



San Diego Chapters
Present



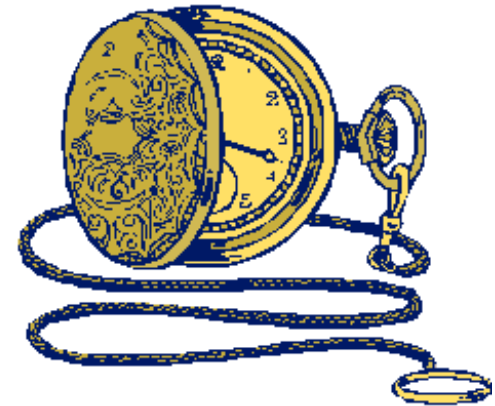
DCAA Audit R⁴ — Rights to Records, Requirements & Remedies

A Seminar with Panel Discussion and
Audience Participation

February 18, 2009

This Morning's Agenda

- 8:30 Introduction
- 8:45 Rights to Records
- 9:55 Break
- 10:05 Requirements & Remedies
- 11:30 Wrap up
 - Recognition of panelists
 - Evaluation forms
 - Upcoming events
 - Recognitions



Introductions

- Maurice Caskey, Moderator
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Industry Panel Member

- **Sloane Rosenbaum, Contracts & Accounting, AUSGAR Technologies, Inc.**
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Government Panel Members

- **Michael Morgan**, CPA, Navy Contract Specialist (formerly DCAA Supervisor)
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- **Keith Palmer**, CACO, DCMA
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Consultant Panel Members

- **Trish Carlin, CPA, Carlin Consulting Group**
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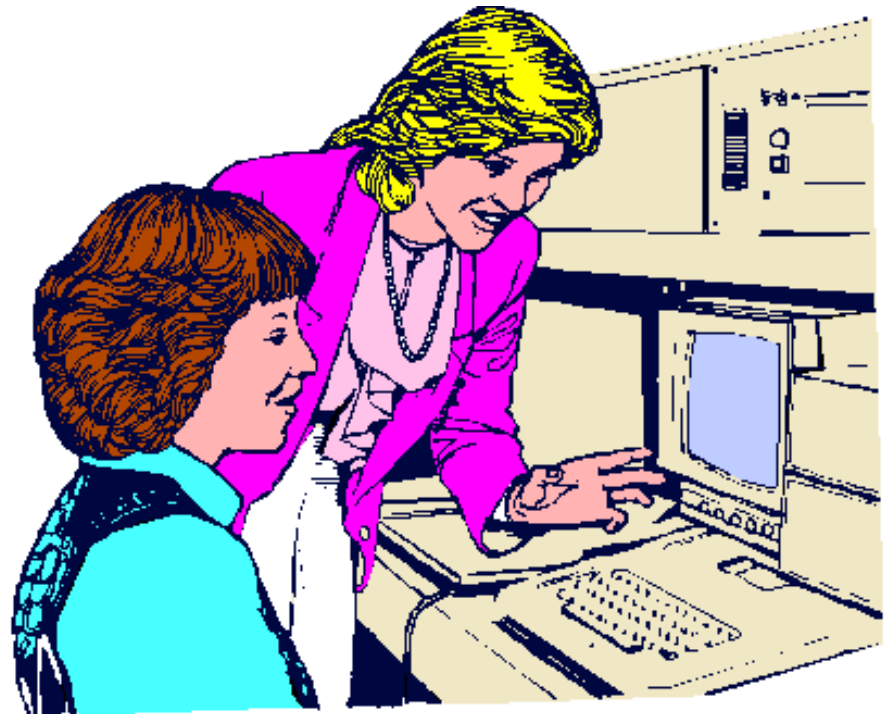
Government's Rights to Records

Basic questions:

How are the Government's rights to records invoked in a contract?

What types of DCAA audits are there?

How does the contracting officer get involved?



Contractual Rights to Records

- CO designates audits to conduct
 - Provisions included in contract
 - Demand audit requests
- Pre-award
- Post-award
- Post-performance



Conduct of Audits

Basic questions:

What can a contractor do to be prepared for an audit?

What does the contractor do in an audit?

What does DCAA do during audits?

What happens when the audit is done?



