



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

FEB 22 2007

MEMORANDUM FOR DISTRIBUTION

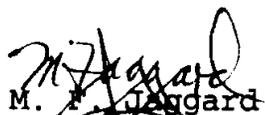
Subj: IMPACT OF THE PENSION PROTECTION ACT OF 2006 ON
FORWARD PRICING

Ref: (a) DASN (ACQ) memo dated Oct 12, 2006

Encl: (1) Director, DPAP memo dated Dec 22, 2006

By reference (a), we forwarded a Defense Procurement and Acquisition Policy (DPAP) early alert on the Pension Protection Act of 2006 (PPA) and provided notification that pending further DPAP guidance, any proposed increase in contract prices based on current Cost Accounting Standards and the PPA shall be coordinated with this office before negotiating the contract price. Enclosure (1), which provides additional detailed guidance on the PPA, is forwarded for implementation and action, as appropriate. It is requested that contracting officers under your cognizance be made aware of the policies in the enclosure. In particular, if contractors propose increased pension costs as a result of the PPA, the cognizant ACO and auditor should be consulted before determining whether to include any proposed costs relating to the PPA in the contract price or Forward Pricing Rates.

My point of contact for this issue is Mr. Clarence Belton, who can be at (703) 693-4006 or via e-mail at clarence.belton@navy.mil.


M. F. Jaggard

Chief of Staff/Policy
for Deputy Assistant Secretary of the Navy
(Acquisition Management)

Subj: IMPACT OF THE PENSION PROTECTION ACT OF 2006 ON
FORWARD PRICING

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ACQUISITION,
TECHNOLOGY
AND LOGISTICS

OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON
WASHINGTON, DC 20301-3000

DEC 22 2006

MEMORANDUM FOR DEPUTY ASSISTANT SECRETARY OF THE ARMY
(POLICY AND PROCUREMENT), ASA (ALT)
DEPUTY ASSISTANT SECRETARY OF THE NAVY
(ACQUISITION MANAGEMENT), ASN (RDA)
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE
(ACQUISITION), SAF/AQ
DIRECTORS OF DEFENSE AGENCIES

SUBJECT: Impact of the Pension Protection Act of 2006 on Forward Pricing

The recently passed Pension Protection Act (PPA) of 2006 may require contractors to significantly change the funding of their defined benefit pension plans. Starting in 2006, the PPA will permit companies to voluntarily increase their pension contributions; starting in 2008, the PPA may cause contractors to significantly increase their required minimum pension contribution for tax purposes. However, such funding changes will not necessarily result in increased costs on negotiated contracts (including ACO negotiated/determined Forward Pricing Rates (FPRs)). In reviewing and negotiating any proposed increases in pension costs related to the PPA in negotiated prices and FPRs, contracting officers shall comply with the following policy:

1. Proposed Increased Pension Costs Using Current CAS Rules

The application of the PPA changes are complex and will require review by DoD pension and cost accounting experts. For example, contractors may state that pension cost increases are due to the increased recognition of pension cost in the current year that would have been deferred to future years as assignable cost deficits but for the PPA. When contractors propose increased pension costs based on the current Cost Accounting Standards (CAS) and the PPA, contracting officers shall contact their cognizant Administrative Contracting Officer (ACO) and/or Defense Contract Audit Agency (DCAA) auditor for assistance in reviewing these costs before negotiating the contract price.

2. Proposed Increased Pension Costs in Anticipation of Changes to the CAS

Contracting officers shall not (a) negotiate any increase in contract prices or FPRs related to a potential CAS change resulting from the PPA, nor (b) include re-opener clauses addressing such costs.



For contracts that are subject to full CAS coverage, any changes to CAS 412 and 413 promulgated by the CAS Board as a result of the PPA may entitle the contractor to an equitable adjustment for those contracts as of the effective date of any such amendment or other guidance issued by the CAS Board.

For contracts that are subject only to modified CAS coverage and contracts that are not covered by CAS, FAR 52.216-7, "Allowable Cost and Payment" clause, determines the allowability of pension costs and locks the contract into the version of FAR 31.2 in effect at the date of contract award. Consequently, contractors with contracts awarded prior to any revision to CAS 412 will be obligated by FAR 31.205-6(j)(2) to continue to apply the (pre-revision) version of CAS 412 in effect at the time of contract award. Any change to CAS 412 will not impact these contracts. They will be subject to the CAS 412 in effect at the time of contract award.

In conclusion, contracting officers shall not include in the contract price or recognize as allowable any increased pension costs for anticipated changes to the CAS into any contract or FPR, or include a re-opener clause that would allow adjustment to the contract at a later date. To do so would result in over-recovery of costs by the contractor.

