



## DCMA Manual 2201-05

### Boards of Review

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<b>Office of Primary Responsibility:</b>	<b>Indirect Cost Control Capability</b>
<b>Effective:</b>	December 20, 2021
<b>Releasability:</b>	Cleared for public release
<b>Implements:</b>	DCMA Instruction 2201, "Indirect Cost Control," October 2, 2018
<b>Incorporates and Cancels:</b>	DCMA Instruction 134, "Boards of Review," October 15, 2012, as amended
<b>Internal Control:</b>	Process flow and key controls are located on the Resource Page
<b>Labor Codes:</b>	Located on the Resource Page
<b>Resource Page Link:</b>	<a href="https://360.intranet.dcmsa.mil/Sites/Policy/IC/SitePages/DCMA-MAN%202201-05r.aspx">https://360.intranet.dcmsa.mil/Sites/Policy/IC/SitePages/DCMA-MAN%202201-05r.aspx</a>
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**Purpose:** This issuance, in accordance with the authority in DoD Directive 5105.64, "Defense Contract Management Agency (DCMA)":

- Implements DCMA Instruction 2201, "Indirect Cost Control"
- Incorporates and cancels DCMA Instruction 134, "Boards of Review," and
- Assigns responsibilities and establishes the procedures for executing the contracting Boards of Review process

## **SUMMARY OF CHANGES**

This Manual incorporates and revises the procedures from DCMA Instruction 134, “Boards of Review.” Some of the notable changes and additional guidance include:

- Deleting procedural actions previously included in SECTION 2 – RESPONSIBILITIES.
- Removal of the supervisory/peer reviews unique to the Corporate Administrative Contracting Officer/Divisional Administrative Contracting Officer Division and Special Programs (DCMA Instruction 134, Paragraph 3.1.5.) permitting each Command to establish their own review process prior to a required Board of Review.
- Deleting several definitions in G.1. DEFINITIONS already defined in the Federal Acquisition Regulation, Defense Federal Acquisition Regulation Supplement, or other high-level guidance
- Adding DCMA Manual references for the contract actions requiring a Board of Review

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## **SECTION 1: GENERAL ISSUANCE INFORMATION**

**1.1. APPLICABILITY.** This Manual applies to all DCMA organizational elements unless higher-level regulations, policy, guidance, or agreements take precedence.

**1.2. POLICY.** It is DCMA policy to:

- a. Establish a higher-level board of review (BoR) process for selected contracting actions.
- b. Execute this Manual in a safe, efficient, effective, and ethical manner.

## SECTION 2: RESPONSIBILITIES

**2.1. DIRECTOR.** The DCMA Director serves as the final review authority if the Defense Contract Audit Agency (DCAA) disagrees with the recommendations of the Headquarters-Level Board of Review (HQ-BoR) Chairperson.

**2.2. EXECUTIVE DIRECTOR, CONTRACTS.** The Contracts Executive Director:

- a. Serves as the Chairperson of the HQ-BoR.
- b. Assigns a HQ-BoR Performance Advocate (PA) to manage the HQ-BoR process.

**2.3. OPERATIONAL UNIT COMMANDERS/EXECUTIVE DIRECTORS.** The Operational Unit Commanders/Executive Directors:

- a. Serve as the Chairperson for the Command-Level BoR (Command-BoR) for their Command.
- b. Assign a Command-BoR PA to manage their Command-BoR process.

**2.4. HQ DCMA OFFICE OF GENERAL COUNSEL (GC) REPRESENTATIVE.** The GC Representative will provide the HQ-BoR Chairperson with legal advice during the BoR proceedings.

**2.5. ADMINISTRATIVE CONTRACTING OFFICER (ACO).** The ACO will initiate the BoR process. The use of ACO in this Manual includes a Divisional ACO, Corporate ACO, and Terminations Contracting Officer depending on the type of contract action requiring the BoR.

