worrying about not having a *Defense Federal Acquisition Regulation Supplement* (*DFARS*) approved estimating system,[2] be aware that I am merely talking about the people, process, and technology involved in developing cost estimates for federal requirements.

As the old adage in federal contracting goes, "Document! Document! Document!"

Having well-trained people working on your firm's estimating policies and procedures while using secure, well-designed software (yes, Microsoft Excel is acceptable) will help ensure audit success. It will also help develop pricing aligned to your strategic objectives.

Ultimately, one of the key outputs of this system for each proposal volume will be Table 15-2, as required by FAR 15.403-5(b)(1) when certified cost or pricing data are necessary. Note that this clause allows the contracting officer to permit the use of alternative formats, but in my experience, most contractors opt to use Table 15-2.

Even though the Table 15-2 requirements under FAR 15.408 are straightforward, many times as an auditor I have found cost volumes that fall short of these requirements, causing the procuring contracting officer to reject the cost volume.

To oversimplify these requirements, the "Cost Elements" section of Table 15-2 for new contracts, modifications, change orders, and claims instructs the following to be included in all negotiated procurements:

- A breakdown of each major cost element by contractor fiscal year to include unit costs
- For change orders, modifications and claims, they must show the cost of added work, estimated cost of all work deleted, the cost of deleted work already performed, and the net impact
- An explanation of how each cost element was estimated by the contractor

A well-written, well-reasoned, and well-supported (more on this later) cost volume is often a key component of the antidote to avoiding proposal audit suggested adjustments. As the old adage in federal contracting goes, "Document! Document! Document!" This is as applicable to putting together cost volumes as anything in the federal contract compliance world.

Understand the Auditors

Auditors should be as committed to the mission as you are, and like you, they want to ensure the taxpayers are getting the maximum benefit from the money being spent. You first need to understand the rules of engagement during an audit.

Federal contract auditors are bound by the Generally Accepted Government Auditing Standards (GAGAS), also known as the Yellow Book.[3] These standards were developed and continue to be maintained by a broad group of federal, state and local government audit experts. These standards serve as guideposts for all audits related to governmental activities and must be followed by all federal proposal auditors.

GAGAS dictates high-level requirements for all audit aspects, including understanding the subject matter,[4] assessing fraud,[5] developing and communicating findings,[6] and the right to a formal auditee response.[7]

The requirements above are the actual rules of an audit as compared to the DCAA Contract Audit Manual (CAM), which is an agency guidebook used by DCAA auditors and referenced by many other federal contract/proposal auditors to aid in conducting efficient audits. I have heard many instances of DCAA auditors citing the CAM as if it were regulatory criteria for contractors to follow. This is improper in conducting an audit. To submit a compliant proposal, contractors must follow the criteria that relate to the contract, including:

- Solicitation language, including the request for proposal (RFP) or request for quotation (RFQ)
- The contract itself
- Referenced law and regulations, including the *FAR*, agency *FAR* supplements and Cost Accounting Standards (CAS)

The CAM remains a valuable resource for contractors and should not be overlooked. Given that it is part of the auditors' proposal playbook, it is essential to review the sections of the CAM related to proposal audits, particularly Chapter 9, Audit of Cost Estimates and Price Proposals, to gain a better

TABLE 1. Cost Elemental Breakdown: Example of FAR Table 15-2

		FY 2025		FY 2026		Total
Material	**BOM**					
	Assembly		3,338,916		3,449,462	6,788,378
	Fabrication		2,202,743		2,268,754	4,471,497
	Total Material		5,541,659		5,718,216	11,259,875
Labor	**Radome Grinding**					
	Grinding	$34.68	1,126,406	$35.47	1,152,066	2,278,472
	Grinding Yeild/Scrap	$34.68	199,535	$35.47	204,080	403,615
			1,325,941		1,356,146	2,682,087
	PAC 3 Assembly					
	Assembly	$26.05	200,585	$26.65	205,205	405,790
	Assembly Yield	$26.05	1,146	$26.65	1,173	2,319
	Grinding	$34.68	126,235	$35.47	129,111	255,346
	Grinding Yeild/Scrap	$34.68	13,886	$35.47	14,202	28,088
			341,852		349,691	691,543
	PAC 3 Fabrication					
	Fabrication Tech	$24.37	377,004	$24.92	385,512	762,516
	Fabrication Tech Yield	$24.37	142,723	$24.92	145,944	288,667
			519,727		531,456	1,051,183
	Total Labor		2,187,520		2,237,293	4,424,813

understanding of what to expect during a proposal audit.

