

Date: August 6, 2018

From: Acting Deputy Senior Procurement Executive

Subj: Class Deviation from the Federal Acquisition Regulation (FAR) to Increase the Threshold for Requiring Certified Cost or Pricing Data (FAR Case 2018-005)

To: Heads of Contracting Activities

1. Purpose. To issue a Class Deviation in accordance with FAR 1.404, Class Deviations, to increase the threshold for requiring certified cost or pricing data from \$750,000 to \$2,000,000.

2. FAR Sections Impacted. This deviation impacts FAR sections 15.403, 30.201-4(b), 42.709-O(b) and 42.709-6; and FAR clauses 52.230-1 through 52.230-5.

3. Effective Date. Immediately.

4. Expiration Date. This deviation expires when incorporated into the FAR or is otherwise rescinded.

5. Applicability. This deviation applies to all VA contracting activities

6. Exception. None.

7. Background. The National Defense Authorization Act for Fiscal Year 2018 (NDAA FY18) Section 811 amends 10 U.S.C. 2306a and 41 U.S.C. 3502 to increase the threshold for certified cost or pricing data. The increase raises the threshold for requiring certified cost or pricing data from \$750,000 to \$2,000,000. These rulemaking changes will be published as an amendment to the FAR in the Federal Register as FAR Case 2018-005.

The Civilian Agency Acquisition Council letter 2018-03 of May 3, 2018 authorizes issuance of this Class Deviation.

a. Current FAR Policy: The current threshold is \$750,000 for actions requiring certified cost and pricing data.

b. Need for Deviation. The deviation is needed to implement the increased threshold for requiring cost or pricing data authorized by the National Defense Authorization Act for Fiscal Year 2018 (NDAA FY18) Section 811.

Class Deviation from the Federal Acquisition Regulation (FAR) to increase the threshold for requiring certified cost or pricing data (FAR Case 2018-005)

c. New Policy. The threshold for requiring cost or pricing data is increased from \$750,000 to \$2,000,000 in FAR 15.403 and affected parts and clauses, as shown on the attached.

It is important to note that under the same U.S. Codes cited above, contracts entered into on or before June 30, 2018 are excluded from this threshold increase. Also, contractors for those contracts can request to modify such contracts, without consideration, to use the new threshold.

8. Additional Information. Direct questions regarding this deviation to the Office of Acquisition and Logistics (003A), Procurement Policy and Warrant Management Service (003A2A) via email at vacovaproc@va.gov or (202) 632-5288.

/s/

Sheila P. Darrell

Attachment: FAR Deviation Text

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Baseline is FAC 2005-97, published in the Federal Register on January 24, 2018.

Changes shown as: **[additions]** and ~~deletions~~.

Part 15 Contracting by Negotiation

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Subpart 15.4 -- Contract Pricing

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15.403 Obtaining certified cost or pricing data.

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15.403-4 Requiring certified cost or pricing data (10 U.S.C. 2306a and 41 U.S.C. chapter 35).

(a)(1) The contracting officer shall obtain certified cost or pricing data only if the contracting officer concludes that none of the exceptions in 15.403-1(b) applies. However, if the contracting officer has reason to believe exceptional circumstances exist and has sufficient data available to determine a fair and reasonable price, then the contracting officer should consider requesting a waiver under the exception at 15.403-1(b)(4). The threshold for obtaining certified cost or pricing data is ~~\$750,000~~ **[\$2,000,000]**. Unless an exception applies, certified cost or pricing data are required before accomplishing any of the following actions expected to exceed the current threshold or, in the case of existing contracts, the threshold specified in the contract:

(i) The award of any negotiated contract (except for undefinitized actions such as letter contracts).

(ii) The award of a subcontract at any tier, if the contractor and each higher-tier subcontractor were required to furnish certified cost or pricing data (but see waivers at 15.403-1(c)(4))

(iii) The modification of any sealed bid or negotiated contract (whether or not certified cost or pricing data were initially required) or any subcontract covered by paragraph (a)(1)(ii) of this subsection. Price adjustment amounts must consider both increases and decreases (e.g., a ~~\$500,000~~ **[\$500,000]** ~~\$200,000~~ modification resulting from a reduction of ~~[\$1,500,000]~~ **[\$1,500,000]** ~~\$500,000~~ and an increase of ~~[\$1,000,000]~~ **[\$1,000,000]** ~~\$300,000~~ is a pricing adjustment exceeding ~~\$750,000~~ **[\$2,000,000]**). This requirement does not apply

Attachment – FAR Deviation Text

when unrelated and separately priced changes for which certified cost or pricing data would not otherwise be required are included for administrative convenience in the same modification. Negotiated final pricing actions (such as termination settlements and total final price agreements for fixed-price incentive and redeterminable contracts) are contract modifications requiring certified cost or pricing data if—

(A) The total final price agreement for such settlements or agreements exceeds the pertinent threshold set forth at paragraph (a)(1) of this subsection; or

(B) The partial termination settlement plus the estimate to complete the continued portion of the contract exceeds the pertinent threshold set forth at paragraph (a)(1) of this subsection (see 49.105(c)(15)).

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PART 30—COST ACCOUNTING STANDARDS ADMINISTRATION

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Subpart 30.2—CAS Program Requirements

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30.201-4 Contract clauses.

* * *(b) Disclosure and consistency of cost accounting practices.

(1) Insert the clause at FAR 52.230-3, Disclosure and Consistency of Cost Accounting Practices, in negotiated contracts when the contract amount is over ~~\$750,000~~ **[\$2,000,000]**, but less than \$50 million, and the offeror certifies it is eligible for and elects to use modified CAS coverage (see 48 CFR 9903.201-2 (FAR Appendix)), unless the clause prescribed in paragraph (c) of this subsection is used.