**2.6. PA.** The PA will perform the duties associated with managing the BoR process.

## SECTION 3: PROCEDURES

### 3.1. OVERVIEW.

a. BoR Levels. This Manual establishes two BoR levels:

- HQ-BoR
- Command-BoR

b. BoR Contract Actions. An ACO will request a BoR for any contracting action identified on the BoR Matrix (located on the Resource Page). An ACO may request a BoR for any contracting action that does not meet the specific conditions identified in the BoR Matrix or any Command-Level BoR guidance.

c. Reviews Prior to a BoR. The DCMA activity (e.g., Command, Contract Management Office, Center, Group, Division) requesting the BoR may establish additional review requirements in preparation for a required BoR. The ACO must refer to the governing manual for the contract action for any additional review requirements prior to the required BoR. A contract action requiring a HQ-BoR must also have a Command-BoR except as otherwise noted on the BoR Matrix.

### 3.2. COMPOSITION OF THE BOARDS.

a. BoR Chairperson.

(1) HQ-BoR. The Executive Director, Contracts, has the responsibility of serving as the HQ-BoR Chairperson but may delegate this responsibility to the appropriate level within the Contracts Executive Directorate. Delegations should be no lower than two levels or a GS-15 equivalent.

(2) Command-BoR. The Commander/Executive Director of the requestor's (ACO's) Command has the responsibility of serving as the Command-BoR Chairperson but may delegate this responsibility to the appropriate level within their Command. Delegations should be no lower than two levels or a GS-15 equivalent.

b. BoR Participants.

(1) The BoR Chairperson selects the advisors to participate in the BoR process. The advisors usually consist of senior personnel with in-depth knowledge and experience concerning the contract action under review.

(2) A representative from the HQ GC must attend the HQ-BoR. Depending on the contract action under review, the Command-BoR Chairperson should consider having a representative from the appropriate Office of GC (e.g., HQ DCMA, Command, Contract Management Office) attend.

(3) The ACO presents the case to the Chairperson and the attending advisors. The ACO may seek support in presenting the case from functional specialists, a price/cost analyst, and/or other relevant subject matter experts. The ACO must invite any functional specialist, price/cost analyst, or other subject matter expert who provided a formal written response (e.g., technical report) concerning the contract action under review. If DCAA issued an examination or a memorandum related to the action under consideration, the ACO must invite the DCAA representative (auditor) to the BoR. The DCAA auditor may attend to either support or challenge the ACO's decision or course of action.

c. PA. The BoR Chairperson assigns the PA to manage the BoR process. The Resource Page lists the current HQ-BoR PA and the Command-BoR PA for each Command. The BoR Chairperson may assign a different PA or add an additional PA to support the BoR process. The duties of PA include (but are not limited to):

- Scheduling the BoR,
- Collecting the required materials for the BoR Chairperson and advisors,
- Documenting the BoR proceedings, and
- Disseminating the results of the BoR.

### **3.3. REQUESTING A BOR.**

a. The ACO must complete a "BoR Request Form" (located on the Resource Page) and submit it to the BoR PA along with all the required documents. Refer to the "BoR File Formats" guide located on the resource page for the required documents and format for submitting the request to the BoR PA.

b. The ACO must mark the documents submitted in the BoR request with the appropriate classification or Controlled Unclassified Information markings as required by DoD Instruction 5200.48, "Controlled Unclassified Information."

c. The BoR PA reviews the request and the documents submitted to ensure the request meets the BoR requirements prior to scheduling the BoR.

### **3.4. REQUESTING A BOR WAIVER.**

a. The ACO may request a waiver to a BoR, using the "BoR Waiver Request Form" located on the Resource Page, under the following circumstances:

(1) The contract action involves audit or functional specialist findings fully sustained by the ACO and/or similar contracting actions/issues with the same contractor, which was brought before a BoR within the previous 12 months, or

(2) Regulatory, statutory, or contractual deadlines do not allow time to convene a BoR. Along with the request for a waiver, the ACO (waiver requestor) must still submit the supporting documentation as prescribed in Paragraph 3.3.

b. The ACO must send the waiver request through the coordination process within their Command prior to submitting it to the appropriate BoR PA.

c. The BoR chairperson will grant or deny the waiver request.

d. The BoR PA will retain a record of the approved waiver request in a manner consistent with guidance found in Paragraph 3.8.