Another critical tool for building the armor around a cost proposal is to understand the auditor's audit program. The benchmark audit programs for proposal audits can be found on the DCAA website.[8] Depending on your situation, the specific audit programs you want to pay the most attention to are:

- 21000 Audit Program for Price Proposal
- 23000 Audit Program for Audit of Forward Pricing Rate Proposals
- 23000 University Indirect Cost Allocation F&A Rate Proposal
- 23300 Audit Program for Restructuring Proposal

These audit programs are educational and contain cross-references to relevant audit best practices within the CAM and regulations. Reviewing audit steps along with the CAM is as close to viewing a crystal ball as you can get in terms of what questions you should expect to answer during a proposal audit.

Interacting With Auditors

As stated earlier, the auditors and contractors have similar mission objectives. Therefore, it is in your best interest to be courteous and respectful throughout the audit. As a friendly reminder, you, as a contractor, signed up for this (look for FAR 52.215-2 Audits and Records – Negotiation in your contract). Here are some tips to make the proposal audit go as expediently as possible so you can move to final negotiations sooner rather than later:

1. Pause, cooperate, and listen

Take your time to understand the scope of the audit. When a federal auditor knocks on your door to conduct an audit, they must disclose the audit's objectives in accordance with the GAGAS requirements I discussed earlier. As they ask questions, you have the right to ask why they are asking them. You know your business much better than any auditor. Help the auditor achieve their audit objective. Pick your battles carefully. Reframe questions such as, "Why does that subject matter expert have a labor rate of $XX? That's outrageous!," to, "Are you asking us to provide support for the reasonableness of the fee of the subject matter expert? I can provide a current pay statement and a recent salary survey of those in our industry. What would work best for your review?"

Reframe questions such as, "Why does that subject matter expert have a labor rate of $XX? That's outrageous!," to, "Are you asking us to provide support for the reasonableness of the fee of the subject matter expert? I can provide a current pay statement and a recent salary survey of those in our industry. What would work best for your review?"

2. Just the facts

As with any audit, do not provide more information than what a question requires. When you think you are going "above and beyond" with stories related to how you arrived at a specific estimate, you may be inviting an additional line of questioning that is not necessary. Be direct in your responses and assist the auditor in achieving their audit objectives. When asked for documented support, provide it to the auditor and keep track of what has been submitted. The best auditors maintain shared lists of requests for support with the auditee to ensure everyone is on the same page. Version control of documents is key in this process. If you accidentally provide an auditor with an outdated version of a vendor quote that is lower than the current version, you may be subject to an audit adjustment that you won't like and may not even be aware of. This is where having a consistent estimating file structure across the whole organization comes in handy.

3. Nothing to hide

Related to the previous section, I highly recommend being as transparent as possible with the auditors. While you do not need to disclose to the auditors a subcontract negotiation that went awry, you should inform them about the negotiation process that included an in-depth cost or price analysis and present the accompanying documentation. If that documentation somehow went missing, talk the auditors through the typical

process, get relevant emails from your subcontract officers, and even go to the subcontractor, if necessary, to get more evidence that you worked through your process to get the best pricing possible. Almost all cost estimates do not come out of thin air, so show the auditors how you arrived at them, even if it ultimately resulted in something that deviated from your policies and procedures. If you can successfully defend your costs, even if you are advised to update your policies and procedures, consider that a win.

The Endgame

You will likely know the audit is nearing its end when you receive less frequent questions and the auditors have repeated several questions in different ways. This latter statement typically indicates that the auditors are considering whether to report a finding related to those repeat questions, which could involve a questioned cost or an internal control deficiency.

