SEP 9 2003

GSA Office of Governmentwide Policy

MEMORANDUM FOR RONALD POUSSARD
DIRECTOR
DEFENSE ACQUISITION REGULATIONS COUNCIL

FROM: RODNEY P. LANTIER, DIRECTOR
REGULATORY AND FEDERAL ASSISTANCE
PUBLICATIONS DIVISION

SUBJECT: FAR Case 1999-025, Cost Accounting Standards Administration

Attached are comments received on the subject FAR case published at 68 FR 40104; June 3, 2003. The comment closing date was July 21, 2003.

Response Number	Date Received	Comment Date	Commenter
1999-025-1	07/23/03	07/17/03	Paul J. Madden
1999-025-2	07/28/03	07/28/03	DoD/IG
1999-025-3	07/29/03	07/29/03	Lockheed Martin
1999-025-4	07/29/03	07/29/03	Bechtel
1999-025-5	09/09/03	09/02/03	AIA/NDIA
1999-025-6	09/09/03	09/02/03	Honeywell
1999-025-7	09/09/03	09/01/03	Ronald Givens & Associates, Inc.
1999-025-8	09/09/03	08/28/03	Rudolph Schuhbauer
1999-025-9	09/09/03	09/02/03	Raytheon

Attachments

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1999-025-1

General Services Administration
FAR Secretariat (MVA)
1800 F Street NW
Room 4035
ATTN: Laurie Duarte
Washington, DC 20405

July 17, 2003

SUBJECT: FAR Case 1999-025, Proposed FAR 30 and 52.230-6

The proposed new method for computing CAS cost impacts is seriously flawed.

Public Law 100-679 and the CAS Clause state that the cost impact process should not result in increased cost paid by the Government or result in the Government recovering more than the increased cost paid.

The proposed new FAR 30.604(h)(4) and 52.230-6(f)(3) violate those principles in more than half of the logical impact scenarios.

> One Example:
> A unilateral change shifts $10 million off of commercial work, $5 million going to Government Firm-Fixed-Price (FFP) work, the other $5 million going to Government Flexibly priced work. (The split need not be exact.)
>
> The proposed aggregating method effectively offsets the $5 million increase to Flexibly priced work with the $5 million increase ("decrease") to FFP work, even though the Government is $5 million out-of-pocket. (A license to steal)

My initial reaction was to avoid the proposed impact aggregating by settling impacts using only General Dollar Magnitudes (GDMs), since FAR 30.604(h) seems to apply only to Detailed Cost Impact proposals (DCIs). But, FAR 52.230-6(f) applies the principle to both GDMs and DCIs.
(You need to correct this contradiction.)

My second reaction was to propose through DCMA HQ the addition of the following subparagraph at FAR 30.604(h)(4)(v) and 52.230-6(f)(3)(v).

> When a cost impact involves significant cost shifts to or from commercial and non-CAS work, the above calculation of the aggregate impact may result in increased cost paid by the Government or result in recovering cost greater than the increased cost paid by the Government. For such a cost impact, the CFAO may use another method to determine the aggregate impact, as long as the result does not permit increased cost paid by the Government, or recover cost greater than the increased cost paid by the Government.

Rec'd 7/23/03

026-1

This is a self-serving recommendation, since most of the impacts I deal with involve cost shifts to or from commercial and non-CAS work. But, the problems with the proposed FAR 30.604(h) and 52.230-6(f) are deeper than that.

> Example:
> A unilateral change shifts $10 million off of FFP work onto Flexibly priced work. The proposed new aggregate method would result in the recovery of $20 million, twice as much as was shifted. The Government is $10 million better off than before the change, through over-recovery.

DCAA has been applying this double recovery method since it changed its internal guidance last year. Most CFAOs at large contractors ignore DCAA's totals, and continue to **either** reduce the FFPs **or** disallow the increase on Flexibly priced work.

The problem is the broadened application of the FFP "windfall profit" principle. I'm partly to blame.

The original CAS Board introduced the "windfall profit" principle only for circumstances where an FFP contract was overpriced due to a noncompliance.

During one September back in the 1970s, Northrop negotiated a large FFP contract for F-5E fighters. The next month (for the coming year), they submitted a unilateral change that shifted millions off of the F-5E contract onto their commercial 747 subcontract.

Northrop's opinion was, if they wanted to shift costs off of an FFP onto commercial work, that's their business. The Air Force countered that if they had known about the later accounting change, they would have negotiated a lower price for the F-5s.

I asked the DOD CAS Working Group, if I could apply the "windfall profit" concept to a "voluntary" change. They told me to give it a try. Northrop conceded. (Northrop also wanted to avoid a defective pricing investigation.)

After that, the DOD CAS Working Group published guidance extending the "windfall profit" principle to voluntary changes. The Working Group did not make the guidance mandatory. It's guidance wasn't binding on contractors anyway. My later idea of offsetting "windfall profits" with "windfall losses" also became universal dogma, without even making it into Working Group guidance or any regulation.

However, the proposed FAR 30 and 52-230-6 will make it all mandatory, to the extreme. We will have immediate disputes.

025-1

The smarter contractors will take their appeals to the courts rather than a Board of Appeals. Boards of Appeals usually examine the facts within the context of the FAR, no matter how inappropriate the FAR's results may be. But, the courts will look at the facts also in the context of Public Law, equity and common sense. If they do, the current proposed FAR impact method will be overturned.

The "windfall profit" principle was intended to make the Government whole, not more than whole. But my main concern is over the impact-aggregating license to steal.

PAUL J. MADDEN
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Note:
I am submitting this response as a private citizen, but my CAS credentials are as follows:

I have been a DOD CAS Monitor for 29 years, first at Northrop then at Boeing. I've recovered CAS impacts totaling more than $200 million.

I was also a traveling CAS trouble-shooter for the old Air Force Contract Management Division (AFCMD), then for DLA.

I participated in the development of AFCMD's "Administrative Guide to Cost Accountings Standards."

I participated with the CAS Board team in the development of CAS 418.

I was a regular contributor to the old DOD CAS Working Group's guidance.

I was offered the job to teach the old Fort Lee CAS class.

I instigated the addition to the old FAR 52.230-6 of the 10 percent withhold for non-submittal of required impact information. That provision survives in the current proposed FAR 52.230-6.

I was one of the DCMA people who briefed DCMA HQ, DCAA HQ and the FAR CAS Subcommittee in February 2001, on the very same problems discussed in the text of this letter. The original author of the proposed new FAR impact method refuses to view cost impacts as cost shifts. To the author, they are abstract pluses and minuses, which can be totaled without further regard.

1999-025-2

INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
400 ARMY NAVY DRIVE
ARLINGTON, VIRGINIA 22202–4704

AUG 28 2003

Ms. Laurie Duarte
General Services Administration
FAR Secretariat (MVA)
1800 F Street, N.W.
Room 4035
Washington, DC 20405

Dear Ms. Duarte:

In response to your request for public comments, we have reviewed the proposed Federal Acquisition Regulation (FAR) Case 1999-025, "Changes to Cost Accounting Practices." The proposal substantially revises FAR part 30, Cost Accounting Standards Administration, and the related contract clause at FAR part 52.230-6.

The proposed language incorporates key provisions in the CAS Board's final rule published June 14, 2000 and significantly improves current guidelines. We generally agree with the proposed procedures but recommend that the CAS Board define the term *aggregate* before the issuance of the final rule, and that the use of the term *cost accumulation* be explained in FAR. We also recommend that the cognizant Federal agency official document the criteria used to determine that an accounting change proposal is immaterial if a general dollar magnitude proposal is not received. The contractor should be required to act within a 60-day time limit, as current administrative procedures provide, and should be required to assert in writing that a cost impact is immaterial or zero. Our specific comments to the proposed changes are included in the enclosure.

Thank you for the opportunity to comment on FAR Case. Should you wish to discuss the issues further, please contact Ms. Madelaine E. Fusfield at (703) 604-8739.

Sincerely,

for L. Jerry Hansen
Deputy Inspector General
Inspections and Policy

Enclosure

025-2

OFFICE OF THE INSPECTOR GENERAL, DOD
COMMENTS ON PROPOSED FAR CASE 1999-025,
COST ACCOUNTING STANDARDS ADMINISTRATION

We recommend the following amendments to the proposed text:

FAR 30.603-1, *Required Changes,* paragraph (d)(2) states that " Contractors shall not receive an equitable adjustment that will result in increased costs in the aggregate paid by the Government . . ." The term is also used in FAR 30.001, *Definitions,* to specify that the Government shall pay no *aggregate* increased costs due to impact resulting from a unilateral change from one compliant accounting practice to another.

Discussion. Although the proposed rule includes separate procedures for resolving cost impacts, which is separate from the cost impact calculation procedures, the use of the word *aggregate* could raise unnecessary questions. Congress stipulated in 41 USC section 422, Cost Accounting Standards, paragraph (h)(3) that the CAS Board should define the term. The Board has not done so. However, unless the Board defines the term *aggregate*, contractors may not be prevented from using unintended offsets to avoid a Government recovery. Since only the Board has the authority to define aggregate, a resolution of a potential dispute may be delayed by the case being referred to the Board. Alternatively, if the Board does not act, litigation and the practices of cognizant Federal agency officials (CFAOs) will "de facto" define the term for them.

Recommendation: That our concerns be forwarded to the CAS Board with a request that it complies with the statutory requirement in 41 USC section 422 and defines *aggregate*.

FAR subpart 30.604(b), *Procedures,* paragraph (1)(i), requires the CFAO to request the contractor to submit a general dollar magnitude (GDM) proposal by a specified date unless the CFAO determines the cost impact is immaterial. The phrase, "by a specified date," is also used in paragraphs 30.604(f)(2) and (i), and paragraphs 30.605(e)(2) and (i). The provision "unless the CFAO determines the cost impact is immaterial" is contained in FAR 30.605(b)(4) and (c)(2)(i)(B).

Discussion. The proposed language does not stipulate a time limit and does not require the CFAO to document criteria used to define immateriality. The current contract clause at FAR 52.230-6, Administration of Cost Accounting Standards, requires the contractor to submit a description of an accounting change within 60 days, or mutually agreed to date. Depending on circumstances, an accounting change may be contingent on circumstances that require extra consideration. In the case of a noncompliance, FAR 30.602-2(a)(2) allows the contractor 60 days to respond. The 60-day period should not be exceeded when the CFAO has determined that the contractor is in noncompliance with existing standards.

Proposed provision in FAR 30.602, *Materiality,* requires the CFAO to use the criteria in 40 CFR 9903.305 (FAR Appendix on CAS) in determining materiality. The proposed FAR case also stipulates when an determination of immateriality may be made but is silent on documentary requirements.

Recommendations.

1. Reinstate the existing time limits for accounting changes and noncompliances in all paragraphs where the phrase "by a specified date" is used.

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2. Require that the CFAO document the criteria used when determining that a cost impact is immaterial in all paragraphs where the CFAO is allowed to determine immateriality before requesting a GDM.

FAR 30.605, *Processing Noncompliances,* paragraph (h), distinguishes between noncompliances that involve estimating costs and accumulating costs. The expression "noncompliances that involve accumulating costs" is unclear.

Discussion: The cost accounting standards guidance generally address the measurement of costs, assignment of costs to periods, and the allocation of costs to cost objectives. Although costs accumulate on contracts as a result of assignment and allocation practices, the CAS Board has not used that term except to discuss the accumulation of costs in pools prior to allocations. To avoid confusion, the guidance should be clarified.

Recommendation: Define *cost accumulation* in FAR 31.001 and clarify the expression "noncompliances that involve accumulating costs."

FAR 52.230-6, *Administration of Cost Accounting Standards,* paragraph (b), requires the contractor to submit to the CFAO a description of any cost accounting practice change to the Disclosure Statement and any assertion that the cost impact of the change is immaterial.

Discussion: The term *assertion* has specific meaning in the context of the Generally Accepted Auditing Standards, as incorporated into Government Auditing Standards. Auditors perform agreed-upon procedures on a subject matter or an assertion. However, the guidance does not specify that the assertion is to be written, and a non-auditor may not readily understand the term, particularly as the term is not defined in FAR 31.001.

Recommendation. Amend the FAR proposed guidance to require the contractor to submit a written statement; or, if the term *assertion* is retained, define the term in FAR 31.001 and specify that the assertion must be in writing.

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1999-025-3

LOCKHEED MARTIN

Anthony M. DiPasquale
Vice President
Government Financial Management

August 29, 2003

General Services Administration
FAR Secretariat (MVA)
1800 F Street N.W., Room 4035
Washington D.C., 20405

Attn: Laurie Duarte

Subject: FAR Case 1999-025

Dear Ms. Duarte:

Lockheed Martin Corporation (LMC) appreciates the opportunity to submit comments concerning the proposed revisions to FAR 30, Cost Accounting Standards Administration.

LMC has concerns regarding the proposed revisions and they are expressed in the Aerospace Industries Association response that we support. However, as the industry Cost Accounting Standards Board (CASB) representative, I feel that there are two significant issues that must be emphasized again by me.

INCREASED COSTS The CASB regulations as found in 48 CFR 9903.306 maintain an important distinction between contract adjustments required for unilateral changes and those required for CAS noncompliances and failures to follow disclosed practices. Paragraph (a) applies to both unilateral changes and noncompliances and defines "increased costs" as the actual costs paid by the Government as a result of a change to a cost accounting practice or a CAS noncompliance. Paragraph (b) applies to ONLY CAS noncompliances and introduces a more expansive measure of "increased costs" that pierces the sanctity of a fixed-price contracts. This distinction has not been adhered to in the proposed paragraph 30.604(h)(4)(i)(A) which incorporates the essence of paragraph (b) for unilateral changes. FAR does not have the authority to modify CAS regulations. Therefore, I recommend that the proposed language in FAR be modified to comply with CAS regulatory language.

OFFSETS Under 41 USCA 422(h)(3), the Government is expressly prohibited from recovering more than the increased costs as defined by the CASB when aggregating contracts subject to the cost accounting practice change. This prohibition is not being adhered to under the proposed paragraphs 30.604(h)(4)(iv) and 30.605(h)(8) & (9) by its use of precluding offsets between fixed-price and flexibly-priced contracts. In certain situations, the Government will actually recover more costs than entitled. Again, I recommend that the proposed language be modified to comply with CAS.

I would welcome further discussion of these matters if requested, and/or answer any questions.

Sincerely,

A. M. DiPasquale, Vice President,
Government Financial Management

1999-025-4

August 29, 2003

General Services Administration
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1800 F Street, NW, Room 4035
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Attention: Laurie Duarte

Subject: FAR Case 1999-025

After reading the second proposed rule, Bechtel has concluded that the FAR councils proposed process for determining and resolving cost impacts fails to recognize contractors, like Bechtel, who have adequate cost impact systems, increases Bechtel's administrative costs and advocates a less precise methodology for determining increased or decreased costs to the government. Bechtel is also concerned that the proposed rule eliminates offsets between fixed-price and flexibly priced contracts and subcontracts, re-defines how increased costs to the government are determined and advocates the adjustment of final incurred expense rates as a methodology for resolving cost impacts.

The following are Bechtel's comments related to the cost impact calculation, General Dollar Magnitude (GDM) and Detailed Cost-Impact (DCI) proposals:

Bechtel is very concerned that the second proposed rule does not acknowledge the fact that Bechtel has a government approved cost impact system that can provide our contracting officer with all information currently required to resolve a cost impact. Bechtel has expended considerable time and money developing and maintaining this system to insure that we track all CAS-covered contract pricing actions and can submit an adequate cost impact proposal in a timely manner by automating the cost impact calculation process. Now Bechtel is being told that we have to perform a detailed cost impact calculation, the results of which, if we read the proposed rule correctly, will never be submitted to the government. Proposed FAR 30.604(e)(1) and (g)(1) and 30.605(d)(1) and (f)(1) requires Bechtel to calculate the cost impact in accordance with FAR 30.604(h) and 30.605(h).

Instead of utilizing the results of the detailed cost impact calculation, the second proposed rule advocates the use of GDM and DCI proposals as the methodology for resolving issues related to noncompliances and voluntary accounting changes, even though they provide less precise results than the detailed cost impact calculation. Both the GDM and DCI proposals utilize samples, estimates, approximations and algebraic formulas to determine the increase or decrease in cost accumulations by contract and subcontract and

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government agency. The second proposed rule is silent as to why the results obtained from the detailed cost impact calculations are not used.

The FAR councils justification for the use of these proposals is that they provide greater flexibility to apply practical solutions to the cost impact process and to reduce administrative effort. Bechtel considers both of these proposal techniques to be additional administrative effort since the effort required to prepare a cost impact calculation has not changed.

Proposed FAR 30.604(h)(1) and (2) provides *"that all affected contracts and subcontracts, for all segments, are included in the cost impact calculation"*. Proposed FAR 30.605(h)(1) and (2) provides *"that all affected contracts and subcontracts, regardless of their status (i.e., open or closed) or the fiscal year in which the costs were incurred, are included in the cost impact calculation"*. This requirement poses no problems for Bechtel since our cost impact system includes all CAS-covered contracts and subcontracts in the cost impact calculation.

FAR 30.604(h)(3) requires a contractor to "*Compute the increase or decrease in cost accumulations for affected CAS-covered contracts and subcontracts based on the difference between (i) the estimated cost to complete using the current practice and (ii) the estimated cost to complete using the changed practice"*. Bechtel is not concerned with this methodology since it is has not changed and Bechtel's cost impact system is programmed to perform the required calculations.

As an aside, what is disturbing to Bechtel is that the proposed rule introduces a new term, *"cost accumulations"* that is not defined. Since the FAR councils failed to define the term, it is assumed that the term is an outgrowth of the definition provided by DCAA in their audit guidance related to cost impact. DCAA defined "cost accumulation" as (i.e., cost measurement, assignment, and allocation) and its affect on contract prices.

Proposed FAR 30.605(h)(3) provides that Bechtel, *"For noncompliances that involve estimating costs, compute the impact on contract and subcontract price for flexibly priced and fixed-price contracts and subcontracts (the computation for the flexibly priced contracts is used only for purposes of determining any necessary adjustments to fee and incentives), based on the difference between (i) the negotiated contract or subcontract price and (ii) what the negotiated price would have been had the contractor used a compliant practice"*. Again, Bechtel is not concerned with this methodology since it is has not changed and Bechtel's cost impact system is programmed to perform the required calculations.