### **3.5. CONVENING A BOR.**

a. The Chairperson should convene the BoR within 15 business days after receiving the BoR request meeting the BoR requirements. The Chairperson may suspend the BoR for the submission of supplemental information from the ACO not available at the time of the BoR. The Chairperson must set a suspense date for the receipt of the supplemental information.

b. The Chairperson will make a recommendation after reviewing the case file documents, evaluating the decision (or position) of the ACO, and considering the input from the BoR advisors. At the conclusion of the BoR, the Chairperson will either concur, conditionally concur, or non-concur with the ACO's position and/or plan of action. The Chairperson documents the BoR recommendation on the "BoR Request" form and returns it to the requestor with the BoR minutes.

(1) Concur. The concurrence completes the BoR process.

(2) Conditional Concurrence. The BoR concurs with the proposed position or plan of action if the ACO agrees to the conditions specified in the BoR recommendation. The acceptance of the conditions by the ACO and documenting the case file on compliance with the conditions completes the BoR process. The BoR Chair, in accordance with the governing document, may determine how documenting the case file on compliance will occur.

(3) Non-concur. The Chairperson disagrees with the ACO's position and/or plan of action.

c. BoR Recommendation Issues. For a non-concur or if the ACO disagrees with any of the conditions in the conditional concurrence, the Chairperson may resolve the issues by contacting the ACO directly or convening a second BoR. The BoR PA will facilitate these actions.

(1) Command-BoR. If the Command-BoR Chairperson and the ACO cannot reach an agreement (ACO does not accept the recommendation), the ACO will follow the process at Paragraph 3.6. If necessary, the Command-BoR Chair may request a HQ-BoR to resolve the disagreement.

(2) HQ-BoR. If the HQ-BoR Chairperson and the ACO cannot reach an agreement (ACO does not accept the recommendation), the ACO must follow the process in Paragraph 3.6.



### **3.6. BOR RECOMMENDATION DISAGREEMENT.**

a. If the ACO decides not to accept (takes an alternate course of action) the BoR recommendation (partially or entirely), the ACO must submit a written justification to the Chairperson through the BoR PA. The ACO will wait for a response from the Chairperson prior to executing the subject contract action. The Chairperson may engage a level above in the Chair's chain-of-command to attempt to resolve the issue.

b. The ACO makes the final decision on how to proceed with the contract action. A BoR recommendation cannot mandate the ACO to follow a specific course of action due to the unique authority of a contracting officer's warrant. The ACO may pursue an alternate course of action within the authority of their warrant. The documentation of the ACO's disagreement with the BoR recommendation and path forward completes the BoR.

### **3.7. DCAA DISAGREEMENT WITH BOARD RECOMMENDATION.**

a. Notification of Disagreement. If an ACO declines to sustain a DCAA audit opinion or ignores a DCAA recommendation, the DCAA auditor who issued the opinion or recommendation may request a DCMA BoR regarding the decision. After finalizing the BoR recommendation (at any level), the BoR Chairperson must inform the DCAA representative of the appeal process for the BoR recommendation and proposed course of action. If DCAA decides to appeal the BoR recommendation, the DCAA representative must submit the appeal in writing to the Chairperson within 3 business days of receiving the approved BoR minutes.

b. Adjudication of Disagreement.

(1) Command-BoR Disagreement. If the Chairperson cannot resolve the disagreement, the DCAA representative may request the Chairperson elevate the disagreement to a HQ-BoR. If requested, the ACO and the BoR PA must submit the request for a HQ-BoR.