Generally, auditors will not reveal the exact questioned cost amounts they plan to report. This can be seen as compromising the government's negotiation position. However, if the questioned costs relate to mathematical or reconciliation issues within the proposal, it behooves the auditor to point these out to the contractor so that similar errors do not continue in future cost proposals. Besides mathematical errors, here are some other common proposal audit findings my team and I have encountered:

1. **Labor rates not representative of cost to be incurred**

   There are several types of issues we see in this category. If labor costs are significant to the proposal, expect the auditors to conduct a thorough review of how the labor category rates were developed. If the amounts paid to personnel within the proposed labor categories are materially different from what was proposed or if the auditors determine an overly broad labor category (i.e., SME engineers are mixed in with junior engineers to create an engineer labor category rate) was used to drive up the rate used, expect them to suggest an adjustment.

2. **Learning curves not considered**

   More than ever, the government is

expecting higher levels of efficiency in manufacturing environments (and one could argue in the services industry as well). It is essential to recognize that most auditors are not rocket scientists, aerospace engineers, plumbers, or information technology architects. The contracting officer will have other representatives, likely from their program office, scrutinizing the technical aspects of the proposal. However, the auditors will still go as far as they can to understand what, if any, parametric estimating methods were employed within both direct inputs on the proposed project and within the indirect rates, as applicable. If they believe insufficient consideration was given to efficiency development, they may do their own regression analyses and suggest an applicable adjustment.

3. Reasonableness of certain costs

The cost evaluation area with the most subjectivity is that of reasonableness. Whether the auditor believes certain individuals are paid too much, the cost of proposed relocation is too high, or the subcontractor costs appear to be excessive, auditors have considerable discretion in determining what they deem unreasonable. To help avoid these findings, contractors should be able to provide evidence of their own reasonableness assessments, whether they are salary surveys, the latest travel agency/website quotes, the most recent project incurred cost data, or subcontract cost/price analyses.

Faceoff: An Opportunity to Respond

Once the audit is complete, contractors should have the opportunity to formally respond to any identified estimating system control deficiencies before the report is finalized. Sometimes, these deficiencies should be seen as opportunities to improve, and contractors should accede to these findings. Other times, contractors may want to push back when they feel their processes have been misunderstood or mischaracterized. A formal response – complete with supporting evidence – is a last-chance effort for contractors to change the auditors' minds on an issue. Consider this response to be like an opening argument with the contracting officer, should the finding be included in the final report.

The auditors will incorporate any formal response into their report, as required by GAGAS,[9] and submit it to the contracting officer. Soon it will be time to negotiate the final price with the contracting officer. They may or may not share any/all results from the audit report. During negotiations, remember not to demean the auditors, as you may see them again (and possibly on the negotiation call). Be ready for potential trade-offs related to price (i.e., take a haircut for this project but not on another one); also be ready to fight another day if the issues are immaterial to your bottom line.

Creating a Partnership

The proposal audit is an important piece to the accountability puzzle within the federal acquisition space. Most federal contractors want to serve their clientele for the long run, continue to serve the mission and make it as profitable as they can.

Being partners in the proposal process with acquisition officers and their delegates, including auditors, from start to finish is a key part of making this strategy successful. Understanding the proposal audit process well in advance of its commencement furthers this strategy and is crucial for expedited negotiations. Are you ready for that audit now? **CM**

Jeffrey L. Shapiro, CPA, is a partner with CohnReznick LLP and a member of the Government Contracting Industry practice in CohnReznick Advisory LLC. CohnReznick LLP, a licensed CPA firm, provides attest services and CohnReznick Advisory LLC, not a licensed CPA firm, provides tax and business consulting services. He began his career in 1999. Shapiro provides an extensive range of services for government contractors including regulatory audit, federal government contractor compliance, indirect cost rate structuring, proposal pricing, and final incurred cost proposal compliance. Through his prior experience as a senior-level contract auditor and contracting officer's technical representative for a federal agency, and as a chief financial officer of a small federal government information technology contractor, Shapiro acquired working knowledge of *FAR*/contract compliance, allocability and allowability issues, disclosure statement requirements, and DCAA audits. He currently works on behalf of several government agencies to conduct a variety of pre-award and post-award contract audits, including business systems reviews, incurred cost audits, and support for competitive source selection procurements. He also advises government contractors on creating and enhancing internal controls related to business systems, and preparing for incurred costs and other government (DCAA/DCMA) audits.