Proposed FAR 30.605(h)(4) provides that Bechtel, *"For noncompliances that involve accumulating costs, compute the cost impact on cost accumulations for flexibly priced and fixed-price contracts and subcontracts (the computation for the fixed-price contracts is used only for purposes of determining interest on costs paid), based on the difference between (i) the costs that were accumulated under the noncompliant practice and (ii) the costs that would have been accumulated using a compliant practice (from the time the*

noncompliance practice was first implemented until the date the noncompliance was replaced with a compliant practice". Once again, Bechtel is quite concerned with the amount of administrative effort that will be required to satisfy this new requirement, as it is apparent that the benefits of performing such an impact are outweighed by the cost involved. We also disagree that the government has been harmed by the mere accumulation of costs in an accounting system. The government cannot be harmed until an actual billing has been submitted and paid.

The following are Bechtel's comments related to the GDM proposal:

Proposed FAR 30.604(e)(2) and 30.605(d)(2) provides that Bechtel *"May use one or more of the following to determine increase or decrease in contract and subcontract price and cost accumulation".* Our first question to the FAR councils is; why can't Bechtel utilize the results of the cost impact calculation to satisfy this requirement? Bechtel's cost impact system summarizes the increase or decrease in cost accumulations by contract, contract type and government agency. It would appear that this data would satisfy the proposed FAR 30.604(e)(3)(i) and 30.605(d)(3)(i) requirement to provide the total increase or decrease in cost accumulation by executive agency. The second proposed rule provides no rationale or justification for not using the results of the cost impact calculation to resolve the cost impact. Other than reducing the government's administrative effort, what possible justification can be offered!

Proposed FAR 30.604(e)(2)(i) and 30.605(d)(2)(i) provides that Bechtel may use *"A representative sample of affected CAS-covered contracts and subcontracts"* to determine increase or decrease in cost accumulations. Bechtel's first concern is what constitutes a "representative sample". Bechtel currently has over 1600 CAS-covered contract and subcontract pricing actions in its CAS Database for twenty-one (21) government agencies. Considering the diversity of the work performed for the government, how does Bechtel determine a representative sample? Bechtel has had many discussions with the government on this issue and to date, no agreement has been reached on what would constitute a representative sample of contracts and subcontracts.

Bechtel is also concerned that based on the requirements of proposed FAR 30.604(f)(1) and 30.605(e)(1), the CFAO may request revised GDM proposals to obtain an expanded sample of affected CAS-covered contracts and subcontracts. Based on Bechtel's experience with the government in the area of sample and the projection of sample data over a universe, it is our opinion that the government will continue requesting expanded samples until they obtain the results they are looking for.

Assuming that Bechtel can ever reach agreement with the government regarding a representative sample, Bechtel is now required by proposed FAR 30.604(e)(3)(i) and 30.605(d)(3)(i) to provide the total increase or decrease in contract and subcontract prices and cost accumulations by executive agency. The second proposed rule fails to provide any guidance on how to accomplish this requirement. How does Bechtel extrapolate the results of the sample? What methodology is used to project the results of the sample?

Proposed FAR 30.604(e)(2)(ii) provides that Bechtel can determine the increase or decrease in cost accumulations by *"the change in indirect rates multiplied by the total estimated base computed for each of the following groups: Fixed-price contracts and subcontracts and flexibly priced contracts and subcontracts"*. Our first concern with this option is that it requires additional time and effort to calculate the increase or decrease in cost accumulations using a different methodology than is required by the requirements for calculating the cost impact. Why would Bechtel or any other contractor choose this as an option when it had already computed the exact impact? Assuming that a contractor would choose this alternative, how does the contractor comply with proposed FAR 30.604(e)(3)(i)? Does the government assume that contractors can somehow summarize the "estimated base" by executive agency?

Proposed FAR 30.604(e)(2)(iii) and 30.605(d)(2)(iii) provides that Bechtel can use *"any other method that provides a reasonable approximation of the total increase or decrease in contract and subcontract prices and cost accumulations for all affected fixed-price and flexibly priced contracts and subcontracts"*. The mystery is why the government is asking for a reasonable approximation of prices and cost accumulations when the actual impact on prices and cost accumulations has already been identified in the cost impact calculation.

Proposed FAR 30.605(d)(2)(ii)(A) provides that *"when the noncompliance involves cost accumulation"*, a contractor can *"for purposes of computing increased cost in the aggregate, the change in indirect rates multiplied by the applicable base for flexibly priced contracts and subcontracts"*. Once again the proposed rule wants Bechtel to incur additional time and effort to calculate increased costs in the aggregate in a different manner than is required by the cost impact calculation. Why does the second proposed rule require Bechtel to calculate increased cost in the aggregate one way for the GDM proposal and another way for the cost impact calculation?

Proposed FAR 30.605(d)(2)(ii)(b) requires that Bechtel compute interest. The specific methodology that Bechtel must use is *"the change in indirect costs multiplied by the applicable base for flexibly priced and fixed-price contracts and subcontracts"*. This requirement makes no sense at all. How do you get interest by multiplying a difference in indirect costs by an applicable base? We suggest that the FAR councils re-think what they are trying to accomplish.

The following are Bechtel's comments related to the DCI proposal.

Proposed FAR 30.604(g)(2)(i) and (ii) requires that Bechtel *"shall show the estimated increase or decrease in cost accumulations for each affected CAS-covered contract and subcontract unless the CFAO and the contractor agree to (i) include only those affected CAS-covered contracts and subcontracts exceeding a specified amount; and (ii) estimate the total increase or decrease in cost accumulations for all affected CAS-covered contracts and subcontracts, using the results in paragraph (g) (2) (i) of this section"*.

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Proposed FAR 30.605(f)(2)(i)(A) and (B) and (ii) requires that Bechtel *"shall show the increase or decrease in price and cost accumulations, as applicable for each affected CAS-covered contract and subcontract unless the CFAO and the contractor agree to (i) include only those affected CAS-covered contracts and subcontracts having (A) Contract and subcontract values exceeding a specified amount when the noncompliance involves estimating costs; and (B) incurred costs exceeding a specified amount when the noncompliance involves accumulating costs; and (ii) estimate the total increase or decrease in price and cost accumulations for all affected CAS-covered contracts and subcontracts using the results in paragraph (f) (2) (i) of this section"*.

At this point, Bechtel can use the results of our cost impact calculation and provide the government the actual increase or decrease in price and cost accumulations, so it makes no sense use a sample of high dollar contracts and subcontracts, which yields a far less precise result.

The following are Bechtel's comments related to increased costs:

After calculating the cost impact, section (h) of proposed FAR 30.604 and 30.605 requires Bechtel to determine increased costs in a manner contrary to the methodology required by the Cost Accounting Standards Board (CASB) (see 48 CFR 9903.306).

The FAR councils have taken the opportunity in the second proposed rule to change the definition of increased costs to the government. The proposals interpretation of increased cost, especially as they relate to fixed-price contracts, and the failure to differentiate increased costs related to noncompliance from those associated from unilateral changes is in direct conflict with existing CASB regulations.

To wit, only the CASB has the statutory authority for defining increased costs. The definitions of increased costs are provided for in 48 CFR 9903.306.

The following are Bechtel's comments related to elimination of the term "offset".

The redefinition of offsets is a classic case of where the councils have tried to fix something that was not broken, and breaks it. Under the guise of seeking to redefine "offsets", the revised proposal creates a scenario where the government could conceivably recover more than the aggregate increased costs it is justifiably entitled to under the current statute. Thus the proposed regulations take on a punitive aspect never envisioned by the original CAS Board. The second proposed rule specifically disallows offsets between contract types, which are allowable under the current regulations.

The justification for this change is *"to avoid potential confusion regarding the term, but includes the effect of offsets by separating the calculation of the cost impact from the resolution of the cost impact"*. Based on our reading of the proposed rule, it appears that

quite the opposite is true. Proposed FAR 30.604(h)(4)(iv) and 30.605(h)(8) and (9) basically eliminate the use off offsets between fixed-price and flexibly priced contracts and subcontracts. The position taken by the FAR councils in the proposed rule disregard the guidance found in DOD Working Group Item 76-8. The specific guidance in 76-8 discusses offsets from the contract perspective, not contract type. Item 1 of the guidance states that *"contracts may be adjusted individually or cost increases and decreases may be offset"*. The proposed rule also violates 41 USCA 422 (h)(3), which prohibits the Government from recovering more than increased costs to the Government in the aggregate. Moreover, the proposed language at FAR 30.606(a)(3) is counter productive as it contains language that will further limit the government and the contractor from resolving some of the more complex cost impacts. As we read this section it precludes the government from combining cost impacts that include (a) changes implemented in different fiscal years, (b) changes and noncompliance's, (c) two or more noncompliance's (a very common occurrence), and (d) different categories of changes. There is no apparent reason for limiting these options as the Government is adequately protected by existing regulations.

Proposed FAR 30.603-2(d)(1) also provides that, *"required changes made to comply with new or modified standards may require equitable adjustments, but only to those contracts awarded before the effective date of the new or modified standard"*. How can a CFAO make an equitable adjustment when the proposed rule does not allow offsets between fixed-price and flexibly priced contracts.

In addition, any noncompliance or unilateral change that causes shifts in costs between fixed-price contracts and subcontracts and flexible priced contracts and subcontracts could provide the government with a "windfall profit" if offsets are not allowed between contract types.

The following are Bechtel's comments related to identifying increased or decreased costs paid related to a unilateral change:

Proposed FAR 30.604(e)(3) requires that Bechtel provide *"for unilateral changes, the increased or decreased costs paid by the government for each of the following groups: (A) Fixed-price contracts and subcontracts and (B) Flexible priced contracts and subcontracts"*. Bechtel's response to this proposed requirement is that there should never be any increased or decreased costs paid by the government related to a unilateral change if contractors are complying with the regulations. Under the current regulations and the proposed FAR 30.603-2(c)(i), Bechtel is required to submit a description of the change not less than 60 days (or other mutually agreeable date) before implementation of the change. Under the current and proposed regulations, if Bechtel implements the unilateral change without submitting the required notice, the CFAO would normally determine the change to be a failure to follow a cost accounting practice consistently and process it as a noncompliance.

In Bechtel's particular situation, it is almost impossible for Bechtel to bill the government for a change in accounting practice. Bechtel's billing rates are established based on a review of our Forward Pricing Rates (FPR). If our FPR submittal included an accounting change, DCAA would neither approve our FPR or new billing rates.

Assuming that it was possible for the government to pay increased or decreased costs related to a unilateral change, Bechtel questions how this data would be used in determining increased costs in the aggregate or resolving the cost impact. The current regulations and proposed FAR 30.604(h)(3)(i) and (ii) require Bechtel to calculate the cost impact based on the difference between the estimated costs to complete using the current practice and the estimated costs to complete using the changed practice. Estimated costs to complete for each affected CAS-covered contract and subcontract would be from the proposed date of the unilateral change until contract completion. The cost impact calculation is providing the government with the anticipated increase or decrease in the costs that will be subsequently accumulated and billed to the government as a result of the change. If the change increased the costs to the government, necessary contract adjustments would be made to insure that the government does not pay increased costs as a result of the unilateral change.

If it was possible for a contractor to bill increased costs and the cost impact calculation confirms that the unilateral change will increase the costs on CAS-covered contracts and subcontracts, the government could not adjust a contract or contracts based on the results of the cost impact and request a billing adjustment. Such actions would result in a windfall profit for the government.

Proposed FAR 30.606(c)(3) does not discuss the use of the information required under proposed FAR 30.604(e)(3) to resolve cost impacts. The second proposed rule provides no justification for wanting this data or any commentary on how this data would be used. Considering the administrative costs required for a contractor with a large numbers of CAS-covered pricing actions to comply with such a requirement, Bechtel questions whether the cost to comply is worth the benefits received.

The following are Bechtel's comments related to adjusting final incurred cost rates for CAS issues:

Bechtel was quite surprised to find that the second proposed rule allows the CFAO to adjust final indirect cost rates as an alternative to contract adjustments. Specifically, proposed FAR 30.606(d) provides that *(1) "the CFAO may use an alternative method instead of adjusting contracts to resolve the cost impact, provided the Government will not pay more, in the aggregate, than would be paid if the CFAO did not use the alternative method and the contracting parties agree on the use of the alternative method".*

Proposed FAR 30.606(3) provides that, *"when using an alternative method that excludes the costs from an indirect cost pool, the CFAO shall (i) apply such exclusion only to the*

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determination of final indirect cost rates, and (ii) adjust the exclusion to reflect the Government's participation rate for flexibly priced contracts and subcontracts. For example, if there is an aggregate increased costs to the Government of $100,000, and the indirect cost pool where the adjustment is to be effected has a Government participation rate of 50 percent for flexibly priced contracts and subcontracts, the contractor shall exclude $200,000 from the indirect cost pool ($100,000/50% = $200,000).

It is also very apparent to Bechtel that the proposed rule is based on DCAA guidance. In January 2002, DCAA issued audit guidance related to the computation and settlement alternatives of the CAS cost impact for unilateral cost accounting practice changes and for noncompliances with CAS or a contractor's disclosed or established accounting practices. As part of this guidance, DCAA advocates the use if indirect rate adjustments. Specifically, DCAA states that, *"the adjustments should be for the aggregate increased costs paid by the government (including the impact on FP contracts), adjusted for the government participation rate in the allocation base of the rate being adjusted. Indirect rate adjustments should be used only on final indirect rates rather than adjusted for in forward pricing rates to ensure that the government recovers the full amount it is owed".*

In addition, DCAA makes the following statements under settlement alternatives related to a concurrent accumulation and estimating noncompliance: *"The government could adjust the indirect rates such that the remainder of increased costs paid by the government after the accumulated costs on flexibly-priced contracts self-adjust will be recovered through the indirect rate application to the government flexibly-priced contracts. We recommend adjusting the rate on a completed fiscal year rather than adjusting forward pricing rates so the government is confident that it recovers the full amount to which it is entitled".*

What is frustrating to Bechtel is that neither the FAR councils nor DCAA address the most basic problem associated with adjusting final incurred cost rates for CAS issues. That problem is that final incurred cost rates are applicable to all government contracts, not just CAS-covered government contracts. Therefore, CAS issues are being forced on non CAS-covered contracts through the application of adjusted final incurred cost rates.

This is a very sensitive issue to Bechtel, since during the 1990's, Bechtel was coerced by DCAA to include CAS issues in the settlement of final incurred cost rates. The CAS adjustment of the final incurred cost rates occurred even though Bechtel strongly advised buying offices, auditors and contracting officers of the negative ramifications of that action. Bechtel was able to demonstrate the adverse cost impact of the CAS adjusted final incurred cost rates on government contracts that were not CAS-covered. Due to the significance of the "harm" to the non CAS-covered contracts, the contracting officer was forced to disposition many of the outstanding CAS noncompliance issues based on materiality, even though Bechtel had been notified, in writing, that none of the CAS issues would be dispostioned based on materiality.

Apparently, neither the FAR councils nor DCAA are aware of the position taken by the CASB regarding this issue. Included in the second supplemental notice of proposed

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rulemaking, 64 FR 457000, August 20,1999, is a response made by the CASB in response to a commenter suggesting the use of the final indirect expense rate settlement process rather than contract price adjustments as a method to resolve the cost impact action.

The CASB stated that, *"the Board would caution the contracting parties with regard to use of any method which results in further inconsistency between the contract price amounts and accumulated contract costs due to the cost accounting practices used to estimate proposed costs and to accumulate costs during contract performance.*

Adjustments of indirect expense rates to settle a cost impact action can result in the adjustment of the wrong contracts for the impact of the change in accounting practice. This method also results in the establishment of final indirect expense rates that are not consistent with a contractor's established and disclosed accounting practices for allocating indirect costs to final cost objectives.
Adjusting indirect expense rates to resolve the cost impact would in most cases require an adjustment to the indirect cost pool that exceeds the amount of the actual cost impact adjustment amount in order to ensure that the aggregate cost impact amount calculated for all affected CAS-covered contracts is recovered on the open flexibly priced contracts being performed during the particular cost accounting period to which the "adjusted" rates apply. Use of this approach distorts the accumulation of costs used for contract cost and pricing purposes, in that the resultant accumulated costs recognized for CAS-covered contracts will be greater or less than the costs that would have been accumulated as actual "booked" costs in accordance with a contractor's established cost accounting practices had the indirect cost pools, and the indirect cost rates used to allocate such costs to final cost objectives, not been adjusted to reflect the cost impact of a change in accounting practice.

Such pool adjustments may further distort the difference between the costs that would have originally been allocated to the affected CAS-covered contracts as the actual "booked" costs and the costs that will be allocated to those contracts for contract costing purposes based on the adjusted final rates if multiple cost accounting periods are involved and/or if the Government's percent of participation in the allocation base is not consistent.

Adjustment of contract prices is the method which most consistently reflects the requirements of both the applicable contract clause and CAS 9904.401 or 9905.501, as applicable, regarding consistency in the cost accounting practices used to both estimate and accumulate costs on CAS-covered contracts. The Board finds inappropriate the commenter's suggestion that the Board endorse a position which holds that such adjustments should only be used as a last resort. To the contrary, the Board believes that any method that further distorts the Board's consistency requirements, such as the adjustment of indirect expense rates, should be a method that is only used as a last resort. If the cognizant Federal agency official determines that adjustment of contract prices is not warranted to resolve the cost impact action, the Board is of the view that a transfer of

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funds between the Government and a contractor is the most appropriate "other suitable technique" that can be used to settle the action".

The second paragraph of the Board's comments specifically addresses the problem faced by Bechtel when its final incurred cost rates were adjusted for CAS issues. The wrong contracts (non CAS-covered) were adjusted for a CAS issue resulting in harm to Bechtel.

Bechtel is of the opinion that any attempt by the government to adjust a final incurred cost rate for a CAS issue will result in Bechtel having to submit and negotiate multiple final incurred cost rates. One set of final rates for all government contracts that are not CAS-covered. Another set of rates for CAS-covered contracts. Potentially, Bechtel may have to submit and negotiate multiple final rates that are applicable to CAS-covered contracts. For instance, there may be a CAS issue that is not applicable to CAS-covered contracts that are under modified coverage.