(2) HQ-BoR Disagreement. If the HQ-BoR Chairperson cannot resolve the disagreement, the Chairperson will make the final recommendation. If the DCAA representative wants to challenge the final recommendation, the DCAA Director must submit a challenge letter to the HQ-BoR Chairperson. If challenged, the ACO and the BoR PA must prepare the BoR case for the DCMA Director's review.

c. DCMA Director Review. The HQ-BoR PA must work with the DCAA representative to schedule a time for the DCMA Director and the DCAA Director to discuss a resolution to the disagreement. If the Directors cannot resolve the disagreement, the DCMA Director will make the final recommendation to the ACO on the resolution of the disagreement.

d. Upon receipt of the final recommendation, the ACO will make the final decision within the authority of their warrant.

### 3.8. BOR CASE FILE.

- a. BoR Minutes. The BoR PA records the BoR proceedings and prepares the BoR minutes.
- b. BoR Case File Contents. The contents of the BoR case file must include all the documents associated with the BoR process such as:
  - “BoR Request” form
  - Documents submitted to the BoR PA by the requestor
  - BoR minutes from a prior BoR at any level for the current contract action.
  - Documents introduced during the BoR by the requestor, BoR Chairperson, BoR Advisors, and BoR participants
  - Disapproved “BoR Waiver Request” form (if applicable)
  - BoR minutes
  - Documents associated with the completion of the contract action under review
- c. BoR Waiver File. The BoR waiver file consists of the approved “BoR Waiver Request” form and all documents the BoR Chairperson relied on to approve the waiver.
- d. BoR Document Distribution. The BoR Chairperson determines the distribution of BoR documents.
- e. BoR File Repository. After the completion of the BoR, the BoR PA will upload the BoR case file documents into the file repository in accordance with DCMA Manual 4501-04, Volume 2, “Records Retention Schedule.”
- f. BoR Reporting Site. HQ and each Command will have its own reporting site (a list of completed cases) with a link on the Resource Page. After completion of the BoR, the cognizant PA will report each BoR using the following minimum elements: Commercial and Government Entity code, BoR No. (as assigned by the Command/HQ), BoR level (HQ, Command), name of Board chair, type of contract issue (CAS 401, FRPA, etc.), description (brief description of the issue), date of BoR, board outcome (concur, conditional concur, non-concur, waiver, other, etc.), name of PA, Department of Defense Activity Address Code (or description if unavailable) of requestor (Contract Management Office, Region, etc.), and calendar year.

## GLOSSARY

### G.1. DEFINITIONS.

**BoR.** A BoR is another level of management review although advisory in nature. Certain contract actions identified within this manual are subject to review by an applicable Board of Review within 15 business days after receipt of the documentation and any supplemental information requested by the Board.

**Command.** This term refers to the seven DCMA Operational Units: DCMA Aircraft Integrated Maintenance Operations Regional Command, DCMA Eastern Regional Command, DCMA Central Regional Command, DCMA Western Regional Command, DCMA Cost and Pricing Regional Command, DCMA International Command, and DCMA Special Programs Command.

**PA.** The PA is the individual designated by the BoR Chairperson to manage the BoR process. The HQ-BoR PA is an individual assigned to the Contracts Executive Directorate. A Command-BoR PA is an individual assigned to the Command conducting the BoR or the Command requesting an HQ-BoR.

## GLOSSARY

### G.2. ACRONYMS.

ACO	Administrative Contracting Officer
BoR	Board of Review
Command-BoR	Command-Level Board of Review
DCAA	Defense Contract Audit Agency
GC	General Counsel
HQ	Headquarters
HQ-BoR	Headquarters-Level Board of Review
PA	Performance Advocate

## **REFERENCES**

DCMA Manual 4501-04, Volume 2, "Records Retention Schedule," April 14, 2021  
DoD Directive 5105.64, "Defense Contract Management Agency (DCMA)," January 10, 2013  
DoD Instruction 5200.48, "Controlled Unclassified Information," March 6, 2020