

**U.S. DEPARTMENT OF ENERGY
OFFICE OF PROCUREMENT AND ASSISTANCE MANAGEMENT
OFFICE OF PROCUREMENT AND ASSISTANCE POLICY (MA-61)**

**MANAGEMENT OF CONTRACT/FINANCIAL ASSISTANCE AUDIT SUPPORT FOR
AMERICAN RECOVERY AND REINVESTMENT ACT ACTIONS (JULY 23, 2009)**

Obtaining field pricing and audit support has been identified as a critical path activity for our Recovery Act contract and financial assistance awards and modifications. In order to meet the aggressive schedule commitments for placing contracts and financial assistance awards, we need to manage the audit process more effectively through increased management attention both at the field contracting office and Headquarters level. The guidance and direction provided herein is written primarily to cover audit support from the Defense Contract Audit Agency (DCAA). It should be applied, as needed and appropriate in cases where audit cognizance is with an agency other than DCAA.

1. To that end, field Procurement Directors are to implement the following process improvements immediately:

A. Requests to the cognizant DCAA Field Audit Office, for a contract/financial assistance application audit will identify the action as a Department of Energy American Recovery and Reinvestment Act action and include the following language in the body of the letter request:

The subject audit request is for the award of a [contract/financial assistance instrument] in support of the Department of Energy's (DOE) American Recovery and Reinvestment Act (ARRA) programs. The award of contracts and financial assistance instruments in support of the ARRA is a National and DOE priority. Accordingly, DOE has a critical need to expedite audits needed to execute the contract and financial assistance awards. Therefore, we ask that this audit request be afforded priority treatment.

In addition, we ask that the Field Audit Office (FAO)/Auditor(s) establish a direct communication channel to the DOE point of contact identified herein relative to delays, barriers, and problems caused by the contractor, such as an inadequate proposal, inadequate or insufficient support of costs proposed, accounting system deficiencies, and inability to contact the authorized contractor representative. This approach will facilitate audit resolution and closure. The DOE point of contact for this action is: [insert name, title, telephone number, and email address].

B. Prior to, or contemporaneously with, initiation of the formal written audit request, the Procurement Director shall contact the DCAA Field Audit Office manager to inform the manager that the audit request is being submitted, identify the action as a DOE Recovery Act priority, obtain a schedule commitment, and discuss the audit scope needs (including the estimated hours and total cost of the audit). The Procurement Director shall also discuss any special information for the audit including any unique aspects of the application/proposal, identify the DOE point of contact, and establish a communication channel so that issues, problems, and findings can be discussed in real time.

2. In order to facilitate the audit work and ensure that the offeror/contractor/applicant's cost proposal/budget is adequate and complete for purposes of the audit, contracting officers shall review the cost proposal/budget using the attached DCAA-developed "Criteria for Adequate Contract Pricing Proposals" guidance, as amended by DOE. Deficiencies identified through this review shall be addressed and resolved, to the extent practical, prior to submitting the audit request to DCAA. If the deficiencies cannot be resolved, DCAA should be informed of such deficiencies and a mutually agreeable approach to resolution should be obtained.

3. Solicitations (e.g., Requests for Proposals and Funding Opportunity Announcements) and contract change orders requiring the submission of cost or pricing data shall include the attached DCAA "Criteria for Adequate Contract Pricing Proposals" guidance, as amended by DOE. A copy of this guidance will also be made available in the STRIPES Library. A solicitation provision/instruction substantially the same as follows shall be included in the solicitation.

ADEQUACY OF COST PROPOSAL OR APPLICATION BUDGET
SUBMISSION FOR AUDIT

The work contemplated under an award made pursuant to this solicitation is in support of the Department of Energy's American Recovery and Reinvestment Act programs and represents a Departmental priority. In order to facilitate timely and efficient evaluation of proposals, there is a need to ensure that the offeror's/applicant's/contractor's initial cost proposal/budget is adequate and complete for purposes of performing the pre-award audit. Accordingly, the offeror/applicant/contractor and major proposed subcontractors are strongly encouraged to review their cost proposals/budgets using the Defense Contract Audit Agency "Criteria for Adequate Contract Pricing Proposals" guidance (Section ____, Attachment ____) prior to submitting their cost proposals/budgets in order to facilitate the audit of its cost proposal/budget.

[END OF PROVISION]

4. Field contracting offices shall provide timely information to the Office of Procurement and Assistance Policy (POC: Helen Oxberger (MA-611), [202-287-1332](tel:202-287-1332) or Helen.oxberger@hq.doe.gov) so that pertinent information can be provided to DOE's DCAA Headquarters Point of Contact. The information to be provided is as follows:

1. DOE Contract Office/Point of Contact:
2. Solicitation/Funding Opportunity Announcement/Contract No:
3. Program Description (e.g., Smart Grid):
4. Proposing Entity:
5. Projected Award Date:
6. Date of Audit Request:
7. Date of Audit Report Due:
8. Type of Audit Request:
9. Cognizant DCAA FAO:
10. Agreed to audit hours and total cost (optional)
11. FCID ID number for DCAA billing (optional)
12. Comments:

An Excel spreadsheet template will be provided under separate distribution.

5. To ensure the expeditious disposition of DCAA audit findings in cases where data is or may not be available to DCAA to perform a detailed audit of rates, contracting officers should consider negotiating a “reopener” clause to be incorporated into the contract or financial assistance instrument as a special clause/provision so as not to delay award of the Recovery Act actions.