Unless the FAR councils can address the negative impact of adjusting final incurred cost rates for CAS issues, Bechtel strongly recommends that this option for resolving cost impacts be deleted.

The following are Bechtel's comments related to the FAR councils failure to impose time constraints on work performed by government employees:

Bechtel is concerned that the second proposed rule does not address one of the major problems associated with the resolution of cost impact proposals related to noncompliances and accounting changes. That problem is the fact that the government has no time restrictions for performing their responsibilities. Bechtel always has to respond to DCAA allegations of noncompliance contained in draft and final audit reports within thirty (30) day. We are given sixty days (60) to respond to initial and final determination of noncompliance from our contracting officer. However, we have had situations where DCAA has taken over a year to audit a cost impact proposal. Bechtel has responded to initial determinations within the specified time frame and has never received a response from our contracting officer.

It in the opinion of Bechtel, if the FAR councils are really interested in improving the process for the resolution of cost impacts and of noncompliances and accounting changes, in general, they should require that all actions related to these issues be performed within specified time frames. The government cannot continue to have the ability to work at whatever pace they choose, but yet force contractors to respond to significant issues in unrealistic time frames.

The following are Bechtel's comments related to materiality:

Proposed FAR 30.602(b) provides that *"a CFAO determination of materiality (1) may be made before or after a general dollar magnitude proposal has been submitted, depending*

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on the particular facts and circumstances; and (2) shall be based on adequate documentation".

The issue of materiality is very germane to Bechtel, since we have been very successful in using materiality as an argument for resolving noncompliance issues. We are concerned with the wording of the proposed rule, which allows for a determination of materiality before the submittal of the GDM. How can the CFAO make this determination? What data would Bechtel have to provide a CFAO for this determination to be made?

The following are Bechtel's comment related to adequate documentation:

The proposed rule uses the term "adequate documentation". What is adequate documentation? Bechtel recommends that the FAR councils be required to provide guidelines for what constitutes adequate documentation when making a determination of materiality.

The following are Bechtel's comments related to the responsibility of the CFAO:

The second proposed rule proposes that a cognizant federal agency official (CFAO) now be responsible for CAS administration. Specifically, proposed FAR 30.601(a) provides that *"the CFAO shall perform CAS administration for all contracts and subcontracts in a business unit, even when the contracting officer retains other administrative functions".* In addition, proposed FAR 30.606(c)(6) provides that *"the CFAO shall (i) execute the bilateral modifications if the CFAO and contractor agree on the amount of the cost impact and the adjustments".*

In the opinion of Bechtel, the proposed responsibilities of the CFAO will not work at contractors such as Bechtel who have CAS-covered contracts and subcontracts with many government agencies. The use of a CFAO may work within DOD, but it is doubtful that it will work with other agencies such as DOE, EPA, USAID, etc. Over the years, Bechtel has dealt with contracting officers in government agencies other than DOD who have refused to acknowledge that Bechtel has one Administrative Contracting Officer (ACO) responsible for all government contracts at Bechtel. Agencies outside of DOD have refused to accept final incurred expense rates that have been audited by DCAA and approved by our ACO.

Considering the difficulty that Bechtel has experienced with routine government contract administration issues in working with multiple government agencies, it is inconceivable to us that agencies such as DOE or USAID will allow a CFAO to execute a bilateral modification to one of their contracts.

If the intent of the FAR councils was to improve the process related to cost impacts, then they have failed as the second proposed rule is unnecessarily complicated and does not address the major reasons that the current process does not work. The FAR councils seem to overlook the simple actions that could be taken, such as enforcing the requirements for contractors to maintain listings of CAS-covered contract pricing actions and adding a requirement for contractors to keep cost proposals that were the basis for negotiating the value of the CAS-covered pricing actions. Taking these simple steps would ensure that all contractors could respond to noncompliances related to estimating.

Bechtel also recommends that the proposed rule be changed to require the CFAO to make a determination, in conjunction with DCAA, regarding a contractor's cost impact system and their ability to submit cost impact proposals. If a contractor has the ability to identify increased or decreased cost accumulations for each affected CAS-covered contract and subcontract and can properly summarize the increased or decreased cost by contract type and government agency, the CFAO should be required to utilize that contractors system. The use of the proposed GDM and DCI proposal formats should be the second option of the CFAO not the first, since they do not provide precise information.

Bechtel also recommends that the FAR councils re-think the requirement for cost accumulation noncompliances. If you consider the fact that the only harm to the government is the application of an interest rate to the difference between a compliant and noncompliant billing, how significant can the harm be when compared to the administrative costs involved in calculating such an impact.

Sincerely,

James L. Tevis
Manager Government Services

1999-025-5

AEROSPACE INDUSTRIES ASSOCIATION
NATIONAL DEFENSE INDUSTRIAL ASSOCIATION

September 2, 2003

General Services Administration
FAR Secretariat (MVA)
1800 F Street, NW, Room 4035
Attn: Laurie Duarte
Washington, DC 20405

Reference: FAR Case 1999-025

Dear Ms. Duarte:

The Aerospace Industries Association and the National Defense Industrial Association are pleased to have the opportunity to comment on the proposed rule "to amend the Federal Acquisition Regulation (FAR) to delineate the process for determining and resolving the cost impact on contracts and subcontracts when a contractor makes a change to a cost accounting practice or follows a noncompliant practice."

We have reviewed the proposed rule and support the Councils' efforts to clarify this process and believe there are a number of positive aspects to the proposal. For example, it provides flexibility in the techniques that may be used to determine cost impacts resulting from cost accounting practice changes and noncompliances with cost accounting standards (CAS), and it recognizes retroactive changes in cost accounting practices. It also attempts to streamline the existing process by allowing the Cognizant Federal Agency Official (CFAO) to truncate the cost impact adjustment process whenever it is determined the cost impact to the Government is immaterial or a general dollar magnitude (GDM) analysis provided by the contractor is adequate for measuring the cost impact. Further, the proposed rule gives formal recognition to the concept of "decreased costs" to the Government and allows combining the impacts of multiple cost accounting practice changes.

However, industry has significant concerns with several provisions of the proposed rule. We believe it is overly prescriptive and will result in disputes and substantially increase administrative effort. For example, the proposal creates new definitions that conflict with those established by the CAS Board. It requires use of a method for calculating increased costs to the Government in the aggregate that is mathematically incorrect and, in some cases, will result in the Government recovering more cost than is permitted by law. Also, the requirement to include closed contracts in cost impact calculations potentially expands the period for requiring cost impact adjustments back to the initial promulgation of CAS (as much as 30 years and counting). Additionally, contrary to the current thrust to give more authority to contracting officers in the administration of contracts, the proposal severely limits the flexibility CFAOs need to administer CAS. A summary of our comments on the most significant areas of concern follows.

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New Definition of Increased Costs to the Government

Increased costs to the Government resulting from a contractor's change in its cost accounting practices are defined by the CAS Board at FAR 9903.306(a). The regulation states:

> Increased costs shall be deemed to have resulted whenever the cost paid by the Government results from a change in a contractor's cost accounting practices or from failure to comply with applicable Cost Accounting Standards, and such cost is higher than it would have been had the practices not been changed or applicable Cost Accounting Standards complied with. (Emphasis added)

From this regulation, it is clear increased costs to the Government only result from a change in a contractor's cost accounting practices when the actual costs paid by the Government are more than they would have been had the contractor's practices not changed.

The proposed rule, however, expands this definition to also include differences in the amount of costs a contractor assigns to its CAS-covered firm-fixed price contracts due to a change in its cost accounting practices even though that difference has no effect on the amount ultimately paid by the Government.

As detailed in 41 USC §422(h), Congress authorized only the CAS Board to define increased costs to the Government. Accordingly, the new definition of increased costs created under the proposed rule, if promulgated, will be null and void since the Councils do not have authority to change what the CAS Board has already defined.

If the Government believes the FAR 9903.306(a) definition needs to be revised, it should present its case to the CAS Board.

Method for Aggregating Increased Costs to the Government

Under 41 USC §422(h)(3), the Government is precluded from recovering more than the increased costs it pays, in the aggregate, whenever a contractor changes its cost accounting practices or fails to comply with the cost accounting standards. The proposed rule, however, provides a process for adding together the increase/decrease in costs paid on flexibly priced contracts and fixed price contracts to arrive at an increased cost in the aggregate value. This process is mathematically incorrect and will result, in certain situations, in the Government recovering more from contractors than is permitted by law or can be reasonably justified.

When a change to a cost accounting practice or CAS noncompliance simultaneously affects different types of contracts, the cumulative or aggregate effect of that change cannot be correctly calculated by simply adding up the "absolute" impact on the individual contracts. The proposed rule, however, as described above attempts to do just that. As shown in **Attachment 1**, under various scenarios, it never achieves the same result as that coming from the comparison of what the Government ultimately pays in the aggregate on CAS-covered contracts under one set of accounting practices versus another. We note the following with respect to Attachment 1.

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1. The correct basis of comparison for determining whether a change to a cost accounting practice will result in any "increased cost paid", in the aggregate, is the amount the government would have paid had no change to a cost accounting practice taken place, as discussed in the previous section. However, for the purpose of Attachment 1, we have reduced the basis for comparison where the proposed Government interpretation would seek adjustments on firm fixed price contracts that were properly priced in compliance with applicable CAS. We do this to illustrate that the problem with the proposal is not due to a difference in the way firm fixed price contracts are handled. Even when using the Council's proposed interpretation on FFPs, adding the "increased costs" together produces incorrect results. The outcome will be windfalls to the Government in virtually all cases where allocated costs increase on cost reimbursement type contracts, while decreasing on FFPs.

2. In order to avoid adding complexity to the illustration, Attachment 1 does not go further than the Council's proposal. Offsets that may be appropriate under the CAS Board's Interpretation, FAR Part 48 9903.306(e), are not included in the Attachment.

We believe a more appropriate measurement, which can be consistently applied and precludes payment of amounts that exceed that allowed by law, is the following:

> Increased costs to the Government, in the aggregate, equals the difference between the cost the Government will pay on its CAS-covered contracts, if no cost impact adjustments are made for a change in cost accounting practices or CAS noncompliance, and the costs that would have been paid if the cost accounting practices had not changed or noncompliance occurred.

Reopening of Closed Contracts

As a matter of practicality, the proposed rule's attempt to include closed contracts and years with negotiated final overhead rates in cost impact calculations is unreasonable and conflicts with contract law. The cost accounting standards have been in effect in some cases for more than 30 years and it is not reasonable to assume contractors would be able to reconstruct the data supporting a cost impact analysis reaching back that far in history. The records needed are usually no longer available nor are the individuals with knowledge of the facts and circumstances pertaining to those periods. Additionally, industry mergers, acquisitions, and consolidations in many cases have made it impossible to reasonably calculate the cost impact of historical noncompliances. Prospectively, compliance with the proposed rule could be interpreted to require retention of virtually all estimating, accounting, and other records related to contract negotiation and performance in perpetuity. Therefore, contrary to statements included on page 40105 of the 7/3 Federal Register issuance, we believe the proposed rule does impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, et seq.

Also, existing statutes of limitation, laws of estoppel, and contract closeout procedures outlined in the FAR preclude reopening contracts/periods in most circumstances.

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Further, as established by the CAS Clause at 9903.201-4 (duplicated at FAR 52.230-2), only the price of the individual contract containing the clause may be adjusted for the cost impact of changes to a contractor's cost accounting practices or failure to comply with CAS. The proposed rule, without authorization, seeks to expand the applicability of this clause to include all previously awarded CAS-covered contracts by creating a new definition called "affected CAS-covered contracts or subcontracts." This new definition, which allows the Government to include all previously awarded CAS-covered contracts irrespective of their status in the calculation of increased costs to the Government for changes in cost accounting practices and/or CAS noncompliances, not only infringes on the CAS Board's area of responsibility, it attempts to retroactively apply a new rule to pre-existing contracts. This is an action the Supreme Court in the Winstar case[1], and more recently the U.S. Court of Federal Claims in the General Dynamics case involving executive compensation[2], have ruled constitutes a breach of those contracts.

Need for More Flexibility

Contrary to other DoD initiatives, particularly the DFARS Transformation project, the proposed regulations severely limit the CFAOs ability to administer cost accounting practice changes and CAS noncompliances. If implemented as currently written, in many cases, CFAOs will not be able to resolve cost impacts resulting from changes to cost accounting practices or CAS noncompliances in a manner fair and equitable to both parties.

For example, the proposed rule requires contractors to use current estimates-to-complete to calculate the cost impact of changes to cost accounting practices. Such estimates, however, may be so impacted by other events occurring subsequent to the award of a contract that they do not provide a reasonable basis for measuring increased costs to the Government.

In other areas, the proposed rule is so detailed and prescriptive that CFAOs will be unable to exercise good business judgment and consider the unique aspects of each contractor's business environment in settling issues.

Additionally, the proposed minimum requirements for computing general dollar cost impacts and noncompliance interest payments are overly onerous and will invalidate more simplified approaches that have worked well for both CFAOs and contractors for many years.

Summary

We have included as **Attachment 2** our detailed recommendations in a line-in/line-out of the proposed rule to address these concerns and streamline/improve the processes attendant to FAR Part 30. Although not included in our detailed response, our recommended revisions for proposed FAR 52.230-6&7 duplicate those we have made for FAR Part 30.

Because of the size and significance of this proposed rule and the number of areas where improvements are needed, we recommend another public working group session be held to go over in detail the recommendations we are providing. Working meetings of this type, subsequent

[1] United States v. Winstar Corp., 518 U.S. 839 (1996)
[2] General Dynamics Corp. v. United States, 47 Fed. Cl. 514, 545 (2000)

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to receipt of public comments on the proposed rule, would enable Government and industry representatives to have a better understanding of the concerns of both parties. We would be pleased to participate in such a meeting.

If you have questions concerning our comments on the proposed rule, please do not hesitate to contact Mr. Dick Powers, AIA, Director of Financial Administration, by phone at (703) 358-1042 or email at powers@aia-aerospace.org. You may also contact Ms. Ruth Franklin, NDIA, Director of Procurement, by phone at (703) 247-2598 or email at rfranklin@ndia.com.

Sincerely,

Robert T. Marlow
Aerospace Industries Association
Vice President, Government Division

Peter M. Steffes
National Defense Industrial Association
Vice President, Government Policy

Method For Calculating Increased Costs In The Aggregate

A	B	C	D	E	F	G	H
Contract Type	ETC After Change	ETC Before Change[1]	Increase/ (Decrease) In Cost Accum. (B-C)	Increased/ (Decreased) Costs to Govt.[2]	Amounts Paid By Govt. If No Cost Impact Adjustments Are Made	Aggregate Difference In Costs Paid By Govt.[3]	Comments
Scenario 1 - Higher, Lower							
Flexibly Priced Contracts	1,230	1,125	105	105	1,230		E = D; F = B
Fixed Price Contracts	1,505	1,605	(100)	100	1,605		E = -D; F = C
Subtotal	2,735	2,730	5	205	2,835	105	G = F-C
Non-CAS Covered Contracts	1,540	1,580	(40)				
Anticipated Future Contracts	850	815	35				
Total	5,125	5,125	0				
Scenario 2 - Lower, Higher							
Flexibly Priced Contracts	1,020	1,125	(105)	(105)	1,020		E = D; F = B
Fixed Price Contracts	1,705	1,605	100	(100)	1,605		E = -D; F = C
Subtotal	2,725	2,730	(5)	(205)	2,625	(100)	G = F-B
Non-CAS Covered Contracts	1,620	1,580	40				
Anticipated Future Contracts	780	815	(35)				
Total	5,125	5,125	0				
Scenario 3 - Higher, Higher							
Flexibly Priced Contracts	1,230	1,125	105	105	1,230		E = D; F = B
Fixed Price Contracts	1,705	1,605	100	(100)	1,605		E = -D; F = C
Subtotal	2,935	2,730	205	5	2,835	105	G = F-C
Non-CAS Covered Contracts	1,415	1,580	(165)				
Anticipated Future Contracts	775	815	(40)				
Total	5,125	5,125	0				
Scenario 4 - Lower, Lower							
Flexibly Priced Contracts	1,025	1,125	(100)	(100)	1,025		E = D; F = B
Fixed Price Contracts	1,500	1,605	(105)	105	1,605		E = -D; F = C
Subtotal	2,525	2,730	(205)	5	2,630	105	G = F-B
Non-CAS Covered Contracts	1,745	1,580	165				

[1] To limit the number of variables being considered, assumed the ETC before the change to a cost accounting practice (or noncompliance) occurs is equal to the negotiated price for the remaining work under the contract.

[2] Proposed rule's definition of increased costs to the Govt. and method of aggregating.

[3] Difference in amounts paid if no cost impact adjustments are made and what would have been paid if cost accounting practice change had been reflected in the cost estimates used at the time the contracts were awarded or noncompliance had not occurred, or original price if lower. Intent is for illustration to be consistent with proposed rule's definition of increased costs.

Anticipated Future Contracts	855	815	40
Total	5,125	5,125	0

It is clear the proposed rule's method of measuring increased costs in the aggregate (as shown in Col. E), does not equal, and in some instances (Scenario 1) exceeds, the aggregate increase in costs paid by the Government (shown in Col. G) on CAS-covered contracts.