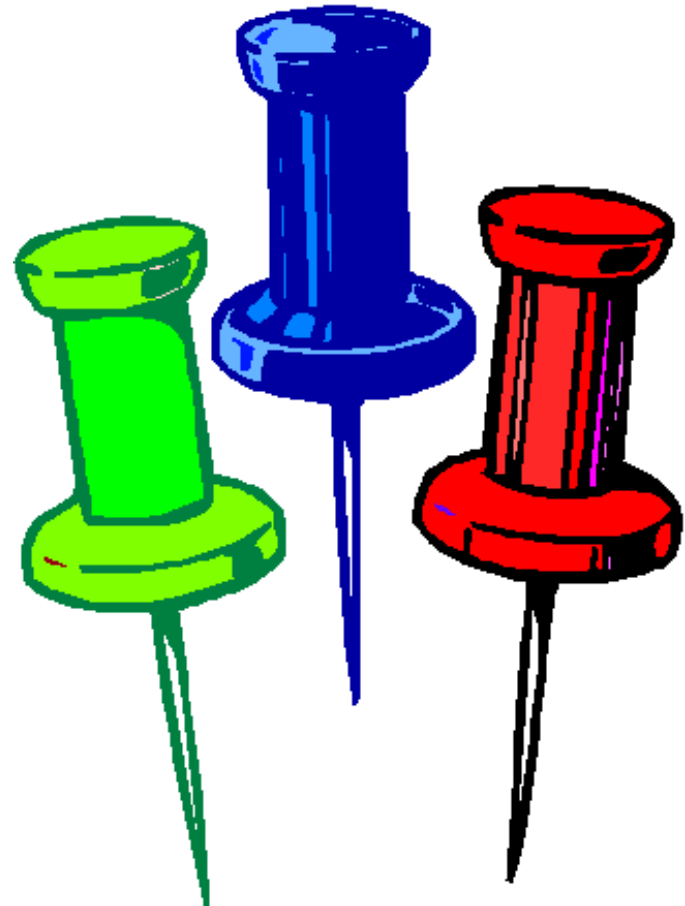
Conducting Audits

- Contractor preparation for an audit
- Contractor–DCAA interaction during audit
- Post-audit actions
 - DCAA audit report
 - Contractor remedies