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PART 42—CONTRACT ADMINISTRATION AND AUDIT SERVICES

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Subpart 42.7—Indirect Cost Rates

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42.709-0 Scope

(a) This section implements 10 U.S.C. 2324(a) through (d) and 41 U.S.C. 4303. It covers the assessment of penalties against contractors which include unallowable indirect costs in-

(1) Final indirect cost rate proposals; or

(2) The final statement of costs incurred or estimated to be incurred under a fixed-price incentive contract.

(b) This section applies to all contracts in excess of ~~\$750,000~~ **[\$2,000,000]**, except fixed-price contracts without cost incentives or any firm-fixed-price contracts for the purchase of commercial items.

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42.709-6 Contract clause.

Use the clause at 52.242-3, Penalties for Unallowable Costs, in all solicitations and contracts over ~~\$750,000~~ **[\$2,000,000]** except fixed-price contracts without cost incentives or any firm-fixed-price contract for the purchase of commercial items. Generally, covered contracts are those which contain one of the clauses at 52.216-7, 52.216-16, or 52.216-17, or a similar clause from an executive agency's supplement to the FAR.

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52.230-1 Cost Accounting Standards Notices and Certification.

As prescribed in 30.201-3, insert the following provision:

COST ACCOUNTING STANDARDS NOTICES AND CERTIFICATION (OCT 2015)

I. DISCLOSURE STATEMENT—COST ACCOUNTING PRACTICES AND CERTIFICATION

(a) Any contract in excess of ~~\$750,000~~ **[\$2,000,000]** resulting from this solicitation will be subject to the requirements of the Cost Accounting Standards Board (48 CFR Chapter 99), except for those contracts which are exempt as specified in 48 CFR 9903.201-1.

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52.230-2 Cost Accounting Standards.

As prescribed in 30.201-4(a), insert the following clause:

COST ACCOUNTING STANDARDS (OCT 2015)

* * * (d) The Contractor shall include in all negotiated subcontracts which the Contractor enters into, the substance of this clause, except paragraph (b), and shall require such inclusion in all other subcontracts, of any tier, including the obligation to comply with all CAS in effect on the subcontractor's award date or if the subcontractor has submitted certified cost or pricing data, on the date of final agreement on price as shown on the subcontractor's signed Certificate of Current Cost or Pricing Data. If the subcontract is awarded to a business unit which pursuant to 48 CFR 9903.201-2 is subject to other types of CAS coverage, the substance of the applicable clause set forth in subsection 30.201-4 of the Federal Acquisition Regulation shall be inserted. This requirement shall apply only to negotiated subcontracts in excess of ~~\$750,000~~ **[\$2,000,000]**, except that the requirement shall not apply to negotiated subcontracts otherwise exempt from the requirement to include a CAS clause as specified in 48 CFR 9903.201-1.

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52.230-3 Disclosure and Consistency of Cost Accounting Practices.

As prescribed in 30.201-4(b)(1), insert the following clause:

DISCLOSURE AND CONSISTENCY OF COST ACCOUNTING PRACTICES (OCT 2015)

* * * (d) The Contractor shall include in all negotiated subcontracts, which the Contractor enters into, the substance of this clause, except paragraph (b), and shall require such inclusion in all other subcontracts of any tier, except that—

(1) If the subcontract is awarded to a business unit which pursuant to 48 CFR 9903.201-2 is subject to other types of CAS coverage, the substance of the applicable clause set forth in subsection 30.201-4 of the Federal Acquisition Regulation shall be inserted.

(2) This requirement shall apply only to negotiated subcontracts in excess of ~~\$750,000~~ **[\$2,000,000]**.

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52.230-4 Disclosure and Consistency of Cost Accounting Practices–Foreign Concerns.

As prescribed in 30.201-4(c), insert the following clause:

DISCLOSURE AND CONSISTENCY OF COST ACCOUNTING PRACTICES–FOREIGN CONCERNS (OCT 2015)

* * * (d) The Contractor shall include in all negotiated subcontracts, which the Contractor enters into, the substance of this clause, except paragraph (b), and shall require such inclusion in all other subcontracts of any tier, except that–

(1) If the subcontract is awarded to a business unit which pursuant to 48 CFR 9903.201-2 is subject to other types of CAS coverage, the substance of the applicable clause prescribed in FAR 30.201-4 shall be inserted.

(2) This requirement shall apply only to negotiated subcontracts in excess of ~~\$750,000~~ [**\$2,000,000**].

52.230-5 Cost Accounting Standards–Educational Institution.

As prescribed in 30.201-4(e), insert the following clause:

COST ACCOUNTING STANDARDS–EDUCATIONAL INSTITUTION (AUG 2016)

* * * (d) The Contractor shall include in all negotiated subcontracts which the Contractor enters into, the substance of this clause, except paragraph (b), and shall require such inclusion in all other subcontracts, of any tier, including the obligation to comply with all applicable CAS in effect on the subcontractor’s award date or, if the subcontractor has submitted certified cost or pricing data, on the date of final agreement on price as shown on the subcontractor’s signed Certificate of Current Cost or Pricing Data, except that–

(1) If the subcontract is awarded to a business unit which pursuant to 48 CFR 9903.201-2 is subject to other types of CAS coverage, the substance of the applicable clause set forth in 48 CFR 9903.201-4 shall be inserted;

(2) This requirement shall apply only to negotiated subcontracts in excess of ~~\$750,000~~ [**\$2,000,000**]; and

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