Proposed Rule	Comments
30.001 – Definitions As used in this part— Affected CAS covered contract or subcontract means an existing contract or subcontract subject to Cost Accounting Standards (CAS) rules and regulations for which a contractor or subcontractor (1) Used on cost accounting practice to estimate costs and a changed cost accounting practice to accumulate and report costs under the contract or subcontract; or (2) Used a noncompliant practice for purposes of estimating or accumulating and reporting costs under the contract or subcontract.	The definitions should reflect, verbatim, the Part 52 CAS related definitions. Revised definition to avoid, as discussed in the cover letter, impractical and impermissible application of the CAS clauses created by CAS Board at 9903.201-4 to previous CAS-covered contracts that are closed.
Cognizant Federal agency official (CFAO) means the contracting officer assigned by the cognizant Federal agency to administer CAS.	
Desirable change means a compliant change to a contractor's established or disclosed cost accounting practices that the CFAO finds is desirable and not detrimental to the Government and is, therefore, not subject to the no increased cost prohibition provisions of CAS-covered contracts and subcontracts affected by the change. See CAS 9903.201-6.	Revised to make definition consistent with that established by the CAS Board. Added reference to CAS language.
Noncompliance means a failure to-- (1) Comply with applicable CAS; or (2) Consistently follow disclosed or established cost accounting practices.	Recommend deleting entirely, but if inclusion determined necessary, reference to FAR subpart 16 is all that is necessary. It is unnecessary to include definitions that are already included in Part 16. Added words detract from the readability of the proposed regulation.
Required change means-- (1) A change in cost accounting practice that a contractor is required to make in order to comply with applicable Standards, modifications or interpretations thereto, that subsequently become applicable to an existing CAS-covered contract due to the receipt of another CAS-covered contract or subcontract; or (2) A prospective change to a disclosed or established cost accounting practice when the CFAO determines that the former practice was in compliance with applicable CAS and the change is necessary for the contractor to remain in compliance.	Recommend deleting entirely, but if inclusion determined necessary, reference to FAR subpart 16 is all that is necessary. It is unnecessary to include definitions that are already included in Part 16. Added words detract from the readability of the proposed regulation.
Unilateral change means a change in cost accounting practice from one compliant practice to another compliant practice that a contractor with a CAS-covered contract(s) or subcontract(s) elects to make that has not been deemed a desirable change by the CFAO and for which the Government will pay no aggregate increased costs.	Deleted words are redundant and incorrectly summarize CAS requirements. Those requirements, instead, address the measurement, assignment, and allocation of costs. Inclusion causes confusion.

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Deleted: Fixed-price contracts and subcontracts means--¶
(1) Fixed-price contracts and subcontracts described at 16.202, 16.203, and 16.207;¶
(2) Fixed-price incentive contracts and subcontracts where the price is not adjusted based on actual costs incurred (subpart 16.4);¶
(3) Orders issued under indefinite-delivery contracts and subcontracts where final payment is not based on actual costs incurred (subpart 16.5); and¶
(4) The fixed-hourly rate portion of time-and-materials and labor-hours contracts and subcontracts (subpart 16.6).¶
¶
Flexibly priced contracts and subcontracts means--¶
(1) Fixed-price contracts and subcontracts described at 16.204, 16.205, and 16.206;¶
(2) Cost-reimbursement contracts and subcontracts (subpart 16.3);¶
(3) Incentive contracts and subcontracts where the price may be adjusted based on actual costs incurred (subpart 16.4);¶
(4) Orders issued under indefinite-delivery contracts and subcontracts where final payment is based on actual costs incurred (subpart 16.5); and¶
(5) The materials portion of time-and-materials contracts and subcontracts (subpart 16.6).¶

Deleted: in estimating, accumulating, or reporting costs

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Proposed Rule	Comments
	Revised to make definition consistent with that established by the CAS Board.
30.201-3 Solicitation provisions. *	Additional administrative task is not required. Proposed provision requirement is already required at 15.408 Table 15.2 paragraph I.A(8).
30.202-6 Responsibilities. ********** (b) The contracting officer shall not award a CAS-covered contract until the cognizant Federal agency official (CFAO) has made a written determination that a required Disclosure Statement is adequate unless, in order to protect the Government's interest, the CFAO waives the requirement for an adequacy determination before award. The agency head, on a nondelegable basis, may authorize award without obtaining submission of the required Disclosure Statement (see 48 CFR 9903.202-2). In both events, the CFAO shall make a determination of adequacy as soon as possible after the award. (c) The auditor is responsible for conducting reviews of Disclosure Statements for adequacy and compliance. * * * * * (d) The CFAO is responsible for issuing determinations of adequacy and compliance of the Disclosure Statement.	Clarification is required to distinguish between the impracticality of the submission of a disclosure statement, which requires agency head approval and of the adequacy determination of a submitted disclosure statement. Administration for determination of adequacy of a submitted disclosure statement is and should remain the responsibility of the CFAO. The CFAO can protect the Government's interest in both areas of timely receipt of contract awards and the determination of adequacy of submitted disclosure statements.
30.202-7 Determinations. a) Adequacy determination. (1) As prescribed by 48 CFR 9903.202-6 (FAR Appendix), the cognizant auditor shall-- (i) Conduct a review of the Disclosure Statement to ascertain whether it is current, accurate, and complete; & (ii) Report the results to the CFAO. (2) The CFAO shall determine if the Disclosure Statement adequately describes the contractor's cost accounting practices. Also, the CFAO shall-- (i) If the Disclosure Statement is adequate, notify the contractor in writing, and provide a copy to the auditor with a copy to the contracting officer if the proposal triggers submission of a Disclosure Statement. The notice of adequacy shall state that-- (A) The disclosed practices are adequately described and the CFAO currently is not aware of any additional practices that should be disclosed;	

Deleted: (c) Insert the provision at FAR 52.230-7, Proposal Disclosure--Cost Accounting Practice Changes, in solicitations for contracts subject to CAS as specified in 48 CFR 9903.201 (FAR Appendix).

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Proposed Rule	Comments
(B) The notice is not a determination that all cost accounting practices were disclosed; and (C) The contractor shall not consider a disclosed practice, by virtue of such disclosure, an approved practice for estimating proposals or accumulating and reporting contract and subcontract cost data; or (ii) If the Disclosure Statement is inadequate, notify the contractor of the inadequacies and request a revised Disclosure Statement. (3) Generally, the CFAO should furnish the contractor notification of adequacy or inadequacy within 30 days after the CFAO receives the Disclosure Statement. (b) Compliance determination. (1) After the notification of adequacy, the auditor shall-- (i) Conduct a detailed compliance review to ascertain whether or not the disclosed practices, as described, comply with CAS; and (ii) Advise the CFAO of the results. (2) The CFAO shall make a determination of compliance or take action regarding a report of alleged noncompliance in accordance with 30.605(b).	Clarification is added to distinguish between the activity of determining compliance for the described practices verses the activity of compliance reviews for monitoring and assuring costs are measured, assigned, and allocated consistent with the described practices. The Disclosure Statement only has to comply with CAS.
Subpart 30.6--CAS Administration Sec. 30.601 Responsibility. 30.602 Materiality. 30.603 Changes to disclosed or established cost accounting practices. 30.603-1 Required changes. 30.603-2 Unilateral and desirable changes. 30.604 Processing changes to disclosed or established cost accounting practices. 30.605 Processing noncompliances. 30.606 Resolving cost impacts. 30.607 Subcontract administration.	
Subpart 30.6- CAS Administration 30.601 Responsibility. (a) The CFAO shall perform CAS administration for all contracts and subcontracts awarded to a business unit, even when the contracting officer retains other administration functions. The CFAO shall make all CAS-related determinations and findings (see subpart 1.7) for all CAS-covered contracts and subcontracts, including-- (1) Whether a change in cost accounting practice or noncompliance has occurred; and (2) If a change in cost accounting practice or noncompliance has occurred, how any resulting cost impacts are resolved. (b) Within 30 days after the award of any new contract subject to CAS, the contracting officer making the award shall request the CFAO to perform administration for CAS matters (see subpart 42.2). For subcontract awards, the contractor awarding the subcontract shall follow the procedures at 52.230-6(l).	Clarification to distinguish that paragraph (a) is for subcontract awards made to a business unit whereas paragraph (b) is for subcontracts awarded by the business unit.

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Proposed Rule	Comments
30.602 Materiality. (a) In determining materiality, the CFAO shall use the criteria in 48 CFR 9903.305 (FAR Appendix). (b) A CFAO determination of materiality-- (1) May be made before or after a general dollar magnitude proposal has been submitted, depending on the particular facts and circumstances; and (2) Shall be based on adequate documentation. (c) When the impact of a change to cost accounting practices or noncompliance is immaterial, the CFAO shall-- (1) Make no contract adjustments and conclude the cost impact process; and (2) In the case of noncompliance issues, inform the contractor that-- If the noncompliance is not corrected, the Government reserves the right to make appropriate contract adjustments prospectively, from the point in time when the cost impact is determined to be material. (d) For required, unilateral, and desirable changes, and CAS noncompliances, when the amount involved is material, the CFAO shall adjust the contract or use another suitable method (see 30.606).	Added clarification. Deleted language that is unnecessary. Added clarification.
30.603 Changes to disclosed or established cost accounting practices.	Correction of editorial error as discussed during public meeting in Washington, DC.
30.603-1 Required changes. (a) General. Offerors shall state whether or not the award of a contract would require a change to an established cost accounting practice affecting existing contracts and subcontracts (see 52.230-1). The contracting officer shall notify the CFAO if the offeror states that a change in cost accounting practice would be required. (b) CFAO responsibilities. Prior to making an equitable adjustment under the applicable paragraph(s) that address a required change at 52.230-2, Cost Accounting Standards; 52.230-3, Disclosure and Consistency of Cost Accounting Practices; or 52.230-5, Cost Accounting Standards--Educational Institution, the CFAO shall determine that-- (1) The cost accounting practice change is required to comply with a CAS, or a modification or interpretation thereof, that subsequently became applicable to one or more contracts or subcontracts; or (2) The former cost accounting practice was in compliance with applicable CAS and the change is necessary to remain in compliance. (c) Notice and proposal preparation.	

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Deleted: Adjustments to contracts and withholding amounts payable for CAS noncompliance, new standards, or voluntary changes are required only if the amounts involved are material. In determining materiality, the ACO shall use the criteria in 48 CFR 9903.305 (FAR Appendix). The ACO may forego action to require that a cost impact proposal be submitted or to adjust contracts, if the ACO determines the amount involved is immaterial. However, in the case of noncompliance issues, the ACO shall inform the contractor that--¶
¶
(a) The Government reserves the right to make appropriate contract adjustments if, in the future, the ACO determines that the cost impact has become material; and¶
¶
(b) The contractor is not excused from the obligation to comply with the applicable Standard or rules and regulations involved.

Proposed Rule	Comments
(1) When the award of a contract would require a change to an established cost accounting practice, the provision at 52.230-7, Proposal Disclosure--Cost Accounting Practice Changes, requires the offeror to-- (i) Prepare the contract pricing proposal in response to the solicitation using the changed cost accounting practice for the period of performance for which the practice will be used; and	Deleted: and
(ii) Submit a description of the changed cost accounting practice to the contracting officer and the CFAO as pricing support for the proposal; and	Deleted: .
(iii) There may be instances where the impact of a standard cannot reasonably be predicted at the time the proposal is prepared or before the negotiations. Consequently, the effects of applying the standard cannot be reflected in the negotiated price. When this condition occurs, procurement officials should make use of contract provisions protecting the Government's interest. (2) When a change is required to remain in compliance (for reasons other than a contract award) or to comply with a new or modified standard, the clause at 52.230-6, Administration of Cost Accounting Standards, requires the contractor to-- (i) Submit a description of the change to the CFAO not less than 60 days (or other mutually agreeable date) before implementation of the change; and (ii) Submit rationale to support any contractor assertion that the cost impact of the change is immaterial. (d) Equitable adjustments for new or modified standards. (1) Required changes made to comply with new or modified standards may require equitable adjustments, but only to those contracts awarded before the effective date of the new or modified standard (see 52.230-2, 52.230-3, or 52.230-5). (2) When a contractor elects to implement a required change to comply with a new or modified standard prior to the applicability date of the standard, the CFAO shall administer the change as either a unilateral change or a desirable change (see 30.603-2). Contractors shall not receive an equitable adjustment that will result in increased costs in the aggregate paid by the Government prior to the applicability date unless the CFAO determines that the unilateral change is a desirable change.	This added paragraph incorporates DOD Working Group Guidance 76-7 into the FAR. Added language to include the full range of options available to the CFAO.
30.603-2 Unilateral and desirable changes. (a) Unilateral changes. (1) The contractor may unilaterally change its disclosed or established cost accounting practices, but the Government shall not pay any increased cost, in the aggregate, as a result of the unilateral change. (2) Prior to making any contract price or cost adjustments under the applicable paragraph(s) of the clause addressing a unilateral change at 52.230-2, 52.230-3, or 52.230-5, the CFAO shall determine that-- (i) The contemplated contract price or cost adjustments will protect the Government from the payment of the estimated increased costs, in the aggregate; and	

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Proposed Rule	Comments
(ii) The net effect of the contemplated adjustments will not result in the recovery of more than the increased costs paid by the Government, in the aggregate.	
(b) Desirable changes. (1) Prior to taking action under the applicable paragraph(s) addressing a desirable change at 52.230-2, 52.230-3, or 52.230-5, the CFAO shall determine the change is a desirable change and not detrimental to the interests of the Government. The CFAO's finding shall not be made solely because of the financial impact of the proposed change on the contractor's current CAS-covered contracts. A change may be desirable and not detrimental to the interest of the Government even though the change results in increased costs to the Government.	Language from DOD Working Group Guidance 79-23.
(2) Until the CFAO has determined a change to a cost accounting practice is a desirable change, the change is a unilateral change. The CFAO must make every effort to make this determination in a reasonable period of time, generally not exceeding 60 days.	Language sends "message" to make the determination without imposing a firm deadline.
(3) Some additional factors to consider in determining if a change is a desirable change include, but are not limited to, whether--	
(i) The contractor must change the cost accounting practices it uses for Government contract and subcontract costing purposes to remain in compliance with the provisions of part 31;	
(ii) The contractor is required to change the cost accounting practices it uses for Government contract costing purposes because of a change in Generally Accepted Accounting Principles (GAAP) and that change is required to be made for Government contract costing purposes to comply with the provisions of part 31.201-2. Such change in GAAP may be caused by a pronouncement of FASB, AICPA, or SEC;	Clarification of what is covered under Part 31
(iii) The contractor is required to change the cost accounting practices it uses for Government contract costing purposes because of a change in Internal Revenue Service regulations and that change is required to be made for Government contract costing purposes to comply with allowability provisions of part 31.205.	
(iv) The change in cost accounting practice is an integral part of a contractor action that will increase Government access to commercial technology; or	Changed "and" to "or"---all conditions need not be met.
(v) The contractor is initiating management actions directly associated with the change that will result in cost savings for segments with CAS-covered contracts and subcontracts over a period for which forward pricing rates are developed or five years, whichever is shorter, and the cost savings are reflected in the forward pricing rates.	
(4) The CFAO shall, if the determination would necessitate an upward adjustment of contract cost or price, incorporate in the contract modification the clause at FAR 51.232-18, Availability of Funds.	Revised language to limit liability of the Government in situations where changes in cost accounting practices are deemed desirable.
(c) Notice and proposal preparation.	
(1) When a contractor makes a unilateral change, the clause at 52.230-6, Administration of Cost Accounting Standards, requires the contractor to--	

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Proposed Rule	Comments
(i) Submit a description of the change to the CFAO not less than 60 days (or other mutually agreeable date) before implementation of the change; and (ii) Submit rationale to support any contractor assertion that the cost impact of the change is immaterial. (2) If a contractor implements the change in cost accounting practice without submitting the notice as required in paragraph (c)(1) of this subsection, the CFAO may determine the change a failure to follow a cost accounting practice consistently and process it as a noncompliance in accordance with 30.605. (d) Retroactive changes. (1) If a contractor requests that a unilateral change be retroactive, the contractor shall submit supporting rationale. (2) The CFAO shall promptly evaluate the contractor's request and, generally within 60 days of receiving the request, notify the contractor in writing whether the request is or is not approved. (3) The CFAO shall not approve a date for the retroactive change that is before the beginning of the contractor's fiscal year in which the request is made. (e) Contractor accounting changes due to external restructuring activities. The requirements for contract price and cost adjustments do not apply to compliant cost accounting practice changes that are directly associated with external restructuring activities that are subject to and meet the requirements of 10 U.S.C. 2325. However, the disclosure requirements in 30.603-2 shall be followed.	Added language to establish a reasonable but flexible timeframe for completion of the CFAO's evaluation and notification to the contractor.
30.604 Processing changes to disclosed or established cost accounting practices. (a) Scope. This section applies to required, unilateral, and desirable changes in cost accounting practices. (b) Procedures. Upon receipt of the contractor's notification and description of the change in cost accounting practice, the CFAO, with the assistance of the auditor, should review the proposed change concurrently for adequacy and compliance. The CFAO shall-- (1) If the description of the change is both adequate and compliant, notify the contractor in writing and-- (i) For required or unilateral changes (except those requested to be determined desirable changes), request the contractor submit a general dollar magnitude (GDM) proposal by a specified date, unless the CFAO determines the cost impact is immaterial; or (ii) For unilateral changes that the contractor requests to be determined desirable changes, inform the contractor that the request shall include supporting rationale and-- (A) For any request based on the criteria in 30.603-2(b)(3)(ii), the data necessary to demonstrate the required cost savings; or	

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Proposed Rule	Comments
(3) For any request other than those based on the criteria in 30.603-2(b)(3)(ii), a GDM proposal and any other data necessary for the CFAO to determine if the change is a desirable change; (2) If the description of the change is inadequate, request a revised description of the new cost accounting practice; and (3) If the new disclosed practice is noncompliant, notify the contractor in writing that, if implemented, the CFAO will determine the cost accounting practice to be noncompliant and process it accordingly.	Added clarity.
(c) Evaluating requests for desirable changes. (1) When a contractor requests a unilateral change be determined a desirable change, the CFAO shall promptly evaluate the contractor's request and, generally not more than 60 days after receipt of the request, notify the contractor in writing whether the change is a desirable change or the request is denied. (2) If the CFAO determines the change is a desirable change, the CFAO shall negotiate any cost or price adjustments that may be needed to resolve the cost impact (see 30.606). (3) If the request is denied, the change is a unilateral change and shall be processed accordingly.	Added language to establish a reasonable but flexible timeframe for completion of the CFAO's evaluation and notification to the contractor.
(d) General dollar magnitude proposal. The GDM proposal- (1) Provides information to the CFAO on the estimated overall impact of a change in cost accounting practice on affected CAS-covered contracts and subcontracts that were awarded based on the previous cost accounting practice; and (2) Assists the CFAO in determining whether individual contract price or cost adjustments are required.	
(e) General dollar magnitude proposal content. The GDM proposal-- (1) Shall calculate the cost impact in accordance with paragraph (h) of this section; (2) May use one or more of the following methods to determine the increase or decrease in cost accumulations: (i) A representative sample of affected CAS-covered contracts and subcontracts. (ii) The change in indirect rates multiplied by the total estimated base computed for each of the following groups: (A) Fixed-price contracts and subcontracts. (B) Flexibly priced contracts and subcontracts. (iii) Any other method that provides a reasonable approximation of the total increase or decrease in cost accumulations for all affected fixed-price and flexibly priced contracts and subcontracts.	Flexibility provided in selecting the method for computing the GDM proposal is a positive development.
(3) May be in any format mutually agreeable to the contractor and CFAO but, as a minimum, should include the following data:	Add flexibility and recognize the process involves both the contractor and CFAO.