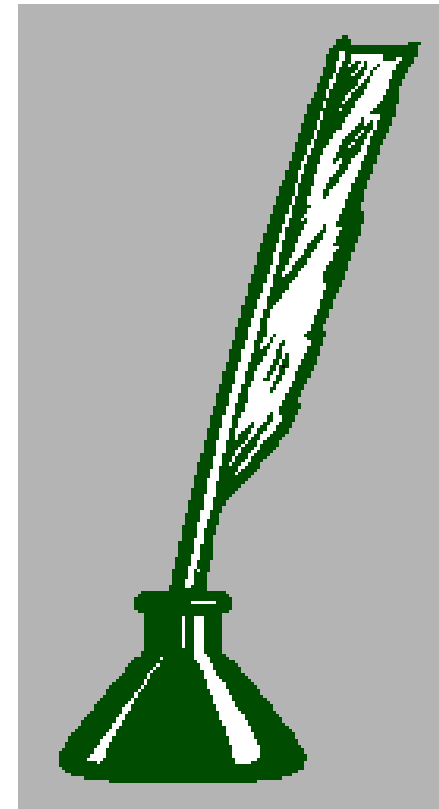
FAR Part 15 and Record Requirements

- FAR 52.215-2
- FAR 52.215-10
- FAR 52.215-11
- FAR 52.215-12
- FAR 52.215-13
- FAR 52.215-20
- FAR 52.215-21



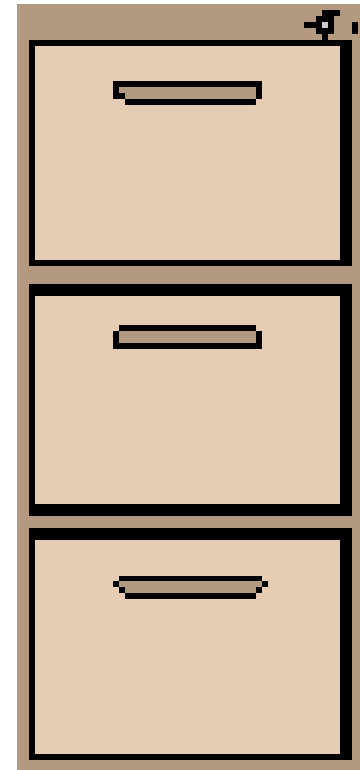
Other FAR Parts & Record Requirements

- FAR 52,216-7
- FAR 52.232-16
- FAR 52.232-25(d)
- FAR 52.242-3
- FAR 52.242-4
- FAR 52.249-2
- FAR 52.249-4



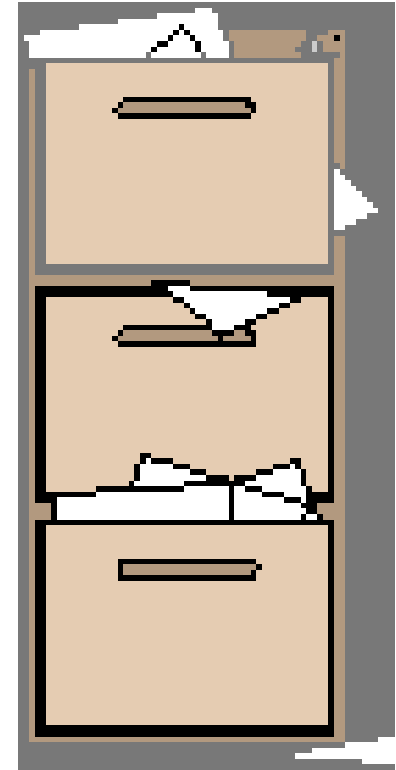
Pre-award DCAA Audits

- Pre-award accounting system
- Forward Pricing Rate Proposal
or
- Forward Pricing Rate Agreement (FPRA)
- Financial capability
- Price proposal



Post-award DCAA Audits

- Billing system
- Incurred cost submissions
- Systems and internal controls
- Timekeeping system
- Contract change proposals
- Actual indirect rates
- Forward Pricing Rate Proposals
- CAS Disclosure Statements



Post-performance DCAA Audits

- Contract closeout
(cost incurred, flexibly priced line items)
- Contract termination
(termination settlement proposal)



Questions for the Panel

The moderator will ask a series of questions for the panel. They will be followed by an opportunity for questions from the floor.

When asking questions, please:

- ❑ Be brief
- ❑ Ask questions of general interest
- ❑ Ask no more than 1 follow-up question
- ❑ **Speak loudly so everyone can hear you**



