



MEMORANDUM FOR BUREAU CHIEF PROCUREMENT OFFICERS

FROM: IRIS B. COOPER, Iris B. Cooper Digitally signed by Iris B. Cooper
Date: 2018.06.04 10:57:06 -04'00'
SENIOR PROCUREMENT EXECUTIVE,
OFFICE OF THE PROCUREMENT EXECUTIVE

SUBJECT: Class Deviation— The Federal Acquisition Regulation to implement changes to increase the threshold for requiring certified cost or pricing data.

- PURPOSE:** The purpose of this acquisition bulletin (AB) is to issue a class deviation to the Federal Acquisition Regulation (FAR). This class deviation implements an increase in the threshold for requiring certified cost or pricing data as authorized by the Section 811 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2018 (Public Law 115-91) until such time the FAR is amended.
- EFFECTIVE DATE:** Upon issuance
- EXPIRATION DATE:** This AB will expire upon the incorporation of this statutory change in the FAR or otherwise superseded or rescinded by the SPE.
- APPLICABILITY:** Contracts entered into on or before June 30, 2018 are excluded from this AB. However, contractors for those contracts can request to modify such contracts, without consideration, to use the new threshold authorized under this AB.
- BACKGROUND:** Section 811 of the NDAA for FY18 amends 10 U.S.C. 2306a and 41 U.S.C. 3502 to increase the threshold for requiring certified cost or pricing data from \$750,000 to \$2,000,000. Section 811 provides that the increased threshold shall apply to contracts awarded on or after July 1, 2018. The statute also provides for contracts awarded before that date to be modified, at the request of the contractor and without consideration, to make the increased threshold applicable to future contract modifications and to the award of subcontracts. [FAR Case 2018-005](#) has been opened by the FAR Council to implement these statutory changes in the FAR. However, it takes time for the FAR to be amended. As a result, the Chair of the Civilian Agency Acquisition Council (CAAC) issued [CAAC Letter 2018-03](#) on May 3, 2018 authorizing civilian agencies, which includes the U.S. Department of the Treasury (Treasury), to issue a deviation in order to implement this statutory change prior to amendment of the FAR¹. The Senior Procurement Executive (SPE) has determined issuance of a deviation provides substantial administrative efficiencies for Treasury, specifically it will decrease the number of contracts that will have to submit certified cost or pricing data. Overall, this class deviation is authorized in accordance with FAR 1.404 and Department of Treasury Acquisition Regulation (DTAR) 1001.404.

¹The CAAC Letter constitutes consultation with the Chair of the CAAC as required by FAR 1404(a)(1).



DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

- 6. DESCRIPTION OF THE DEVIATION:** Attachment A of this Acquisition Bulletin (AB) provides the FAR citations being amended to implement the statutory change described herein. The FAR baseline used for this class deviation is FAC Number 2005-98, effective May 31, 2018 which is available at <https://www.acquisition.gov>.
- 7. REQUIRED BUREAU ACTIONS:** Bureau Chief Procurement Officers shall take immediate steps to:
- a. Update related Bureau policies and procedures, and guidance impacted by this deviation;
 - b. Ensure dissemination of this AB to all acquisition personnel to ensure full awareness and compliance; and
 - c. Determine how this deviation will affect and take appropriate action on internal systems (e.g., Contract Writing Systems), business processes, and reporting requirements.
- 8. ADDITIONAL INFORMATION:** Questions regarding this AB can be directed to Mr. Thomas O'Linn, who may be reached at thomas.olinn@treasury.gov or OfficeoftheProcurementExecutive@treasury.gov.
- 9. ATTACHMENTS:**
- a. Attachment A - Acquisition Bulletin No. 18-03 – Class Deviation (Deviation No. 2018-00003)

**Attachment A –
Acquisition Bulletin No. 18-03 –
Class Deviation (Deviation No. 2018-00003)**

The below represents the FAR citations being amended by this AB. This AB authorizes a class deviation to implement an increase in the threshold for requiring certified cost or pricing data from \$750,000 to \$2,000,000 as authorized by Section 811 of the National Defense Authorization Act for Fiscal Year 2018 (NDAA FY18) (Public Law 115-91) until such time the FAR is amended.

The FAR baseline used for this class deviation is FAC Number 2005-98, effective May 31, 2018 (see <https://www.acquisition.gov>). Changes to the FAR text as authorized by this deviation are shown by ~~struckthrough~~ text (i.e. deletions) and by bracketed yellow highlighted text (i.e. additions). ***** are used to show there is no change in the FAR text proceeding or following as a result of this deviation.

1. FAR 15.403-4 is amended as follows:

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:

(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 ~~\$200,000~~ [\$500,000] modification resulting from a reduction of ~~\$500,000~~ [\$1,500,000] and an increase of ~~\$300,000~~ [\$1,000,000] is a pricing adjustment exceeding ~~\$750,000~~ [\$2,000,000]). This requirement does not apply 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—

2. FAR 30.201-4(b) is amended as follows:

(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.

3. FAR 42.709-0(b) is amended as follows:

(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.

4. FAR 42.709-6 is amended as follows:

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.

5. FAR provision 52.230-1 Cost Accounting Standards Notices and Certification is amended as follows:

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 **[(Deviation 2018-00003)(JUNE 2018)] (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.

6. FAR clause 52.230-2 Cost Accounting Standards is amended as follows:

52.230-2 Cost Accounting Standards.

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

COST ACCOUNTING STANDARDS [(Deviation 2018-00003)(JUNE 2018)] (~~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.

7. FAR clause 52.230-3 Disclosure and Consistency of Cost Accounting Practices is amended as follows:

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 [(Deviation 2018-00003)(JUNE 2018)] (~~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].

8. FAR clause 52.230-4 Disclosure and Consistency of Cost Accounting Practices—Foreign Concerns is amended as follows

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 [(Deviation 2018-00003)(JUNE 2018)] (~~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].

9. FAR clause 52.230-5 Cost Accounting Standards—Educational Institution is amended as follows:

52.230-5 Cost Accounting Standards—Educational Institution.

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

COST ACCOUNTING STANDARDS—EDUCATIONAL INSTITUTION [(Deviation 2018-00003)(JUNE 2018)](~~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