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Proposed Rule	Comments
(i) The total estimated increase or decrease in cost accumulations by ~~executive agency~~, including any impact the change may have ~~on contract and subcontract incentives, fees, and profits~~, for each of the following groups: (A) Fixed-price contracts and subcontracts. (B) Flexibly priced contracts and subcontracts. (ii) For unilateral changes, the estimated increased or decreased costs paid by the Government for each of the following groups: (A) Fixed-price contracts and subcontracts. (B) Flexibly priced contracts and subcontracts; and (4) When requested by the CFAO, shall identify all significant affected CAS-covered contracts and subcontracts.	Historically CFAO's and contractors have been able to work out the impact by major customer based on the contractor's total contract mix without requiring the GDM to segregate cost impacts by executive agency. That flexibility should be maintained. Increased costs to the Government that are caused by a change in cost accounting practice are defined by the CAS Board at FAR 9903.306(a) to only include increases in costs actually paid. Therefore, inclusion of data on contract and subcontract incentives, fees, and profit is inappropriate. Materiality should be considered in the level of detail required by the CFAO, particularly where a GDM proposal is being used as the basis for negotiations.
(f) General dollar magnitude proposal evaluation. The CFAO, with the assistance of the auditor, shall promptly evaluate the GDM proposal. Generally not more than 60 days after receipt of the contractor's request, if the cost impact is immaterial, the CFAO shall notify the contractor in writing and conclude the cost impact process with no contract adjustments. Otherwise, the CFAO shall-- (1) Negotiate and resolve the cost impact (see 30.606). If necessary, the CFAO may request that the contractor submit a revised GDM proposal by a specified date with specific additional data needed to resolve the cost impact (e.g., an expanded sample of affected CAS-covered contracts and subcontracts or a revised method of computing the increase or decrease in cost accumulations); or (2) If the CFAO determines the GDM proposal is not sufficient to resolve the cost impact and a more detailed proposal is critical, request the contractor submit a detailed cost-impact (DCI) proposal by a specified date.	Good conclusion/result. Also, added language to establish a reasonable but flexible timeframe for completion of the CFAO's evaluation and notification to the contractor. Emphasize the fact that a DCI is a last resort and the goal is to resolve the matter with a GDM proposal.
(g) Detailed cost-impact proposal. The DCI proposal-- (1) Shall calculate the cost impact in accordance with paragraph (h) of this section; (2) Shall show the estimated increase or decrease in cost accumulations for each affected CAS-covered contract and subcontract unless the CFAO and contractor agree to-- (i) Include only those affected CAS-covered contracts and subcontracts exceeding a specified amount; and (ii) Estimate the total increase or decrease in cost accumulations for all affected CAS-covered contracts and subcontracts, using the results in paragraph (g)(2)(i) of this section; (3) May be in any format mutually agreeable to the contractor and CFAO but, as a minimum, should include the requirements at paragraphs (e)(3)(i) and (ii) of this section; and (4) When requested by the CFAO, shall identify all affected CAS-covered contracts and subcontracts.	Add flexibility and recognize the process involves both the contractor and CFAO.

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Proposed Rule	Comments
(h) Calculating cost impacts. The cost impact calculation shall-- (1) Include all affected CAS-covered contracts and subcontracts, except where ageneral dollar magnitude proposal is being used.;	It is unlikely that a change in cost accounting practices would impact closed contracts or affect years where final rates have been negotiated. Also, as discussed in the cover letter to this submission, inclusion of closed contracts in the cost impact calculation is inappropriate. Added language inserted to be consistent with GDM process.
(2) Combine the cost impact for all affected CAS-covered contracts and subcontracts for all segments if the effect of a change results in costs flowing between those segments; (3) Compute the estimated increase or decrease in cost accumulations for affected CAS-covered contracts and subcontracts based on the difference between-- (i) The estimated cost to complete, or other appropriate measure, using the current practice; and (ii) The estimated cost to complete, or other appropriate measure, using the changed practice; (4) For unilateral changes-- (i) Determine the increased or decreased cost paid by the Government for flexibly priced contracts and subcontracts as follows: (A) When the amount in paragraph (h)(3)(i) exceeds the amount in paragraph (h)(3)(ii) of this section, the difference is decreased cost to the Government; (B) When the amount in paragraph (h)(3)(i) is less than the amount in paragraph (h)(3)(ii) of this section, the difference is increased cost to the Government; and	Positive development to clarify that affected CAS-covered contracts for all segments should be included in cost impact calculation. Added language to provide flexibility in computing cost impacts where current estimates to complete do not provide a reasonable basis for measuring the impact of a change in cost accounting practices on amounts paid by the Government. As defined by the CAS Board at 9903.306(a) and discussed in the cover letter, increased costs to the Government only result when costs paid by the Government are higher than they would have been had a contractor's accounting practices not been changed. Since the amount of costs paid on fixed-price contracts are unaffected by a contractor's subsequent change to its cost accounting practices, the proposal to include fixed price contracts in the cost impact calculations impermissibly expands beyond the CAS Board's definition of increased costs to the Government.
(ii) Calculate the estimated increased or decreased cost to the Government in the aggregate by computing the amount of costs that will be paid by the Government on CAS-covered contracts, if no adjustments for the cost impact of the changes to cost accounting practices are made, and subtracting from that value the amount of cost that would be paid by the Government on those contracts if the changes to cost accounting practices had not taken place.; and	
(5) For equitable adjustments for required changes-- (i) Estimated increased cost accumulations are the basis for increasing contract prices, including target prices and cost ceilings; and (ii) Estimated decreased cost accumulations are the basis for decreasing contract prices, including target prices and cost ceilings. (i) Remedies. If the contractor does not submit the accounting change description or the proposals required in paragraph (d) or (g) of this section within the specified time, or any extension granted by the CFAO, the CFAO shall-- (1) With the assistance of the auditor, estimate the general dollar magnitude of the cost impact on affected CAS-covered contracts and subcontracts; and (2) Take one or both of the following actions: (i) Withhold an amount not to exceed 10 percent of each subsequent payment related to the contractor's affected CAS-covered contracts (up to the estimated general dollar magnitude of the cost impact), until the contractor furnishes the required information.	As discussed in the cover letter for this response, increased costs for changes in cost accounting practices are limited to differences in costs paid, not prices paid. Added clarifying language and revised the method for calculating increased or decreased costs to the Government in the aggregate to reflect the aggregate difference in costs paid by the Government. As discussed in the cover letter to this response and demonstrated in Attachment 1, the proposed rule's method for measuring increased costs to the Government in the aggregate is mathematically incorrect and does not reflect the true increase or decrease in costs paid by the Government.

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(A) When the amount in paragraph (h)(3)(i) exceeds the amount in paragraph (h)(3)(ii) of this section, the difference is increased cost to the Government.¶
(B) When the amount in paragraph (h)(3)(i) is less than the amount in paragraph (h)(3)(ii) of this section, the difference is decreased cost to the Government;¶

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Deleted: (iii) Calculate the total increase or decrease in contract and subcontract incentives, fees, and profits associated with the increased or decreased cost to the Government in accordance with 48 CFR 9903.306(gc). The associated increase or decrease is based on the difference between the negotiated incentives, fees and profits and the amounts that would have been negotiated had the cost impact been known at the time the contracts and subcontracts were negotiated.

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(A) The increased or decreased costs to the Government for fixed-price contracts and subcontracts;¶
(B) The increased or decreased costs to the Government for flexibly priced contracts and subcontracts; and¶
(C) The total increase or decrease in contract and subcontract incentives, fees, and profits computed in paragraph (h)(4)(iii) of this section

Proposed Rule	Comments
(ii) Issue a final decision in accordance with 33.211 and unilaterally adjust the contract(s) by the estimated amount of the cost impact.	
30.605 Processing noncompliances. (a) General. Prior to making any contract price or cost adjustments under the applicable paragraph(s) addressing noncompliance at 52.30-2, 52.230-3, or 52.230-5, the CFAO shall ensure that the aggregate effect of adjustments to contract costs, and contract prices, will be neither increased costs to the Government nor recovery of more than the increased costs which would otherwise have been paid by the Government.	This paragraph differentiates between the multiple noncompliant consequences that can result from a single noncompliance. There is no apparent basis in regulation for this differentiation. References to "increased costs in the aggregate" mean precisely that – a noncompliant condition must be evaluated as a whole. The suggested language expresses the overall concept of cost adjustments under CAS.
(b) Notice and determination. (1) Within 30 days of receiving a report of alleged noncompliance from the auditor, the CFAO shall (i) Notify the auditor that the CFAO disagrees with the alleged noncompliance; (ii) Return the audit report to the auditor with a request for additional detail or improved clarity deemed necessary to begin the evaluation of the issue; or (iii) Issue a notice of potential noncompliance to the contractor and provide a copy to the auditor. (2) The notice of potential noncompliance shall-- (i) Notify the contractor in writing of the exact nature of the noncompliance; and (ii) Allow the contractor 60 days or other mutually agreeable date to-- (A) Agree in writing that a noncompliance exists; or (B) Submit reasons why the contractor considers the existing practices to be in compliance; and (C) Submit rationale to support any assertion that the cost impact of the identified practice is immaterial.	Although 15 days is the current standard, it is an unrealistically short period in which to form any opinion regarding an allegation of noncompliance. Thirty days is a much more realistic time frame for a reasoned response. The option of obtaining clarification from the auditor concerning the nature of an allegation is a recognition of reality. Without this option, an ACO is compelled to either issue an unsupported notice of noncompliance or dismiss the audit finding.
(3) The CFAO shall-- (i) If applicable, review the reasons why the contractor considers the existing practices to be compliant or the cost impact to be immaterial; (ii) Make a determination of compliance or noncompliance consistent with 1.704; and (iii) Notify the contractor and the auditor in writing of the determination of compliance or noncompliance and the basis for the determination.	
(4) If the CFAO makes a determination of noncompliance, the CFAO shall follow the procedures in paragraphs (c) through (h) of this section, as appropriate, unless the CFAO determines at this time that the cost impact is immaterial. If immaterial, the CFAO shall-- (i) Inform the contractor in writing that-- (A) The practice is noncompliant but the observed impact is not material; and (B) If the noncompliance is not corrected, the Government reserves the right to make appropriate contract adjustments should the noncompliance become material in the future; and	Edits necessary for clarity.

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(1) The contemplated contract price or cost adjustments will protect the Government from the payment of increased costs, in the aggregate; and¶
(2) The net effect of the contemplated contract price or cost adjustments will not result in the recovery of more than the increased costs to the Government, in the aggregate.¶
(3) The net effect of any invoice adjustments made to correct an estimating noncompliance will not result in the recovery of more than the increased cost paid by the Government, in the aggregate.¶
(4) The net effect of any interim and final voucher billing adjustments made to correct a cost accumulation noncompliance will not result in the recovery of more than the increased cost pay by the Government, in the aggregate

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Proposed Rule	Comments
(ii) Conclude the cost impact process with no contract adjustments.	
(c) Correcting noncompliances.	
(1) The clause at 52.230-6 requires the contractor to submit a description of any cost accounting practice change proposed by the contractor to correct a noncompliance within 60 days after the earlier of--	
(i) Agreement with the CFAO that there is a noncompliance; or	
(ii) Notification by the CFAO of a final determination of noncompliance.	Immaterial noncompliant conditions do not need to be corrected. Notice that the condition "should be corrected" is not necessary to protect the Government's rights against the principle of estoppel. Note: this provision duplicates language found at 30.602(b) which is expressly applicable to materiality issues involving noncompliant practices.
(2) The CFAO, should review the proposed change to correct the noncompliance concurrently for adequacy and compliance (see 30.202-7). The CFAO shall--	
(i) When the description of the change is both adequate and compliant--	
(A) Notify the contractor in writing;	
(B) Request that the contractor submit by a specified date a general dollar magnitude (GDM) proposal, unless the CFAO determines the cost impact is immaterial; and	
(C) Follow the procedures at paragraph (b)(4) of this section if the CFAO determines the cost impact is immaterial.	
(ii) If the description of the change is inadequate, request a revised description of the new cost accounting practice.	Clarifies / reaffirms the concept that selection of a particular compliant practice is the responsibility / prerogative of the contractor. In an extremely prescriptive regulation such as this failure to call out this point may be construed to be significant.
(iii) If the corrected disclosed practice is noncompliant, notify the contractor in writing that, if implemented, the CFAO will determine the cost accounting practice to be noncompliant,	Involvement or lack of involvement by the auditor should be at the discretion of the contracting officer.
(d) General dollar magnitude proposal content. A general dollar magnitude proposal is a simplified and streamlined technique for evaluating cost impacts and, thus, should contain only the information necessary for a high level evaluation of the potential impact. The GDM proposal--	
(1) Shall calculate the cost impact in accordance with paragraph (h) of this section;	
(2) May use one or more of the following methods to determine the increase or decrease in contract and subcontract price or cost accumulations, as applicable:	
(i) A representative sample of affected CAS-covered contracts and subcontracts affected by the noncompliance.	
(ii),	
the change in indirect rates multiplied by the applicable base,	
(iii) Any other method that provides a reasonable approximation of the total increase or decrease in contract costs;	It is unclear what is meant by "and process it accordingly"
(3) May be in any format mutually agreeable to the contractor and CFAO but, as a minimum, should include the following data:	Should incorporate a statement of the purpose for a GDM. The proposed regulation imposes the same requirements on a GDM as a detailed cost impact proposal. Alternate suggestion: consider using a slightly modified version the proposed language at 30.604(d) in lieu of the suggested language.
(i) The total estimated increase or decrease in contract costs for each of the following groups:	
(A) Fixed-price contracts and subcontracts.	
(B) Flexibly priced contracts and subcontracts.	

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Deleted: When the noncompliance involves cost accumulation:

Deleted: (A) For purposes of computing increased cost in the aggregate,

Deleted: for flexibly priced contracts and subcontracts

Deleted: (B) For purposes of determining interest, the change in indirect costs multiplied by the applicable base for flexibly priced and fixed-price contracts and subcontracts.¶

Deleted: and subcontract prices and

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Deleted: and subcontract prices and

Deleted: ~~accumulations, as applicable,~~ by executive agency, including any impact the noncompliance may have on contract and subcontract incentives, fees, and profits,

125-7

Proposed Rule	Comments
(4) Only when determined necessary by the CFAO to support the evaluation method selected in paragraph (d)(2), shall identify all affected CAS-covered contracts and subcontracts.	
(e) General dollar magnitude proposal evaluation. The CFAO shall promptly evaluate the GDM proposal. If the cost impact is immaterial, the CFAO shall follow the requirements in paragraph (b)(4) of this section. Otherwise, the CFAO shall--	Apparently inappropriate differentiation based on contract type. "Any other method that provides a reasonable approximation of the total increase or decrease in contract costs" should be the standard for addressing and potentially resolving noncompliance using a GDM.
(1) Negotiate and resolve the cost impact (see 30.606). If necessary, the CFAO may request the contractor submit a revised GDM proposal by a specified date, with specific additional data needed to resolve the cost impact (e.g., an expanded sample of affected CAS-covered contracts and subcontracts or a revised method of computing the increase or decrease in contract and subcontract costs); or	Add flexibility and recognize the process involves both the contractor and CFAO. Cost increases or decreases are the appropriate measure at the General Dollar Magnitude phase of noncompliance resolution. Costs not prices are the subject of the CAS.
(2) Request that the contractor submit a detailed cost-impact (DCI) proposal by a specified date if the CFAO determines that the GDM proposal is not sufficient to resolve the cost impact.	
(f) Detailed cost-impact proposal. The DCI proposal--	
(1) Shall calculate the cost impact in accordance with paragraph (h) of this section.	
(2) Shall show the increase or decrease in price and cost accumulations, as applicable for each affected CAS-covered contract and subcontract unless the CFAO and contractor agree to--	Imposition of requirements related to calculation of interest absent evidence that the noncompliance resulted in a material cost impact is not reasonable. Imposition of a requirement to create a quarterly schedule "overpayments and underpayments" would seldom be necessary for a detailed cost impact and never be appropriate for a GDM.
(i) Include only those affected CAS-covered contracts and subcontracts having--	
(A) Contract and subcontract values exceeding a specified amount when the noncompliance involves estimating costs; or	Requiring production of a complete listing of all affected CAS covered contracts defeats the intent to streamline and simplify this process. The CFAO should be responsible for documenting a basis for requiring this data in support of a GDM. Preferably this requirement should be deleted in its entirety.
(B) Incurred costs exceeding a specified amount when the noncompliance involves accumulating costs; and	
(ii) Estimate the total increase or decrease in costs for all affected CAS-covered contracts and subcontracts using the results in paragraph (f)(2)(i) of this section;	
(3) May be in any format mutually agreeable acceptable to the contractor and CFAO but, as a minimum, should include the information in paragraph (d)(3) of this section; and	Costs not prices are the subject of the CAS. Per 9903.306(b) "If the contractor under any fixed-price contract, including a firm fixed-price contract, fails during contract performance to follow its cost accounting practices or to comply with applicable Cost Accounting Standards, increased costs are measured by the difference between the contract price agreed to and the contract price that would have been agreed to had the contractor proposed in accordance with the cost accounting practices used during contract performance. The determination of the contract price that would have been agreed to will be left to the contracting parties and will depend on the circumstances of each case." [emphasis added]
(4) When requested by the CFAO, shall identify all affected CAS-covered contracts and subcontracts.	
(g) Interest. The CFAO shall--	
Compute simple interest on any increased cost paid, in the aggregate, as a result of the noncompliance in accordance with FAR 32.6;	
(h) Calculating cost impacts. The cost impact calculation shall--	
(1) Include all affected CAS covered contracts and subcontracts except where a general	