ENDNOTES

1 10 U.S.C. chapter 271 and 41 U.S.C. chapter 35
2 DFARS 252.215-7002 Cost Estimating System Requirements
3 https://www.gao.gov/yellowbook
4 GAO, Government Auditing Standards (Yellow Book), 2024, paragraph 8.08
5 GAO, Government Auditing Standards (Yellow Book), 2024, paragraph 8.71
6 GAO, Government Auditing Standards (Yellow Book), 2024, paragraphs 8.116 and 9.18
7 GAO, Government Auditing Standards (Yellow Book), 2024, paragraph 9.50
8 https://www.dcaa.mil/Guidance/Directory-of-Audit-Programs/
9 GAO, Government Auditing Standards (Yellow Book), 2024, paragraph 9.51

FUNDAMENTALS OF CONTRACT MANAGEMENT

Simplified Acquisition Procedures (FAR Part 13)

BY JIM KIRLIN, CPCM, CFCM, NCMA FELLOW

FAR Part 13 Simplified Acquisition Procedures provides a method for purchasing lower-dollar items in a timely and cost-effective manner. It prescribes policies and procedures for acquiring supplies and services, including construction, research and development, commercial products, and commercial services, the aggregate amount of which does not exceed the simplified acquisition threshold. The chart below summarizes the key policies and procedures of this part.

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Simplified Acquisition Procedures (SAP) - (FAR Part 13)	
Purpose (13.002)	The purpose of this part is to prescribe simplified acquisition procedures in order to: (a) Reduce administrative costs; (b) Improve opportunities for small, small disadvantaged, women-owned, veteran-owned, HUBZone, and service-disabled veteran-owned small business concerns to obtain a fair proportion of Government contracts; (c) Promote efficiency and economy in contracting; and (d) Avoid unnecessary burdens for agencies and contractors.
Policy (13.003)	(a) Agencies shall use simplified acquisition procedures to the maximum extent practicable for all purchases of supplies or services not exceeding the simplified acquisition threshold (including purchases at or below the micro-purchase threshold). This policy does not apply if an agency can meet its requirement using: (1) Required sources of supply under part 8 (e.g., Federal Prison Industries, Committee for Purchase from People Who are Blind or Severely Disabled, and Federal Supply Schedule contracts); (2) Existing indefinite delivery/indefinite quantity contracts; or (3) Other established contracts. (b)(1) Acquisitions of supplies or services that have an anticipated dollar value above the micro-purchase threshold, but at or below the simplified acquisition threshold, shall be set aside for small business concerns (see 19.000, 19.203, and subpart 19.5).
Promoting Competition (13.104)	The contracting officer must promote competition to the maximum extent practicable to obtain supplies and services from the source whose offer is the most advantageous to the government, considering the administrative cost of the purchase.
Synopsis and Posting Requirements (13.105(a))	The contracting officer must comply with the public display and synopsis requirements of 5.101 and 5.203 unless an exception in 5.202 applies.
Evaluation Procedures (13.106-2(b)(1))	The contracting officer has broad discretion in fashioning suitable evaluation procedures. The procedures prescribed in parts 14 and 15 are not mandatory. At the contracting officer's discretion, one or more, but not necessarily all, of the evaluation procedures in part 14 or 15 may be used.
Basis of Award (13.106-3(a))	Before making award, the contracting officer must determine that the proposed price is fair and reasonable.
Procedures	Actions at or Below the Micro-Purchase Threshold (13.2)
	Simplified Acquisition Methods (13.3)
	Simplified Procedures for Certain Commercial Products and Commercial Services (13.5)