Moderator's Questions

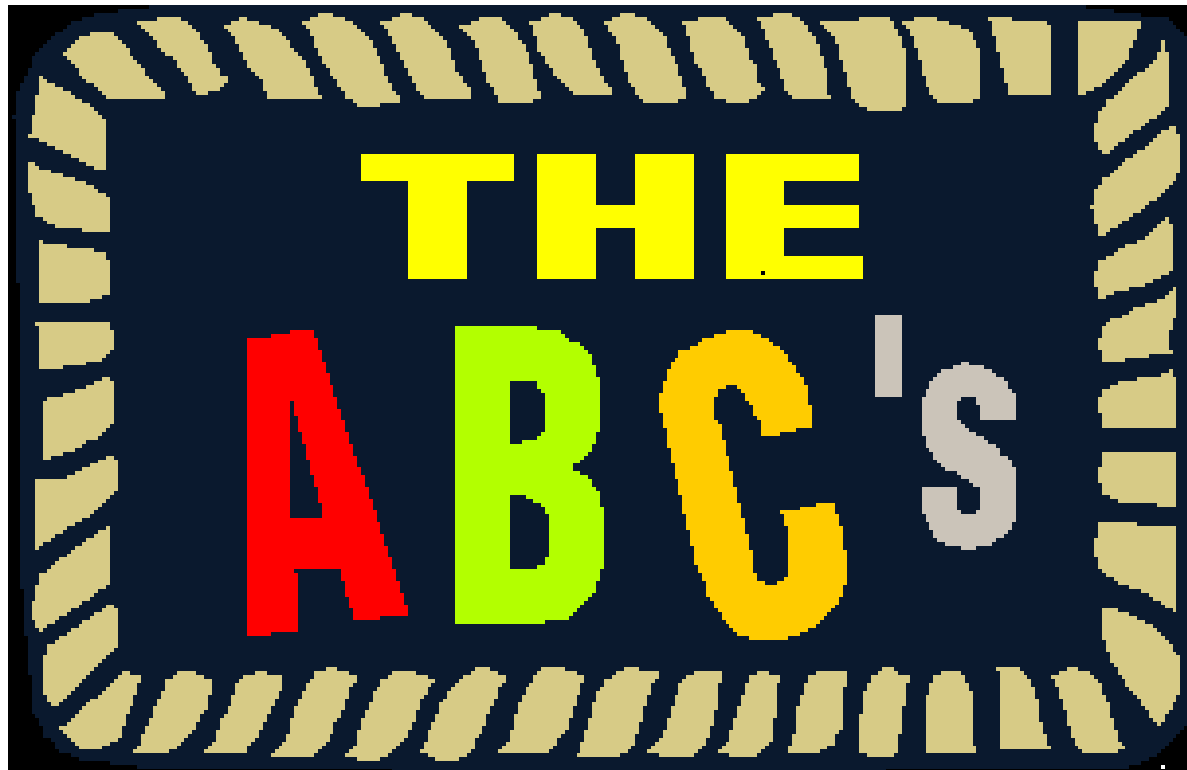


Your Questions



Be brief
General interest
Only 1 follow-up
Speak loudly

Abbreviations and Acronyms



Abbreviations and Acronyms (cont.)

ODC — Other direct cost

PCO — Procuring Contracting Officer

PO — Purchase order

POP — Period of performance

RAM — Regional audit manager

RFP — Request for proposal

SF1408 Preaward Survey of Prospective Contractor—
Accounting System

SLIN — [contract] Sub-line item number

TINA — Truth in Negotiations Act

WAH — Work-at-Home



Abbreviations and Acronyms

ACO — Administrative contracting officer

ASBCA — Armed Services Board of Contract Appeals

CACO — Corporate administrative contracting officer

CAM — Contract Audit Manual

CAO — Contract administration office

CAS — Cost Accounting Standards

CLIN — Contract line item number

CO — Contracting officer

CPA — Certified public accountant



Abbreviations and Acronyms (cont.)

CPAF — Cost plus award fee [contract type]

CPFF — Cost plus fixed fee [contract type]

DCAA — Defense Contract Audit Agency

DCAAM — DCAA Audit Manual

DCMA — Defense Contract Management Agency

DFARS — Defense FAR Supplement

DFAS — Defense Finance and Accounting Service

DoD — Department of Defense

ECP — Engineering change proposal



Abbreviations and Acronyms (cont.)

EVMS — Earned Value Management System

FAR — Federal Acquisition Regulation

FFP — Firm-fixed price [contract type]

FPIF — Fixed-price incentive fee [contract type]