Deleted: (ii) The increased or decreased costs to the Government for each of the following groups:¶
(A) Fixed-price contracts and subcontracts.¶
(B) Flexibly priced contracts and subcontracts.¶
(iii) The total overpayments and underpayments made by the ¶ Government during the period of noncompliance. The total overpayments and underpayments shall be broken down by quarter, unless each of the quarterly amounts billed during the period of noncompliance were approximately equal; and

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Deleted: (1) Separately identify

Deleted: (2) Compute simple interest from the date of overpayment to the time the adjustment is effected in accordance with 26 U.S.C. 6621(a)(2), as follows:¶
(i) If the quarterly amounts billed during the period of noncompliance were approximately the same, use the average interest rate and midpoint for the period of the noncompliance as the baseline for the computation of interest.¶
(ii) If the quarterly amounts billed during the period of noncompliance were not approximately the same, use an alternate method that computes simple interest from the date of overpayment to the time the adjustment is effected.¶

2005-5

Proposed Rule	Comments
dollar magnitude proposal is being used.	
(2) Combine the cost impact for all affected CAS-covered contracts and subcontracts for all segments if the effect of a change results in costs flowing between those segments or a practice uniformly applied by more than one segment;	
(3) For noncompliances that involve estimating costs, compute the impact on contract and subcontract price for fixed-price contracts and subcontracts based on the difference between--	Should be "or", not "and" as both conditions are not necessarily present in every case.
(i) The negotiated contract or subcontract price; and	Costs not prices are the subject of the CAS.
(ii) What the negotiated price would have been had the contractor used a compliant practice. The determination of the contract price that would have been agreed to will be left to the contracting parties and will depend on the circumstances of each case;	Add flexibility and recognize the process involves both the contractor and CFAO.
(4) For noncompliances that involve accumulating costs, compute the impact on cost accumulations for flexibly priced contracts and subcontracts, based on the difference between--	
(i) The costs that were accumulated under the noncompliant practice; and	
(ii) The costs that would have been accumulated using a compliant practice (from the time the noncompliant practice was first implemented until the date the noncompliant practice was replaced with a compliant practice);	FAR 32.6 is sufficient basis for computing interest on increased costs associated with noncompliances. There is no need to refer the reader to the US Code or include this sort of overly prescriptive guidance in this regulation.
(5) For purposes of determining increased costs in the aggregate, for noncompliances that involve estimating cots, determine the increased or decreased cost to the Government for fixed-price contracts and subcontracts as follows:	
(i) When the amount in paragraph (h)(3)(i) exceeds the amount in paragraph (h)(3)(ii), the difference is increased cost to the Government.	
(ii) When the amount in paragraph (h)(3)(i) is less than the amount in paragraph (h)(3)(ii), the difference is decreased cost to the Government;	
(6) For purposes of determining increased costs in the aggregate, for noncompliances that involve cost accumulation, determine the increased or decreased cost to the Government for flexibly priced contracts and subcontracts as follows:	
(i) When the amount in paragraph (h)(4)(i) exceeds the amount in paragraph (h)(4)(ii), the difference is increased cost to the Government.	This provision is not based on statute, case law or existing regulation. Any attempt to implement this provision would result in extensive litigation. There are time limits on most criminal statutes and all civil actions with the exception of certain frauds. These limitations are there for good reasons. In addition, enforcement of this provision would appear to compel retention of records in perpetuity. Added language inserted to be consistent with GDM process.
(ii) When the amount in paragraph (h)(4)(i) is less than the amount in paragraph (h)(4)(ii), the difference is decreased cost to the Government; and	
(7) Calculate the total increase or decrease in contract and subcontract incentive, fees, and profits associated with the increased or decreased cost to the Government in	This change to the proposed language protects the Government from increased costs in

Deleted: regardless of their status (i.e., open or closed) or the fiscal year in which the costs were incurred (i.e., whether or not the final indirect cost rates have been established);

Deleted: flexibly priced and

Deleted: (the computation for the flexibly priced contracts is used only for purposes of determining any necessary adjustments to fee and incentives),

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Deleted: (the computation for the fixed-priced contracts is used only for purposes of determining interest on costs paid),

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026-9

Proposed Rule	Comments
accordance with 48 CFR 9903.306(c). The associated increase or decrease is based on the difference between the fees and profits based on the negotiated cost targets and target fees, and profits for cost based incentive fee contracts and the amounts that would have been negotiated had the contractor used a compliant practice. Care shold be taken to avoid overstating amounts;	the aggregate while avoiding windfalls to the Government. This language conforms with the interpretation at 9903.306(e).
(8) For noncompliances that involve estimating costs, calculate the increased or decreased cost to the Government, in the aggregate, by adding-- (i) The increased or decreased costs to the Government for fixed-price contracts and subcontracts; and (ii) The total increase or decrease in contract and subcontract incentive fees, and profits relating to cost based incentive fee contracts computed in paragraph (h)(7) of this section; and	References made in 9903.306 for estimating impacts are applicable only to fixed price contracts.. The proposed regulation expands the definition beyond the intent of the CAS Board by extending applicability to flexibly priced contracts. The suggested additional language is verbatim from 9903.306. This language makes it clear that it was not the intent of the Board to impose a standard technique for computing impacts on contract prices.
(9) For noncompliances that involve accumulating costs, calculate the increased or decreased cost to the Government, in the aggregate, by adding-- (i) The increased or decreased costs to the Government for flexibly priced contracts and subcontracts,	9903.306(a) refers only to costs paid. Costs are not "paid" under firm-fixed-price contracts. Although there may be contract financing through cost based progress payments, only prices are paid.
(10) Increased costs in the aggregate from noncompliances which involve both estimating and cost accumulation shall be computed by aggregating and netting increased or decreased costs separately computed for accumulating and estimating costs. Related noncompliances which offset increased costs shall be included when computing increased costs in the aggregate.	
(i) Remedies. If the contractor does not correct the noncompliance or submit the proposal required in paragraph (d) or (f) of this section within the specified time, or any extension granted by the CFAO, the CFAO shall follow the procedures at 30.604(i).	This proposed paragraph seeks to adjust profits in a way that expands the meaning of "increased costs in the aggregate" as defined by the CAS Board. There is no language in 9903.306[c] which would indicate that references to strictures against payment of increased profits refers to anything other than the profits resulting from decreases in costs due to noncompliant practices and the mathematical application of these changes in costs to firm-fixed-price contracts and the target costs for incentive fee contracts. In

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(ii) The total increase or decrease in contract and subcontract incentives, fees, and profits computed in paragraph (h)(7) of this section.

Proposed Rule	Comments
	addition, attempts to recalculate profit contemplated on firm-fixed-price contracts would be totally impractical, ultimately arbitrary and generally beyond the scope of the CAS. Changes made to conform to this item to (h)(7) above. Explicitly recognizes that the CAS addresses costs not profit. Deleted as the impact on the fee portion of incentive fee contracts are covered under (7)(i) and the impact on the cost portion are covered in the preceding portion of (9). Necessary to recognize that a single noncompliance may involve both cost accumulation and cost estimating. Evaluation of such a noncompliance as two separate noncompliances may result in the Government recovering more than the adjustment to increased costs in aggregate to which it is entitled.
30.606 Resolving cost impacts. (a) General. (1) The CFAO shall coordinate with the affected contracting officers before negotiating and resolving the cost impact when the estimated cost impact on any of their contracts is at least $100,000 or 1% of the contract value, whichever is greater. However, the CFAO has the sole authority for negotiating and resolving the cost impact. (2) The CFAO may resolve a cost impact by adjusting a single contract, several but not all contracts, all contracts, or any other suitable method. (3) In resolving the cost impact, the CFAO-- (i) Shall combine the cost impacts of several changes in cost accounting practices within a segment, between segments, intermediate office, or home office, (b) Negotiations. The CFAO shall-- (1) Negotiate and resolve the cost impact on behalf of all Government agencies; and (2) At the conclusion of negotiations, prepare a negotiation memorandum and send copies to the auditor and affected contracting officers. (c) Contract adjustments. (1) The CFAO may adjust some or all contracts with a material cost impact, subject to the provisions in paragraphs (c)(2) through (c)(6) of this section. (2) In selecting the contract or contracts to be adjusted, the CFAO should assure, to the	Added language to better establish materiality criteria for determining when coordination with affected contracting officers is required. Changed to be consistent with 9903.306(f) Changed permissive "may" to the mandatory "shall" for the sake of fairness. As discussed in Working Group Item 76-8, the Government's goal should be to minimize downward price adjustments. Deleted language which limits flexibility in resolving issues.

Deleted: attributed to a change in cost accounting practice or a noncompliance

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Deleted: only if the changes are implemented in the same fiscal year;¶
(ii) May combine the cost impacts of two or more segments (e.g., a change that affects the flow of costs between segments or the implementation of a common cost accounting practice for two or more segments);¶
(iii) Shall not combine the cost impact of a change in cost accounting practice with the cost impact of a noncompliant practice; and¶
(iv) Shall not combine the cost impact of one noncompliant practice with the cost impact of another noncompliant practice.¶
(v) Shall not combine the costs impacts attributable to different categories of compliant changes, i.e., required, unilateral, or desirable changes.¶
(4) For desirable changes, the CFAO should consider the estimated cost impact of associated management actions on contract costs in resolving the cost impact.

226-5

Proposed Rule	Comments
maximum extent practical and subject to the provisions in paragraphs (c)(3) through (c)(6) of this section, that the adjustments reflect a pro rata share of the cost impact based on the ratio of the cost impact of each executive agency to the total cost impact. (3) For unilateral changes, see paragraph 30.606(a)-- (4) For noncompliances that involve estimating costs, see paragraph 30.606(a). (5) For noncompliances that involve cost accumulation, see paragraph 30.606(a). (d) Alternate methods. (1) The CFAO may use an alternate method instead of adjusting contracts to resolve the cost impact, provided the Government will not pay more, in the aggregate, than would be paid if the CFAO did not use the alternate method and the contracting parties agree on the use of that alternate method; (2) The CFAO may not use an alternate method for contracts when application of the alternate method to contracts would result in-- (an underrecovery of monies by the Government,	Other remedies could keep the government from paying increased cost that would not be as administratively burdensome. This should happen only in extreme situations and thus could be part of the negotiation process between the government and the contractor.

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Deleted: (i) To the maximum extent practical, not adjust the price upward for fixed-price contracts;¶
(ii) If contract adjustments are made, preclude payment of aggregate increased costs by taking one or both of the following actions--¶
(A) Reduce the contract price on fixed-price contracts.¶
(B) Disallow costs on flexibly priced contracts; and¶
(iii) The CFAO may, in consultation with the affected contracting officers, increase or decrease individual contract prices, including cost ceilings or target costs on flexibly priced contracts. In such cases, the CFAO shall limit any upward contract price adjustments on affected contracts to the amount of downward price adjustments to other affected contracts, i.e., the aggregate value of all contracts affected by a unilateral change shall not be increased (9903.201-6(b)).

Deleted: the CFAO--

Deleted: (i) Shall, to the extent practical, not adjust the price upward for fixed-price contracts;¶
(ii) Shall, if contract adjustments are made, preclude payment of aggregate increased costs by reducing the contract price on fixed-price contracts.¶
(iii) The CFAO may, in consultation with the affected contracting officers, increase or decrease individual contract pri... [1]

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Deleted: (i) Shall require the contractor to--¶
(A) Correct noncompliant contract cost accumulations in the contractor's cost accounting records for affected co... [2]

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Deleted: (e.g., due to cost overruns); or¶
(ii) Distortions of incentive provisions and relationships between target costs, ceiling costs, and actual costs for incentive type contracts.¶ ... [3]

025-5

Proposed Rule	Comments
	This appears to be unnecessarily detailed. As stated ,the government is not to pay more by using the alternative method.

0826

Proposed Rule	Comments
30.607 Subcontract administration. When a negotiated CAS price adjustment or a determination of noncompliance is required at the subcontract level, the CFAO for the subcontractor shall furnish a copy of the negotiation memorandum or the determination to the CFAO for the contractor of the next higher-tier subcontractor. The CFAO of the contractor or the next higher-tier subcontractor shall not change the determination of the CFAO for the lower-tier subcontractor.	This appears to be to overly restrictive for the prime.

Deleted: If the subcontractor refuses to submit a GDM or DCI proposal, remedies are made at the prime contractor level.

025-5

Page 17: [1] Deleted Pre-Installed System 8/22/2003 6:27 AM

(i) Shall, to the extent practical, not adjust the price upward for fixed-price contracts;
(ii) Shall, if contract adjustments are made, preclude payment of aggregate increased costs by reducing the contract price on fixed-price contracts.
(iii) The CFAO may, in consultation with the affected contracting officers, increase or decrease individual contract prices, including costs ceilings or target costs on flexibly priced contracts. In such cases, the CFAO shall limit any upward contract price adjustments to affected contracts to the amount of downward price adjustments to other affected contracts, i.e., the aggregate value of all contracts affected by a noncompliance that involves estimating costs shall not be increased (9903.201-6(d)).
(iv) Shall require the contractor to correct the noncompliance, i.e., ensure that compliant cost accounting practices will now be utilized to estimate proposed contract costs.
(v) Shall require the contractor to adjust any invoices that were paid based on noncompliant contract prices to reflect the adjusted contract prices, after any contract price adjustments are made to resolve the noncompliance.

Page 17: [2] Deleted Pre-Installed System 8/22/2003 6:28 AM

(i) Shall require the contractor to--
(A) Correct noncompliant contract cost accumulations in the contractor's cost accounting records for affected contracts to reflect compliant contract cost accumulations; and
(B) Adjust interim payment requests (public vouchers and/or progress payments) and final vouchers to reflect the difference between the costs paid using the noncompliant practice and the costs that should have been paid using the compliant practice; or
(ii) Shall adjust contract prices. In adjusting contract prices, the CFAO shall preclude payment of aggregate increased costs by disallowing costs on flexibly priced contracts.
(A) The CFAO may, in consultation with the affected contracting officers, increase or decrease individual contract prices, including costs ceilings or target costs on flexibly priced contracts. In such cases, the CFAO shall limit any upward contract price adjustments to affected contracts to the amount of downward price adjustments to other affected contracts, i.e., the aggregate value of all contracts affected by a noncompliance that involves cost accumulation shall not be increased (9903.201-6(d)).
(B) Shall require the contractor to--
(1) Correct contract cost accumulations in the contractor's cost accounting records to reflect the contract price adjustments; and
(2) Adjust interim payment requests (public vouchers and/or progress payments) and final vouchers to reflect the contract price adjustments.
(6) When contract adjustments are made, the CFAO shall--
(i) Execute the bilateral modifications if the CFAO and contractor agree on the amount of the cost impact and the adjustments (see 42.302(a)(11)(iv)); or
(ii) When the CFAO and contractor do not agree on the amount of the cost impact or the contract adjustments, issue a final decision in accordance with 33.211 and unilaterally adjust the contract(s).

Page 17: [3] Deleted Pre-Installed System 8/22/2003 7:35 AM

(e.g., due to cost overruns); or
(ii) Distortions of incentive provisions and relationships between target costs, ceiling costs, and actual costs for incentive type contracts.
(3) When using an alternate method that excludes the costs from an indirect cost pool, the CFAO shall--
(i) Apply such exclusion only to the determination of final indirect cost rates (see 42.705); and
(ii) Adjust the exclusion to reflect the Government participation rate for flexibly priced contracts and subcontracts. For example, if there are aggregate increased costs to the Government of $100,000, and the indirect cost pool where the adjustment is to be effected has a Government participation rate of 50 percent for flexibly priced contracts and subcontracts, the contractor shall exclude $200,000 from the indirect cost pool ($100,000/50% = $200,000).

Honeywell
P. O. Box 1219
Morristown, NJ 07962-1219

1999-025-6

September 2, 2003

General Services Administration
FAR Secretariat (MVA)
1800 F Street, NW, Room 4035
Attn: Laurie Duarte
Washington, DC 20405

Reference: FAR Case 1999-025

Dear Ms. Duarte:

Honeywell is pleased to have the opportunity to comment on the proposed rule.

Honeywell supports the positions taken by the Aerospace Industries Association and wishes to add the following comments and amplifications.

- The requirement to calculate cost impacts for noncompliances on closed contracts and settled indirect rates is extremely problematical for several reasons. First, the proposed regulation would unilaterally rewrite the terms of preexisting contracts, including closed contracts. An open discussion on this subject might avoid what we believe are easily foreseeable legal entanglements. In addition, the implied prospective requirement to retain all contract performance, bidding and accounting records in perpetuity and potentially to perform detailed cost impact analyses spanning decades would represent a monumental administrative burden. Furthermore, the implied requirement to have available records going back to the time of award of a contractor's first CAS covered contract will often constitute an impossibility. In many instances these records no longer exist. In any event, the proposed regulation should be explicit about changes to record retention requirements imposed as a consequence of this rule and estimates of all associated costs should be prepared and reviewed by OMB pursuant to the Paperwork Reduction Act.

- We strongly agree with the Aerospace Industries Association position that the mechanical process set forth in proposed regulation for computing increased costs is mathematically incorrect due to the potential for counting a single dollar of costs more than once as it moves between cost objectives. In addition, the proposed regulation describes the processes for resolving noncompliances in a manner which appears to require that a single noncompliance affecting cost accumulation and cost estimating be treated as two distinct noncompliances. The application of this technique could result in recovery of more than the increased costs in the aggregate paid by the Government. Likewise we agree that the definition of "increased costs to the Government" in this regulation must be conformed to FAR 9903.306(a) in order to avoid other circumstances where the Government seeks to recover more than the increased costs paid in the aggregate.