3. Special Rules for Plans of Certain Government Contractors

Under the PPA, contractors that meet the requirements of section 106(c), "Eligible Government Contractor Plan Defined," are subject to a mandatory delayed implementation of Title I of the PPA. Specifically, section 106 of the Act provides:

(a) General Rule- Except as provided in this section, if a plan is an eligible government contractor plan, this subtitle and subtitle B shall not apply to plan years beginning before the earliest of--

(1) the first plan year for which the plan ceases to be an eligible government contractor plan,

(2) the effective date of the Cost Accounting Standards Pension Harmonization Rule, or

(3) January 1, 2011.

(b) . . .

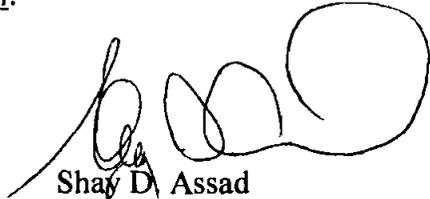
(c) Eligible Government Contractor Plan Defined- For purposes of this section, a plan shall be treated as an eligible government contractor plan if it is maintained by a corporation or a member of the same affiliated group (as defined by section 1504(a) of the Internal Revenue Code of 1986), whose primary source of revenue is derived from business performed under contracts with the United States that are subject to the Federal Acquisition

Regulations (Chapter 1 of Title 48, C.F.R.) and that are also subject to the Defense Federal Acquisition Regulation Supplement (Chapter 2 of Title 48, C.F.R.), and whose revenue derived from such business in the previous fiscal year exceeded \$5,000,000,000, and whose pension plan costs that are assignable under those contracts are subject to sections 412 and 413 of the Cost Accounting Standards (48 C.F.R. 9904.412 and 9904.413).

Thus, proposed costs, including forward pricing rate proposals, submitted by contractors maintaining Eligible Government Contractor Plans should not include any amounts resulting from the PPA revised minimum funding standards, such as seven year amortization for funding shortfalls, interest rate assumption based upon corporate bond rates of return, or any other revisions contained in Title I of the Act.

In summary, if the contractor proposes increased pension costs as a result of the PPA, the Contracting Officer should consult with the cognizant ACO and auditor before determining whether to include any proposed costs relating to the PPA in the contract price or FPRs.

If you require additional information, my point of contact for this memorandum is Mr. John McPherson, Senior Procurement Analyst, who can be reached at 703-602-0296 or via e-mail at john.mcpherson@osd.mil.

A handwritten signature in black ink, appearing to read 'Shay D. Assad', with a large circular flourish at the end.

Shay D. Assad
Director, Defense Procurement
and Acquisition Policy



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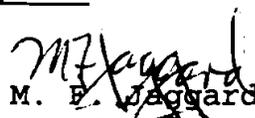
MEMORANDUM FOR DISTRIBUTION

Subj: PENSION PROTECTION ACT OF 2006 IMPACT ON FORWARD
PRICING

Encl: (1) Director, DPAP memo dated October 3, 2006

Enclosure (1) is a Defense Procurement and Acquisition Policy (DPAP) early alert on the Pension Protection Act (PPA) of 2006. The Director, DPAP has provided notification that the recently passed PPA of 2006 may require contractors to significantly change the funding of their defined benefit pension plans for plan years beginning after 2007. The application of the PPA changes are complex and require review by DoD pension and cost accounting experts. A working group has been established to determine the impact of the legislation and detailed guidance is anticipated by November 30, 2006. Pending further DPAP guidance, any proposed increase in contract prices based on current Cost Accounting Standards and the PPA of 2006 shall be coordinated with this office before negotiating the contract price.

My point of contact for this issue is Mr. Clarence Belton, who can be at (703) 693-4006 or via e-mail at clarence.belton@navy.mil.


M. E. Jagyard
Chief of Staff/Policy
for Deputy Assistant Secretary of the Navy
(Acquisition Management)

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OCT 03 2006

ACQUISITION
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AND LOGISTICS
DPAP/P

MEMORANDUM FOR SECRETARIES OF THE MILITARY DEPARTMENTS
(ATTN: ACQUISITION EXECUTIVES)
DIRECTORS OF DEFENSE AGENCIES

SUBJECT: Pension Protection Act of 2006 Impact on Forward Pricing

The recently passed Pension Protection Act of 2006 will require significant funding changes to contractor defined benefit pension plans for plan years beginning after 2007. My office is working with the services, DCMA and DCAA to determine the full impact of the legislation on forward pricing rates and contract pricing. We anticipate that guidance will be issued by November 30, 2006. In the interim, contracting officers shall coordinate with their Headquarters/Secretariat staff organizations before including any impacts in contract prices for changes related to the Pension Protection Act of 2006.

If you have any questions or require additional information, contact Mr. John McPherson, Senior Procurement Analyst, at 703-614-4840 or email at john.mcpherson@osd.mil.

Shay D. Assad
Director, Defense Procurement and
Acquisition Policy