FPRA — Forward pricing rate agreement

G&A — General and administrative [indirect] costs

ICP — Incurred cost proposal

ICQ — Contractor Survey & Internal Control Questionnaire

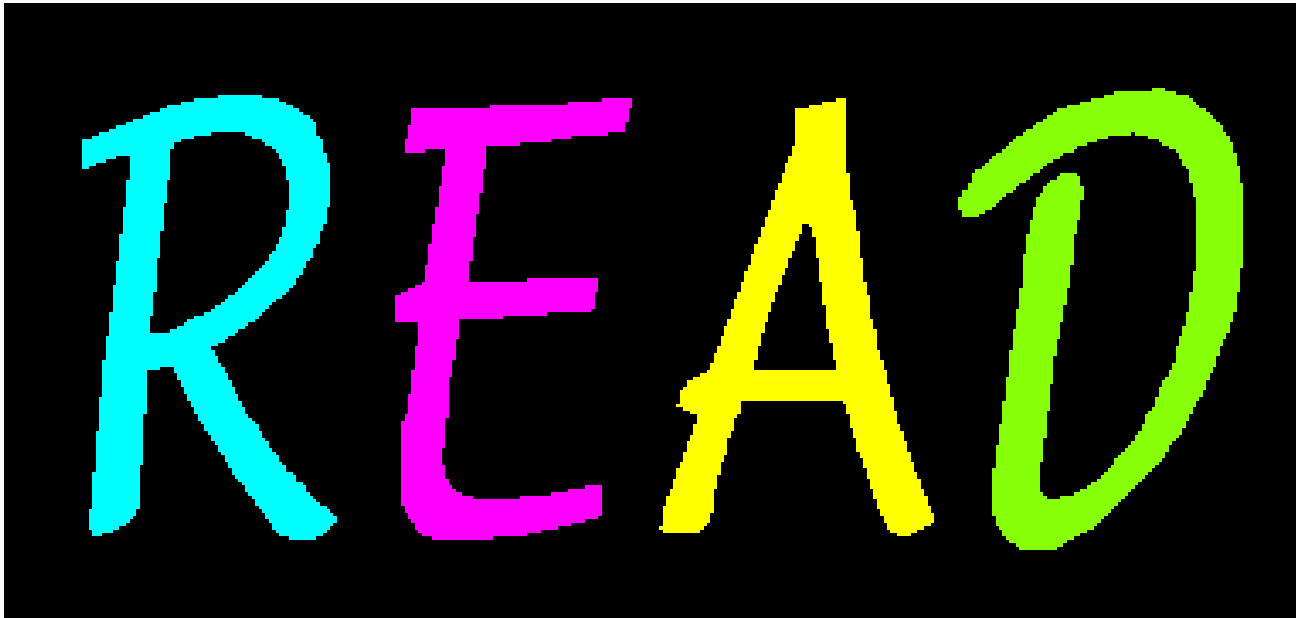
IG — Inspector general

LOE — Level-of-effort

MRD — Memorandum for Regional Directors



Background Material



READ

DoD Reference Information

- DoD Directive 5105.36, "Defense Contract Audit Agency (DCAA)"



DCAA Reference Information

On DCAA's Website: www.dcaa.mil

- ❑ Audit Guidance and Audit Management Guidance Memorandums for Regional Directors (MRDs)
- ❑ Information for Contractors, DCAAP 7641.90
- ❑ Directory of Audit Programs and Other Audit Guidance Documents
- ❑ Contract Audit Manual, DCAAM 7640.1



Recent DCAA MRDs

Audit Management Guidance Memorandum
No. 08-PAS-042 issued 12/19/08
“Denial of Access to Records”

Audit Management Guidance Memorandum
No. 08-PAS-043 issued 12/19/08
“Adequacy of the Contractor's Internal
Control System”



DCAA Audit Guidance 08-PAS-42

"Denial of Access to Records" memo instructs auditors to require that contractors provide "timely" access to supporting records requested by DCAA, with timeliness defined in many cases as the same day. Ignoring the provisions of the standard Audit clauses limiting the Government's audit rights to contractor "records," "support" is defined in the guidance to include "access to personnel" in addition to documents and other data.



Memo 08-PAS-42 [continued]

The guidance directs auditors generally to obtain support information "directly from the person responsible for the information," rather than from a "liaison" designated by the contractor. Auditors are required to report failure to provide "support" in a timely way as a "denial of access" to records, to consider issuing a subpoena for the supporting data (either directly or through the DOD Inspector General), to follow other published guidance about suspending payment (generally using a Form 1 to recommend suspension),



Memo 08-PAS-42 [continued 2]

and to consider whether an internal control deficiency exists (see the bullet below). While the assertion of an audit right to contact individual contractor employees directly is likely to be the most controversial element of this policy, it also seems inevitable that at least some auditors will rely on the guidance to take precipitous action when a contractor is unable to produce supporting records instantly in response to a request from DCAA or contests the scope or relevance of DCAA requests.



Memo 08-PAS-42 — Conclusion

The guidance is clearly intended to encourage DCAA's increasingly common practice of issuing Form 1s to attempt to suspend payment to contractors, a process almost never used for 30 years after the passage of the Contract Disputes Act in 1976.

Extracted from Crowell Moring “Government Contracts Bullet Points” of 1/7/09



DCAA Audit Guidance 08-PAS-43

“Adequacy of the Contractor's Internal Control System” memo instructs auditors to report any "material internal control" weakness identified in an audit. The guidance states that since DCAA only performs internal control audits that are material to Government contract costs, a finding of an internal control deficiency by DCAA will generally have a material impact on Government contract costs and should result in a report finding that there is a "material deficiency" that renders the contractor's "system" inadequate.



Memo 08-PAS-43 [continued]

The guidance suggests that it is not necessary to identify any actual questioned costs in order to make a finding of a "material" deficiency, citing as an example the possibility that inadequacies identified by DCAA in controls related to ethics and integrity may be material even though the finding involves no identified actual cost impact.