1999-026-6

- Other administrative burdens imposed by this rule should also be more carefully evaluated. For example, the proposed rule mandates a schedule of increased or decreased costs paid by quarter (or an analysis to demonstrate why such a schedule was not necessary) by executive agency as a required part of a general dollar magnitude cost impact study for an alleged noncompliance. The proposed regulation thereby expands the current burdensome requirement for an analysis of potential impacts by executive agency. It is difficult to reconcile this requirement with the reality that in many instances there is no material impact that would necessitate the computation of interest or a decision about which technique a contracting officer should utilize to adjust contracts. Since this rule was undertaken as a complete reexamination of CAS administrative processes, neither existing nor newly implemented requirements imposing unnecessary burdens should survive in any resulting final rule.

- In our opinion, the highly prescriptive nature of this regulation will impede the expeditious and fair resolution of CAS issues. We believe that CFAOs will interpret this regulation as significantly decreasing the flexibility regularly exercised under the current regulation. In addition, the proposed rule requires the use of some practices that are not technically correct. For example, the proposed rule mandates the use of estimates to complete when calculating the cost impact of accounting changes. This practice has been frequently used by contractors and accepted by the Government as it is generally expedient. However, this technique may not always constitute a reasonable basis for measuring increased costs to the Government.

In summary, although Honeywell conceptually supports the Council's efforts to clarify this process, we believe that the proposed rule will have the unintended consequence of reducing flexibility, complicating the resolution process and resulting in an increase in disputes.

The proposed rule is highly technical and needs to be more completely evaluated. Specifically, there should be a careful examination of the concerns of industry about how the rule would be applied in real world situations.

Toward that end, we believe that additional public working group sessions should be held to address the concerns and recommendations contained in the public comments submitted in response to the proposed rule. We believe that these meetings would enable Government and industry representatives to have a better understanding of the concerns of both parties.

If you have questions concerning our comments on the proposed rule, please contact Gordon Johns at (973) 455-4310.

Very truly yours,

Laura K. Kennedy
Vice President - Global Compliance

1999-025-7

Ronald Givens & Associates, Inc.
18641 Woodbank Way
Saratoga, CA 95070

September 1, 2003

General Services Administration
FAR Secretariat (MVA)
1800 F Street, NW, Room 4035
Washington, DC 20405

Attention: Laurie Duarte

Subject: FAR Case 1999-025

I want to thank the councils for the opportunity to respond to the proposed changes to Federal Acquisition Regulation Part 30, hereinafter referred to as the second proposed rule. Advice regarding cost accounting standards comprises about a third of our firm's practice, with calculation and settlement of cost impact proposals being the lion's share. In fact, we have prepared and settled well over one hundred cost impact proposals, mostly at medium and large government contractors, over the last twenty some years. I only point that out to buttress the fact that we recognize that there clearly needs to be some improvement in the CASB guidance as it relates to the preparation and settlement process as well as clearer definitions. The Cost Accounting Standards Board (CASB) labored at this effort for over seven years only to make very minor changes. Accordingly, there was an air of raised expectations when the councils tackled the task.

Having said that, the subject proposed rule is a great disappointment as it is needlessly complicated and confusing. The proposal spends a great amount of time trying to rectify situations that are rarely, if ever, encountered. Even worse, from our experience it makes the settlement process both unduly complicated and expensive for both the government and the contractor, only to yield an end result that is much less precise and equitable than those obtained under existing guidance. Disturbingly, many of the proposed rules are at odds with the existing CASB regulations or, worse yet, seek to change them without the authority to do so. In the ensuing comments we try to highlight what we consider to be, the most egregious examples.

025-1

Offsets

The redefinition of offsets is a classic case of where the councils seem to have tried to fix something that was not broken, and breaks it. Under the guise of seeking to redefine "offsets", the revised proposal creates a scenario where the government could conceivably recover more than the aggregate increased costs it is justifiably entitled to under the current statute. Thus the proposed regulations take on a punitive aspect never envisioned by the original CAS Board. The second proposed rule specifically disallows offsets between contract types, which are allowable under the current regulations.

The justification for this change is *"to avoid potential confusion regarding the term, but includes the effect of offsets by separating the calculation of the cost impact from the resolution of the cost impact"*. Based on our reading of the proposed rule, it appears that quite the opposite is true. Proposed FAR 30.604(h)(4)(iv) and 30.605(h)(8) and (9) basically eliminate the use off offsets between fixed-price and flexibly priced contracts and subcontracts. The position taken by the FAR councils in the proposed rule disregard the guidance found in DOD Working Group Item 76-8. The specific guidance in 76-8 discusses offsets from the contract perspective, not contract type. Item 1 of the guidance states that *"contracts may be adjusted individually or cost increases and decreases may be offset"*. The proposed rule also violates 41 USCA 422 (h) (3), which prohibits the Government from recovering more than increased costs to the Government in the aggregate. Moreover, the proposed language at FAR 30.606(a)(3) is counter productive as it contains language that will further limit the government and the contractor from resolving some of the more complex cost impacts. As we read this section it precludes the government from combining cost impacts that include (a) changes implemented in different fiscal years, (b) changes and noncompliance's, (c) two or more noncompliance's (a very common occurrence), and (d) different categories of changes. There is no apparent reason for limiting these options as the Government is adequately protected by existing regulations.

Proposed FAR 30.603-2(d)(1) also provides that, *"required changes made to comply with new or modified standards may require equitable adjustments, but only to those contracts awarded before the effective date of the new or modified standard"*. It is difficult to envision how a CFAO can make an equitable adjustment when the proposed rule does not allow offsets between fixed-price and flexibly priced contracts.

In addition, any noncompliance or unilateral change that causes shifts in costs between fixed-price contracts and subcontracts and flexible priced contracts and subcontracts could provide the government with a "windfall profit" if offsets are not allowed between contract types.

026-7

Adjustment of Final Overhead Rates

One of the most surprising parts of the second proposed rule was the language in FAR 30.606 (3) that allows the CFAO to adjust final indirect cost rates as an alternative to contract adjustments. Specifically, proposed FAR 30.606(d) provides that *(1) "the CFAO may use an alternative method instead of adjusting contracts to resolve the cost impact, provided the Government will not pay more, in the aggregate, than would be paid if the CFAO did not use the alternative method and the contracting parties agree on the use of the alternative method".*

Proposed FAR 30.606(3) provides that, *"when using an alternative method that excludes the costs from an indirect cost pool, the CFAO shall (i) apply such exclusion only to the determination of final indirect cost rates, and (ii) adjust the exclusion to reflect the Government's participation rate for flexibly priced contracts and subcontracts. For example, if there is an aggregate increased costs to the Government of $100,000, and the indirect cost pool where the adjustment is to be effected has a Government participation rate of 50 percent for flexibly priced contracts and subcontracts, the contractor shall exclude $200,000 from the indirect cost pool ($100,000/50% = $200,000).*

The genesis of this misguided approach appears to be from recent DCAA guidance. In January 2002, DCAA issued audit guidance related to the computation and settlement alternatives of the CAS cost impact for unilateral cost accounting practice changes and for noncompliance's with CAS or a contractor's disclosed or established accounting practices. As part of this guidance, DCAA advocated the use if indirect rate adjustments. Specifically, DCAA states that, *"the adjustments should be for the aggregate increased costs paid by the government (including the impact on FP contracts), adjusted for the government participation rate in the allocation base of the rate being adjusted. Indirect rate adjustments should be used only on final indirect rates rather than adjusted for in forward pricing rates to ensure that the government recovers the full amount it is owed".*

In addition, DCAA makes the following statements under settlement alternatives related to a concurrent accumulation and estimating noncompliance: *"The government could adjust the indirect rates such that the remainder of increased costs paid by the government after the accumulated costs on flexibly-priced contracts self-adjust will be recovered through the indirect rate application to the government flexibly-priced contracts. We recommend adjusting the rate on a completed fiscal year rather than adjusting forward pricing rates so the government is confident that it recovers the full amount to which it is entitled".*

What is amazing is that neither the FAR councils nor DCAA seem to understand the most basic problem associated with adjusting final incurred cost rates for CAS issues. That problem is that final incurred cost rates are applicable to all government contracts, not just CAS-covered government contracts. Therefore, CAS issues are being forced on non CAS-covered contracts through the application of adjusted final incurred cost rates.

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In our practice, we have seen instances where contractors have been forced to include CAS issues in the settlement of final incurred cost rates. In these cases we were able to calculate the adverse cost impact of the CAS adjusted final incurred cost rates on government contracts that were not CAS-covered and ultimately recover the costs. However, it cost both the contractor and the government time and money and caused needless delays to the administrative process.

In espousing this position the FAR councils and DCAA seem to be unaware of the position taken by the CASB regarding this issue in the second supplemental notice of proposed rulemaking, 64 FR 457000, August 20,1999. The position laid out by the CASB was in response to a commenter suggesting the use of the final indirect expense rate settlement process rather than contract price adjustments as a method to resolve the cost impact action.

The CASB stated that, *"the Board would caution the contracting parties with regard to use of any method which results in further inconsistency between the contract price amounts and accumulated contract costs due to the cost accounting practices used to estimate proposed costs and to accumulate costs during contract performance.*

Adjustments of indirect expense rates to settle a cost impact action can result in the adjustment of the wrong contracts for the impact of the change in accounting practice. This method also results in the establishment of final indirect expense rates that are not consistent with a contractor's established and disclosed accounting practices for allocating indirect costs to final cost objectives.

Adjusting indirect expense rates to resolve the cost impact would in most cases require an adjustment to the indirect cost pool that exceeds the amount of the actual cost impact adjustment amount in order to ensure that the aggregate cost impact amount calculated for all affected CAS-covered contracts is recovered on the open flexibly priced contracts being performed during the particular cost accounting period to which the "adjusted" rates apply. Use of this approach distorts the accumulation of costs used for contract cost and pricing purposes, in that the resultant accumulated costs recognized for CAS-covered contracts will be greater or less than the costs that would have been accumulated as actual "booked" costs in accordance with a contractor's established cost accounting practices had the indirect cost pools, and the indirect cost rates used to allocate such costs to final cost objectives, not been adjusted to reflect the cost impact of a change in accounting practice.

Such pool adjustments may further distort the difference between the costs that would have originally been allocated to the affected CAS-covered contracts as the actual "booked" costs and the costs that will be allocated to those contracts for contract costing purposes based on the adjusted final rates if multiple cost accounting periods are involved and/or if the Government's percent of participation in the allocation base is not consistent.

Adjustment of contract prices is the method which most consistently reflects the requirements of both the applicable contract clause and CAS 9904.401 or 9905.501, as applicable, regarding consistency in the cost accounting practices used to both estimate and accumulate costs on CAS-covered contracts. The Board finds inappropriate the commenter's suggestion that the Board endorse a position which holds that such adjustments should only be used as a last resort. To the contrary, the Board believes that any method that further distorts the Board's consistency requirements, such as the adjustment of indirect expense rates, should be a method that is only used as a last resort. If the cognizant Federal agency official determines that adjustment of contract prices is not warranted to resolve the cost impact action, the Board is of the view that a transfer of funds between the Government and a contractor is the most appropriate "other suitable technique" that can be used to settle the action".

The second paragraph of the Board's comments specifically addresses the problem faced by a contractor when its final incurred cost rates are adjusted for CAS issues. All contracts, both CAS and non CAS-covered, are adjusted for a CAS issue resulting in harm to the contractor.

Cost Accumulation

Proposed FAR 30.605(d)(2)(ii)(A) provides that *"when the noncompliance involves cost accumulation"*, a contractor can *"for purposes of computing increased cost in the aggregate, the change in indirect rates multiplied by the applicable base for flexibly priced contracts and subcontracts"*. If we understand this requirement correctly, it requires a contractor to incur additional time and effort to calculate increased costs in the aggregate in a different manner than is required by the cost impact calculation. We fail to see why a contractor should be required to calculate increased cost in the aggregate one way for the GDM proposal and another way for the cost impact calculation? One of many situations that greatly affect the cost accumulation calculation that is not addressed in the proposal is the trend toward task order contracts that may have both fixed fee and incentive fee tasks as well as CAS covered and non CAS covered tasks.

Increased Costs

The FAR councils have taken the opportunity in the second proposed rule to change the definition of increased costs to the government. The proposals interpretation of increased cost, especially as they relate to fixed-price contracts and the failure to differentiate increased costs related to noncompliance from those associated from unilateral changes is in direct conflict with existing CASB regulations. This change seems to be a ploy on the part of the councils to incorporate DCAA's philosophy as contained in DCAM 8-503.2 that increased costs under fixed price contracts should apply to all price adjustments involving FFP contracts into the regulation. Fortunately, only the CASB has the statutory authority for defining increased costs. The definitions of increased costs in 48 CFR 9903.306 has historically distinguished between contract adjustments for noncompliances

and those required for unilateral changes. Moreover, subparagraph (a)(4)(ii) of the CAS clause, which applies to unilateral changes, only requires that a contractor negotiate with the contracting officer to determine the terms and conditions under which a change may be made to a cost accounting practice. The only limitation is that no agreement can be made which will increase costs to the government. In addition to usurping the CASB's authority, the proposed rule would also make it harder for contracting officers to settle unilateral changes.

Unilateral Changes

Proposed FAR 30.604(e)(3) requires that a contractor provide *"for unilateral changes, the increased or decreased costs paid by the government for each of the following groups: (A) Fixed-price contracts and subcontracts and (B) Flexible priced contracts and subcontracts"*. One can only wonder how there can be any increased or decreased costs paid by the government related to a unilateral change if contractors are complying with the current regulations. Under the current regulations, and the proposed FAR 30.603-2(c)(i), a contractor is required to submit a description of the change not less than 60 days (or other mutually agreeable date) before implementation of the change. Under the current and proposed regulations, if a contractor were to implement a unilateral change without submitting the required notice, the CFAO would normally determine the change to be a failure to follow a cost accounting practice consistently and process it as a noncompliance.

With most contractors it would be difficult to bill the government for a change in accounting practice as their billing rates are usually established during the review of a Forward Pricing Rates (FPR) proposal. If the FPR submittal included an accounting change, DCAA would neither approve the FPR or the new billing rates.

Assuming that it was possible for the government to pay increased or decreased costs related to a unilateral change, we are curious as to how this data would be used in determining increased costs in the aggregate or resolving the cost impact. The current regulations and proposed FAR 30.604(h)(3)(i) and (ii) require that a contractor calculate the cost impact based on the difference between the estimated costs to complete using the current practice and the estimated costs to complete using the changed practice. Estimated costs to complete for each affected CAS-covered contract and subcontract are calculated from the proposed date of the unilateral change until contract completion. The cost impact calculation provides the government with the anticipated increase or decrease in the costs that will be subsequently accumulated and billed to the government as a result of the change. If the change increases the costs to the government, necessary contract adjustments should be made to insure that the government does not pay increased costs as a result of the unilateral change.

If it was possible for a contractor to bill increased costs and the cost impact calculation confirms that the unilateral change will increase the costs on CAS-covered contracts and subcontracts, the government could not adjust a contract or contracts based on the results

of the cost impact and request a billing adjustment. Such actions would result in a windfall profit for the government.

Redundant Calculations – Precise and Estimated

After a contractor has expended the time and effort to perform the cost impact calculation, the second proposed rule is silent as to why the results obtained from these calculations are not presented in a cost proposal format. If a contractor is required to perform detailed cost impact calculations, why are the results of these calculations not used by the government to resolve the cost impact?

It has long been a requirement that CAS covered contractors maintains a database of CAS covered contracts, and prepares cost impacts. Instead of utilizing the cost impact calculation results to resolve a cost impact, the second proposed rule now requires that a contractor submit what the FAR councils call "broad based data" as the basis for the GDM proposal. We are concerned with the data required by proposed FAR 30.604(e) and 30.505(d) and the use of samples, approximations and algebraic formulas to determine the increase or decrease in cost accumulations. Proposed FAR 30.604(e)(2) and 30.605(d)(2) provides that a contractor *"May use one or more of the following to determine increase or decrease in contract and subcontract price and cost accumulation"*. This being the case, why wouldn't a contractor utilize the results of the cost impact calculation to satisfy this requirement? It would appear that this data would satisfy the proposed FAR 30.604(e)(3)(i) and 30.605(d)(3)(i) requirement to provide the total increase or decrease in cost accumulation by executive agency. The second proposed rule provides no rationale or justification for not using the results of the cost impact calculation to resolve the cost impact. Other than reducing the government's administrative effort, what possible justification can be offered!

Proposed FAR 30.604(e)(2)(i) and 30.605(d)(2)(i) provides that a contractor may use *"A representative sample of affected CAS-covered contracts and subcontracts"* to determine increase or decrease in cost accumulations. One of the biggest problems we have faced over the years when attempting to do GDM's is getting an agreement with the government as to what constitutes an acceptable sample. Much of the time, it takes longer to agree on the technique than it does to just calculate the full cost impact, especially if the contractor has an automated system to do so. This concern is buttressed by the requirements of proposed FAR 30.604(f)(1) and 30.605(e)(1), in which the CFAO may request revised GDM proposals to obtain an expanded sample of affected CAS-covered contracts and subcontracts.

Assuming that a contractor can reach agreement with the government regarding a representative sample, it is then required by proposed FAR 30.604(e)(3)(i) and 30.605(d)(3)(i) to provide the total increase or decrease in contract and subcontract prices and cost accumulations by executive agency. The second proposed rule fails to provide any guidance on how to accomplish this requirement. This would be a very difficult task at best in a contractor with numerous buying offices and a disparate contract mix.

Proposed FAR 30.604(e)(2)(ii) provides that a contractor can determine the increase or decrease in cost accumulations by *"the change in indirect rates multiplied by the total estimated base computed for each of the following groups: Fixed-price contracts and subcontracts and flexibly priced contracts and subcontracts"*. Our first concern with this option is that it requires additional time and effort to calculate the increase or decrease in cost accumulations using a different methodology than is required by the requirements for calculating the cost impact. Why would a contractor choose this as an option when it had already computed the exact impact? Assuming that a contractor would choose this alternative, how does the contractor comply with proposed FAR 30.604(e)(3)(i)? Does the government assume that contractors can somehow summarize the "estimated base" by executive agency?

Proposed FAR 30.604(e)(2)(iii) and 30.605(d)(2)(iii) provides that a contractor can use *"any other method that provides a reasonable approximation of the total increase or decrease in contract and subcontract prices and cost accumulations for all affected fixed-price and flexibly priced contracts and subcontracts"*. The mystery is why the government is asking for a reasonable approximation of prices and cost accumulations when the actual impact on prices and cost accumulations has already been identified in the cost impact calculation.