A. The following is an example that may be used for contract awards:

REOPENER CLAUSE - PENDING INDIRECT RATES PROPOSAL

(a) At the time the price for this contract was established, agreement could not be reached on indirect expense rates due to [Note 1] . However, agreement was reached that [Note 2] of the contract price (including fee) is subject to adjustment in accordance with the provisions of this clause.

(b) Within 30 days from [Note 3], the Contractor shall submit an indirect cost rate proposal to the cognizant Contracting Officer. The Contractor shall also submit a supplemental proposal to the Contracting Officer for purposes of adjusting the contract price and option price, whether or not such option has been exercised. The supplemental proposal shall (1) use the methodology, direct costs, and profit/fee indicated in paragraph (a), (2) be supported by cost or pricing data (FAR 15.403-3), and a Certificate of Current Cost or Pricing Data (where required - FAR 15.406-2), and (3) include the effects of accounting system changes and contract modifications which may impact the amount of the adjustment. In no event will an adjustment result in a finalized contract price which exceeds \$_____.

(c) If determined necessary by the Contracting Officer, the Contractor agrees to commence negotiations concerning the amount of the adjustment within 30 days after receipt of the supplemental proposal by the Government.

(d) Should the Contractor fail to submit the information in paragraph (b), or should there be no agreement as to the amount of the price adjustment contemplated by this clause, then the Contracting Officer may make a unilateral determination and modify the contract accordingly. Failure to agree with such change in the contract price shall be resolved in accordance with the Disputes clause of this contract.

(e) The Contractor warrants that the contract price does not include any other allowance for the indirect rate contingency except as shown above.

(f) Should information after award indicate the amount developed in paragraph (a) may vary significantly from the finalized price, the contract price shall be adjusted downward or upward, subject to the ceiling in paragraph (b), through negotiation.

[END OF CLAUSE]

Note 1: Enter a description of why the reopener clause was included in the contract, such as:

(1) Delay in the Contractor's submission of its revised forward pricing rate proposal for fiscal year 200_;

(2) Delay in agreement on rates for this contract, which represents a substantial portion of the Contractor's business base for fiscal year 200_;

(3) Delay in completion of the mandatory IR&D/B&P advance agreement with the Contractor or agreement on the Contractor's corporate allocation for fiscal year 200_, and a determination of its impact on projected indirect expense rates; or,

(4) The absence of agreement on the impact on projected indirect expense results of a pending review of the Contractor's corporate allocation for fiscal year 200_.

(5) Incomplete or inadequate information provided to the Contracting Officer and/or cognizant auditor by the Contractor.

Note 2: Enter the total dollar value subject to downward adjustment. This amount should be reached through discussion and agreement with the Contractor on how this amount was calculated. It is suggested a schedule of calculations as exemplified below be prepared, signed by both parties, and included as an attachment to the price negotiation memorandum. Absent such agreement, calculations supporting the Contracting Officer's interpretation of negotiations should be incorporated. Since such information may be considered confidential by the Contractor, the details should not be incorporated into a reopener clause or otherwise included in the contract:

FY 200_ FY 200_

Indirect Expense Rate Calculations:

Materials Overhead Pool (a) \$ _____ \$ _____

Materials Base (b) _____

Materials Overhead % _____

Labor Overhead Pool (c) _____

Direct Labor Hours Base (d) _____

Labor Overhead % _____

Other Direct Costs (e) _____

G & A Expenses Pool _____

Total Cost Input Base (a+b+c+d+e) _____

G&A Expenses % _____

Contract Price Calculations (CLIN):

FY 200_ FY 200_

Direct Materials \$ _____ \$ _____

Other Direct Costs _____

Material Overhead (% / %) _____

Direct Labor Hours (hrs / hrs) _____

Direct Labor Costs _____

Labor Overhead (% / % of D.L. Cost) _____

Subtotals \$ _____ \$ _____

G & A (% / %) _____

Subtotals \$ _____ \$ _____

Profit (% / %) _____
Cost of Money - Material (% / %) _____
Cost of Money - G & A (% / %) _____
Subtotals \$ _____ \$ _____
(each contractor FY)
Total Price \$ _____

Note 3: Insert an appropriate description of the date for determining when submission of the reopener proposal is required, such as (1) contract award or (2) establishment of the revised forward pricing rate agreement.

B. The following is an example that may be used for Financial Assistance awards:

REOPENER TERM - PENDING INDIRECT RATES - FINANCIAL ASSISTANCE

- (a) At the time the total budget cost for this award was established, agreement could not be reached on indirect rates. However, agreement was reached on a total estimated budget cost that includes a dollar amount for indirect costs and this amount is subject to adjustment in accordance with the provisions of this term and other administrative provisions of the award.
- (b) Within XX days from XXXX, you shall submit an indirect rate proposal to the contracting officer and cognizant auditor for determination of a provisional billing rate.
- (c) If the approved provisional billing rates result in amounts for indirect costs that are substantially lower the amount budgeted, you agree to commence negotiations to revise the budget and the total estimated cost for this award.
- (d) Should you fail to submit the information in paragraph (b), or should there be no agreement as to the amount of the adjustment contemplated by this term, then the Contracting Officer may make a unilateral determination and modify the award accordingly.