FEDERAL ACQUISITION REGULATION (FAR) CLASS DEVIATION TO INCREASE THE THRESHOLD FOR OBTAINING CERTIFIED COST OR PRICING DATA

NASA Case 2018-N015

PURPOSE: Effect a class deviation from the FAR to increase the threshold for obtaining certified cost or pricing data from $750,000 to $2,000,000.

BACKGROUND:

Section 811 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2018 (Public Law 115-91) amends 10 U.S.C. 2306a and 41 U.S.C. 3502 to increase the threshold for obtaining certified cost or pricing data from $750,000 to $2,000,000 for contracts entered into after June 30, 2018.

Additionally, since 41 U.S.C. 1502(b) equates the cost accounting standards threshold to the threshold for obtaining certified cost or pricing data at 10. U.S.C. 2306a, as a result of the NDAA for FY 2018, the threshold for applicability of the cost accounting standards is increased to $2,000,000.

FAR Case 2018-005 has been opened to implement statutory changes to the threshold for obtaining certified cost or pricing data in the FAR, however due to the time necessary to complete the regulatory process the threshold increases will not be implemented in the FAR until after the July 1, 2018 effective date of these changes.

GUIDANCE:

For all prime contracts entered into after June 30, 2018, contracting officers shall use $2,000,000 as the threshold for obtaining certified cost or pricing data, in lieu of the threshold of $750,000 at FAR 15.403-4.
For all prime contracts entered into on or before June 30, 2018, contracting officers shall, when required to obtain certified cost or pricing data in accordance with FAR 15.403-4, continue to use $750,000 as the threshold for obtaining certified cost or pricing data in the case of a change or modification made to the prime contract.

In the case of a subcontract entered into after June 30, 2018, under a prime contract that was entered into on or before June 30, 2018, for all new subcontract awards and changes or modifications to the subcontract, contracting officer shall continue to use $750,000 as the threshold for obtaining certified cost or pricing data with the following exception. If the prime contractor requests that the prime contract be modified to increase the threshold for obtaining certified cost or pricing data to $2,000,000 for new subcontract awards and changes or modifications to subcontracts, contracting officers shall modify the prime contract to include the deviated version of FAR clause 52.215-12 or 52.215-13, to reflect the $2,000,000 threshold for obtaining certified cost or pricing data for new subcontract awards and changes or modifications to subcontracts in lieu of the current FAR clauses. Per 10 U.S.C. 2306a paragraph (a)(6), all such modifications shall be made without requiring consideration.

In addition, contracting officers shall use $2,000,000 as the threshold for applicability of the cost accounting standards. As such, contracting officers shall use, when applicable, the deviated versions of FAR provisions and clauses 52.230-1 through 52-230-5 as provided in the Enclosure to this deviation in lieu of the current FAR provisions and clauses.

**EFFECTIVE DATE:** This PCD is effective as dated and shall remain in effect until the increased thresholds are incorporated into the FAR, via FAR Case 2018-005.

**CLAUSE CHANGES:** FAR provisions and clauses 52.215-12 (DEVIATION), 52.215-13 (DEVIATION), 52.230-1 (DEVIATION), 52.230-2 (DEVIATION), 52.230-3 (DEVIATION), 52.230-4 (DEVIATION), 52.230-5 (DEVIATION)

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Enclosure

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). [(DEVIATION 18-04)]

(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 [$200,000] modification resulting from a reduction of $1,500,000 [$500,000] and an increase of $1,000,000 [$300,000] 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—

(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. [(DEVIATION 18-04)]

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(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. [(DEVIATION 18-04)]

(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. [(DEVIATION 18-04)]
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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52.215-12 Subcontractor Certified Cost or Pricing Data. [(DEVIATION 18-04)]

As prescribed in 15.408(d), insert the following clause[ in lieu of the clause at FAR 52.215-12, Subcontractor Certified Cost or Pricing Data, for contracts entered into on or before June 30, 2018, and the contractor has expressly requested a modification to the contract to increase the threshold to $2,000,000]:

SUBCONTRACTOR CERTIFIED COST OR PRICING DATA (OCT 2010)[(DEVIATION 18-04)]

(a) Before awarding any subcontract expected to exceed the threshold for submission of certified cost or pricing data at FAR 15.403-4, on the date of agreement on price or the date of award, whichever is later[$2,000,000]; or before pricing any subcontract modification involving a pricing adjustment expected to exceed the threshold for submission of certified cost or pricing data at FAR 15.403-4[$2,000,000], the Contractor shall require the subcontractor to submit certified cost or pricing data (actually or by specific identification in writing), in accordance with FAR 15.408, Table 15-2 (to include any information reasonably required to explain the subcontractor’s estimating process such as the judgmental factors applied and the mathematical or other methods used in the estimate, including those used in projecting from known data, and the nature and amount of any contingencies included in the price), unless an exception under FAR 15.403-1 applies.

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52.215-13 Subcontractor Certified Cost or Pricing Data–Modifications [(DEVIATION 18-04)]

As prescribed in 15.408(e), insert the following clause[ in lieu of the clause at FAR 52.215-13, Subcontractor Certified Cost or Pricing Data - Modification, for contracts entered into on or before June 30, 2018, and the contractor has expressly requested a modification to the contract to increase the threshold to $2,000,000]:

SUBCONTRACTOR CERTIFIED COST OR PRICING DATA–MODIFICATIONS (OCT 2010) [(DEVIATION 18-04)]

(a) *

(1) Become operative only for any modification to this contract involving a pricing adjustment expected to exceed the threshold for submission of certified cost or pricing data at FAR 15.403-4[$2,000,000]; and
(2) ***

(b) Before awarding any subcontract expected to exceed the threshold for submission of certified cost or pricing data at FAR 15.403-4, on the date of agreement on price or the date of award, whichever is later [\( \$2,000,000 \)]; or before pricing any subcontract modification involving a pricing adjustment expected to exceed the threshold for submission of certified cost or pricing data at FAR 15.403-4 [\( \$2,000,000 \)], the Contractor shall require the subcontractor to submit certified cost or pricing data (actually or by specific identification in writing), in accordance with FAR 15.408, Table 15-2 (to include any information reasonably required to explain the subcontractor’s estimating process such as the judgmental factors applied and the mathematical or other methods used in the estimate, including those used in projecting from known data, and the nature and amount of any contingencies included in the price), unless an exception under FAR 15.403-1 applies.

(c) ***

(d) The Contractor shall insert the substance of this clause, including this paragraph (d), in each subcontract that exceeds the threshold for submission of certified cost or pricing data at FAR 15.403-4 on the date of agreement on price or the date of award, whichever is later [\( \$2,000,000 \)].

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52.230-1 Cost Accounting Standards Notices and Certification. [(DEVIATION 18-04)]

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

COST ACCOUNTING STANDARDS NOTICES AND CERTIFICATION (OCT 2015)[(DEVIATION 18-04)]

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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. [(DEVIATION 18-04)]

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

COST ACCOUNTING STANDARDS (OCT 2015)[(DEVIATION 18-04)]

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(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. [(DEVIATION 18-04)]

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

**DISCLOSURE AND CONSISTENCY OF COST ACCOUNTING PRACTICES (OCT 2015) [(DEVIATION 18-04)]**

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(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. [(DEVIATION 18-04)]

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

**DISCLOSURE AND CONSISTENCY OF COST ACCOUNTING PRACTICES—FOREIGN CONCERNS (OCT 2015) [(DEVIATION 18-04)]**

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(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].

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52.230-5 Cost Accounting Standards—Educational Institution. [(DEVIATION 18-04)]
As prescribed in 30.201-4(e), insert the following clause:

COST ACCOUNTING STANDARDS—EDUCATIONAL INSTITUTION (AUG 2016)[(DEVIATION 18-04)]

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(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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