Memo 08-PAS-43 — Conclusion

Although not specifically mentioned in the guidance, audit reports asserting that a system is inadequate could result in problems under FAR 16.301-3, which requires as a prerequisite to awarding any cost reimbursement contract that contractor's accounting systems be "adequate for determining costs applicable to the contract."

Extracted from Crowell & Moring "Government Contracts Bullet Points" of 1/7/09



Rumbaugh on Memo 08-PAS-043 issued 12/19/08

The guidance “clarifies what constitutes a significant deficiency/material weakness and establishes new guidance on reporting audit opinions on contractors’ internal control systems. Effective immediately, audit reports on contractors’ internal controls that report any significant deficiencies/material weaknesses will include an opinion that the system is inadequate.



More on Memo 08-PAS-043

DCAA will no longer report inadequate in part opinions. In addition, the audit report will identify the portions of the system affected by the deficiencies and recommend that the contracting officer disapprove the system (if applicable) and pursue suspension of a percentage of progress payments or reimbursement of costs.



Memo 08-PAS-43 Implemented

(APPS audit report shells have been revised to reflect the appropriate recommendation depending on the system involved and should be used for any in-process assignments.)

Further, suggestions to improve the system will no longer be reported in internal control audit reports....” (sic)

Taken from Charles E. Rumbaugh *Regulatory/ Contractual Update*, Volume14, Issue1, January 5, 2009



Relevant FAR Clauses



Basic FAR Requirements

FAR 9-105 & -106, Procedures for determining contractor qualifications

FAR 4.804, Closeout of Contract Files

FAR Part 12, Acquisition of Commercial Items

FAR Part 15, Contracting by Negotiation

FAR 15.406-2, Certificate of current cost or pricing data



FAR Requirements continued

FAR 15.408, Table 15-2, Instructions for Submitting Cost/Price Proposals When Cost or Pricing Data Are Required

FAR 16.306, Cost-Plus-Fixed-Fee Contracts

FAR 31.204, Application of principles and procedures

FAR 31.2, Contracts with Commercial Organizations

FAR 32.006, Reduction or Suspension of Contract Payments Upon Finding of Fraud



Post-performance FAR Rqmts.

FAR 42.705, Final Indirect Cost Rates

FAR 42.708, Quick-Closeout Procedure

FAR 49.107, Audit of prime contract
settlement proposals and subcontract
settlements

FAR 49.206, Settlement proposals

FAR 49.206-1, Submission of settlement
proposals

FAR 49.303-1, Submission of settlement
proposal [cost-reimbursement contract]



FAR Part 52 Clauses (re. Part 15)

FAR 52.215-2, Audit and Records—
Negotiation

FAR 52.215-10, Price Reduction for Defective
Cost or Pricing Data

FAR 52.215-11, Price Reduction for Defective
Cost or Pricing Data—Modifications

FAR 52.215-12, Subcontractor Cost or Pricing
Data



FAR Part 52 Clauses [re. Changes]

FAR 52.215-13, Subcontractor Cost or Pricing Data—Modifications

FAR 52.215-20, Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data

FAR 52.215-21, Requirements for Cost or Pricing Data or Information Other Than Cost or Pricing Data—Modifications



FAR Part 52 Clauses [re. Accounts]

52.216-4, Economic Price Adjustment—
Labor and Material

FAR 52.216-7, Allowable Cost and Payment

FAR 52.216-16, Incentive Price Revision—
Firm Target [FPI contracts]

FAR 52.230-2, Cost Accounting Standards

FAR 52.230-3, Disclosure and Consistency
of Cost Accounting Standards



FAR Part 52 Clauses [re. Payments]

FAR 52.232-16, Progress Payments

FAR 52.232-20 & -21, Limitation of Cost

FAR 52.232-22(b), Limitation of funds

FAR 52.232-25(d), Overpayments



Other FAR Part 52 Clauses

FAR 52.242-3, Penalties for Unallowable Costs

FAR 52.242-4, Certification of Final Indirect Cost

FAR 52.249-2, Termination for Convenience of the Government (Fixed-Price)

FAR 52.249-4, Termination for Convenience of the Government (Services) (Short Form)



DFARS Clauses

DFARS 252.215-7000, Pricing
Adjustments

DFARS 252.215-7001, Cost Estimating
System Requirements

DFARS 252.231-7002, Progress
Payments for Foreign Military Sales

DFARS 252.234-7000, Notice of
Earned Value Management System