No time requirement for Government

The second proposed rule does not address one of the major problems associated with the timely resolution of cost impact proposals related to noncompliances and accounting changes. That problem is the fact that the government has no time restrictions for performing their responsibilities. Contractors must respond to DCAA allegations of noncompliance contained in draft and final audit reports within thirty (30) days and are given sixty days to respond to initial and final determination of noncompliance from a contracting officer. Troublingly, we have had occasions where DCAA has taken over a year to audit a cost impact proposal. Likewise, it often takes over a year, or in some cases, many years to receive a response from a contracting officer.

The FAR councils could greatly improve the resolution process by establishing reasonable response times for the government personnel.

Interest Calculation

Proposed FAR 30.605(d)(2)(ii)(b) apparently means to require a contractor to compute interest, although it makes no sense as written. The methodology that the councils want contractors to use is *"the change in indirect costs multiplied by the applicable base for flexibly priced and fixed-price contracts and subcontracts"*. This makes no sense unless they are suggesting that a rate be multiplied by the applicable base.

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Use of General Dollar Magnitude (GDM) versus Detailed Cost-Impact (DCI) proposals

While in theory a General Dollar Magnitude proposal seems like a great time saver and a quicker way to resolve cost impacts, in practice, we have found that, more often than not, this is not the case. The GDM proposal uses samples, estimates, approximations and algebraic formulas to determine the increase or decrease in cost accumulations by contract, subcontract and government agency rather than calculating the actual amounts. The problem we have found with this method is that very often, any time saved by using the GDM approach over the DCI, is lost in the seemingly endless wrangling over the methodology employed. The inability to reach agreement on methodology seems to be directly proportional to the number of open CAS covered contracts, the years involved and the number of agencies affected. When a contractor selects a "representative" sample, the government seems to be inherently suspicious that the sample is loaded in the contractors favor. Likewise, the sample approach makes it difficult to determine with any accuracy the amount by contract, agency, buying office, etc., thus often needlessly protracting the settlement process. The problem being, that after all of this, you still have an imprecise result.

Fortunately, over the last decade, as the CASB and FAR councils have been agonizing over these issues, technology has advanced to the stage where a very accurate cost impact proposal covering all affected pricing actions, (by contract, task, agency, contract type, etc.) is now practical. The speed and power of personal computers, combined with advances in database technology, now make it much easier to calculate precise cost impacts in a very short time, giving all parties involved confidence in the results. We, and many contractors, have modified database programs to also calculate cost impacts. Thus it is easy and cost effective to quickly and efficiently calculate DCI proposals.

It has long been a requirement that a contractor track CAS covered contracts and pricing actions. Information such as job number, client, government agency, prime contract number, subcontract number, contract type, award date, period of performance, CAS value of the contract pricing action, PCO name and PCO phone number are required not only for CAS purposes but for a variety of contract administration functions as well. In fact, when all contracts (CAS covered and non-CAS covered) are included in such programs, most clients use them for contract administration, contract close out, defective pricing reviews and a host of other requirements as well. Where we have installed these systems for clients, we have always asked DCAA to proactively audit the database of CAS covered contracts to assure themselves that all CAS covered contracts are included and that the values are correct. Secondly, to assure the auditors that the results of the cost impact calculation are correct, we run a series of cost impacts with contracts and rate changes selected by them with results they have previously calculated to validate the results. When a real cost impact is run, a great deal of their audit work is complete and they and the ACO have faith in the results, a factor that greatly expedites the audit and settlement process.

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Needless to say, as in any system, the information contained in the database should be supported by "hard copy" documentation, which includes a copy of the contract or subcontract and any change to contract or subcontract and a copy of the cost proposal submitted to the customer. Indirect rates used in the cost proposals tie back either to Forward Pricing Rates memorandums or claimed rates based on Final Incurred Cost Submittals. All indirect rate support is also maintained in electronic format, which allows for the rates to be re-calculated for any noncompliance or accounting change scenario.

With this data maintained on a current basis, once a noncompliance has been cited, with such a program, all that remains is for the contractor to calculate the compliant rates, enter them into the program and run the cost impact. Once the data is entered, the calculation only takes a few hours at most. For unilateral changes, once the estimates-to-completes are calculated, the system can be used to calculate the impact on government contracts and do "what if" scenarios that all contractors should do before embarking on an accounting change. With the increase in the CAS covered contract ceiling, fewer cost impact proposals will be required of smaller companies. With medium and large CAS covered contractors utilizing similar cost impact programs, the debate over GDM versus DCI cost impacts may well become moot.

As you can see, our perspective is from the point of view of a firm that works with a wide variety of contractors, government agencies, ACO's and DCAA auditors to resolve what are normally complex accounting issues. From that perspective I believe there are quite a number of changes to be made that would make the cost impact process simpler for all concerned. I hope you reconsider some of the proposed changes in light of our comments, and those you will undoubtedly receive from other respondents, and continue to press forward with that goal of making the process simpler and more equitable for all concerned.

Sincerely,

Ronald Givens
President

1999-025-8

August 28, 2003

General Services Administration,
FAR Secretariat (MVA),
1800 F Street, NW, Room 4035,
ATTN: Laurie Duarte,
Washington, DC 20405

Subject: FAR Case 1999-025

From: Rudolph J. Schuhbauer, 5337 Ellzey Drive, Fairfax VA, 22032

Dear Ms. Duarte,

I appreciate the opportunity to comment on the proposed rule to amend the Federal Acquisition Regulation (FAR) at Part 30, Cost Accounting Standards Administration, that was published in the Federal Register on July 3, 2003 (68 FR 40104).

The following comments and suggestions are entirely my own. Please be advised that, as a former Project Director to the Cost Accounting Standards Board (CASB), my comments are not to be attributed to the CASB, its Members, or the Board's staff.

Summary Comments

Final promulgation of the proposed administrative processes governing contractor notification of a compliant cost accounting practice change and Cognizant Federal Agency Official (CFAO) noncompliance determinations will improve and facilitate the contract administration process.

The proposed rule does not appear to provide for the fair and equitable resolution of all cost impacts attributable to unilateral cost accounting practice changes or to noncompliances involving estimated contract costs.

For unilateral changes, the proposed mandatory cost impact calculation and resolution process appears to provide for the recovery of more than the aggregate increased cost to the Government, in certain circumstances, e.g., when the unilateral change affects both flexibly priced contracts and fixed-price (FP) contracts.

For noncompliances that involve estimated contract costs, the proposed cost impact calculation and resolution process appears to exempt all negotiated cost ceilings and target costs of affected flexibly priced contracts from contract price adjustment. Hence, for any CAS-covered contracts with cost ceilings or target costs that were overstated due to a noncompliant cost accounting practice that was used to estimate proposed contract costs, the CFAO is not required to take any corrective actions to reduce the overstated contract cost ceilings or target prices. Understated contract cost ceilings or target costs are also not addressed.

The proposed rule mandates a mechanical calculation methodology for determining increased cost to the Government, in the aggregate, and mandates certain downward only contract price or

cost adjustments for resolving the calculated cost impact. The proposed rule does not require consideration of the total amount of contract payments that would have been made for contract performance if the original practice had not changed and the total payments that would be made for the same contract performance if the contemplated adjustments were actually made (or no action is taken) to resolve the cost impact. (See comments on 30.606(a)(2) and 30.606(c)(3).)

To ensure the CFAO's contemplated actions will fairly and equitably resolve the cost impact of a unilateral change or a noncompliance involving estimated costs, the proposed rule should provide guidance on the additional factors that need to be considered before contemplated cost impact resolution actions are actually taken, e.g., consider impact on total contract payments.

The cost impact on individual contracts is not addressed. The proposed mandatory calculation and resolution process only focuses on the "net" aggregate increased or deceased cost total. Individual contract cost increases or decreases are simply offset. A guidance statement is needed to clarify that contract price adjustments may be needed even in cases where one contract's increased cost to the Government is offset by decreased cost to the Government under another contract, e.g., when the estimated cost accumulations for two flexibly priced contracts decrease significantly for one and increase significantly for the other, to the point where the relationships between each flexibly priced contract's cost ceiling and estimated contract cost accumulations are significantly distorted, when existing flexibly priced contracts will accumulate a lower level of contract costs but contract cost accumulations under future contract awards will increase due to a change in the assignment of contractor costs.

The proposed rule perpetuates, in part, the traditional Government agency interpretations of the CASB's long established rules for determining increased cost. The comments and suggestions made herein are intended to share some of my concerns and suggestions regarding the continued use of that traditional approach and the proposed concept that cost impacts can be resolved by focusing only on the "net" total amount of increased or decreased cost to the Government. In my opinion, the cost impact resolution process should focus on the total contract payments that would be made if the original practice was not changed and the total contract payments that would be made under the changed practice for the same scope of contract work after the contract prices and costs were adjusted (or no action is taken) to resolve the cost impact.

Processing Compliant Changes

30.604(h)(1) The proposed language infers that all cost impacts occur in prior periods. The cost impact calculation for affected contracts generally involves the "estimated cost to complete" that will be incurred in future periods, after the change is implemented. (See proposed 30.603-1(c), 30.603-2(c), 30.604(b) and 30.604(h)(3).)

Suggestion: To clarify that the cost impact can involve existing contracts that will be performed in the future, insert the words "or will be" between the words "were" and "incurred."

30.604(h)(3) As proposed, it is not clear that the two required estimates to complete must both be based on the same level of contract performance. This proposed provision applies equally to required, unilateral or desirable accounting changes. However, omission of a common scope of

work requirement could prove particularly troublesome for unilaterally changes in that estimated cost accumulations under the changed practice for flexibly priced contracts could be understated. Consequently, the full impact of the unilateral change would not be disclosed. For example, assume that, for a cost-reimbursable contract with a $10 million contract cost ceiling, estimated contract cost accumulations would total $10 million under the original accounting practice. Under the changed cost accounting practice, the estimate to complete for performing the same amount of contract work would approximate $11 million. Without specificity regarding contract scope, the contractor could take the position that the contractor's estimate to complete under the changed practice is also $10 million; because reimbursable costs are limited to the $10 million cost ceiling and the contractor is not required to incur contract costs in excess of the existing contract cost ceiling. Under the changed practice, contract work would simply stop sooner than previously planned. If so, the fact that the Government would receive less scope than originally envisioned in the negotiated contract cost ceiling, i.e., increased cost to the Government, would not be shown in the contractor's cost impact submission. Such "accounting" cost overruns would fall outside of the cost impact process and require subsequent administrative resolution on an individual contract-by-contract basis.

Suggestion: Clarify that the two estimates to complete shall be based on contractor performance at the same level of contract work. Potential fix: After the words "in cost accumulations" add the phrase "required to perform the same level of contract work."

30.604(h)(4) For unilateral changes, proposed paragraphs (h)(4)(i) and (ii) prescribe how to calculate total increased or decreased cost to the Government under FP contracts and flexibly priced contracts, respectively. Paragraph (h)(4)(iii) prescribes how to determine the increase or decrease in contract incentives, fees, and profits associated with the increased or decreased cost to the Government. Paragraph (iv) prescribes a mechanical formula for calculating if there are increased cost to the Government, in the aggregate. Basically, the amounts obtained under paragraphs 604(h)(4)(i), (ii) and (iii), are simply added together. Increased and decreased cost totals for each category are totaled to arrive at the "net" increased cost to the Government.

The resultant "net" total represents the aggregate increased or decreased cost to the Government that would be paid under existing contract terms and conditions, if no contract price or cost adjustments are made to resolve the cost impact of the unilateral change. Presumably, if decreased costs exceed increased costs, then the CFAO is to conclude the cost impact process and take no further action. If there are "net" increased cost to the Government, then the CFAO would proceed to recover or preclude the payment of such net amount by taking the actions proposed at 30.606(c)(3) and (c)(4). Individual contracts would not be adjusted to resolve their individual cost impacts.

There is no requirement to give further consideration to the aggregate contract payments that will be made under all affected contracts if such contemplated actions are taken. The proposed mandatory adjustment of contract prices or disallowance of contract costs based solely on the net increased cost total produced by the proposed arithmetic calculation may not produce fair and equitable results or protect the Government's interests in all cases. The following examples and related comments illustrate some of the concerns involved. [Examples 1 and 2 are based on the two examples provided attendees at the August 5th public meeting.]

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Example 1

	Estimated Cost Accumulations					At Contract Completion	
Contracts:	Contract Price or Cost Ceiling(1)	After Change	Before Change	Increase (Decrease)	Increased (Decreased) Cost To Gov't.	Price Paid Before	Price Paid After (2)
Flexible	105	75	105	-30	-30	105	75
FP	70	100	70	30	-30	70	70
Totals	175	175	175	0	-60	175	145

Note 1 Assumption: The contract cost ceiling and FP contract price approximated the "before change" estimated cost accumulations. Impact on fee or profit is not considered.

Note 2 Proposed 30.606(c)(3)(i) and (ii) appear to mandate that the CFAO shall not increase FP contract prices and/or shall only disallow accumulated costs on flexibly priced contracts to recover **aggregate** increased costs to the Government. Per the proposed "net" calculation methodology, the unilateral change results in decreased cost, in the aggregate, of 60. Since there are no "net" increased costs to the Government, no contract price or cost adjustments are required. The CFAO can conclude the cost impact process, presumably by determining the amount is immaterial (see 30.602(c)(1). The Government would pay 30 less, in the aggregate, and receive the same contract work it had contracted for. If the contractor continued contract performance until the cost ceiling limit was reached, then the Government would receive additional work of 30 under the flexible contract. In either case, if the CFAO takes no action, the Government would benefit by 30. The equity of this proposed approach is questionable. It is also questionable from sound financial management and contracting perspectives.

However, if the referenced mandatory provisions were superseded by proposed 30.606(c)(3)(iii), then the CFAO could adjust the contract prices for an equitable resolution; by decreasing the flexible contract cost ceiling by 30 and by increasing the FP contract price by 30. The Government would, in the aggregate, pay $175 before and after the change (no aggregate increased cost to the Government), and receive the same amount of contract work. The FAR cost impact process should clarify that this latter equitable approach is the desired objective.

Example 2

	Estimated Cost Accumulations					At Contract Completion	
Contracts:	Contract Price or Cost Ceiling(1)	After Change	Before Change	Increase (Decrease)	Increased (Decreased) Cost To Gov't.	Price Paid Before	Price Paid After (2)
Flexible	1125	1230	1125	105	105	1125	1125
FP	1605	1505	1605	-100	100	1605	1505
Totals	2730	2735	2730	5	205	2730	2630

Note 1 Assumption: The contract cost ceilings and FP contract prices approximated the "before change" estimated cost accumulations. Impact on fee or profit is not considered.

Note 2 Proposed 30.606(c)(3)(i) and (ii) appear to mandate that the CFAO shall only decrease the FP contract prices, presumably for the FP contracts' "offset" total increased costs, and shall disallow accumulated costs to recover the **aggregate** increased costs on flexibly priced contracts. Per the proposed calculation methodology, the unilateral change results in "net" increased cost to the Government of 205. Presumably, the CFAO would decrease some FP prices by 100 and disallow some flexibly priced contract cost accumulations by 105. If so applied, the Government would pay 2,630, i.e., 100 less in the aggregate for the same scope of work it had contracted for. The contractor, however, would accumulate total costs of contract performance of 2,735 which would exceed, by 5, the total amount of costs that would have been accumulated under the original practice. For affected contracts, the contractor would breakeven if the unilateral change were not made. After the unilateral change and the application of the proposed cost impact resolution process the contractor would incur a loss of 105 (2,630-2,735). The equity of this proposed approach is questionable.

However, if the referenced mandatory provisions were superseded by proposed 30.606(c)(3)(iii), then the CFAO could adjust the contract prices in order to arrive at an equitable resolution. First, the CFAO could decrease the FP contract prices and flexibly priced contract cost ceilings/target costs for those contracts with decreased cost accumulations. Then, the CFAO could increase the FP contract prices and cost ceilings for those contracts that would experience increased cost accumulations; provided the aggregate increase in contract prices was limited to the aggregate decrease in contract price adjustments being made concurrently. In the aggregate, FP contract prices would be reduced by 100 and flexible contract prices would be increased by 100. The 100 of upward contract cost ceiling adjustments would cover 100 of the 105 increase in estimated contract cost accumulations. Only, the remaining cost accumulation increase of 5 would be disallowed. The Government would, in the aggregate, pay 2,730 before and after the change (no aggregate increased cost to the Government), and receive the same amount of contract work. The contract cost ceilings would be in line with the expected "allowable" contract cost accumulations. The contractor would receive 2,730 in contract payments for accumulated contract costs totaling 2,735; and experience a loss of 5, as contrasted with a loss of 105 under the proposed mandatory provisions at 30.606(c)(3)(i) and (ii).

When determining aggregate increased cost to the Government, the CFAO should be required to consider the aggregate contract prices that would have been paid under the original practice and the aggregate contract prices that would be paid for the same contract scope of work after the contemplated contract price adjustments and cost disallowances were made. By not giving consideration to the total payments that will be made under all affected contracts after the contemplated contract price or cost adjustments are made, there is no assurance that the contemplated contract price cost adjustments will resolve the cost impact of a unilateral change in a fair and equitable manner.

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Example 3

Contracts:	Contract Price or Cost Ceiling	Estimated Cost Accumulations: After Change	Before Change	Increase (Decrease)	Increased (Decreased) Cost To Gov't.	At Contract Completion: Price Paid Before	Price Paid After (1)
Flexible	1000	900	1000	-100	-100	1000	900
FP	1050	900	1050	-150	150	1050	1000
Totals	2050	1800	2050	-250	50	2050	1900

Note 1 Proposed 30.606(c)(3)(i) and (ii) appears to mandate that the CFAO shall preclude payment of **aggregate** increased costs by decreasing FP contract prices and/or by disallowing accumulated costs on flexibly priced contracts. Under the proposed "net" calculation methodology, this unilateral change results in aggregate increased cost to the Government of 50. As proposed, the CFAO would be required to recover the 50 of aggregate increased cost, probably by decreasing some FP contract prices. If so applied, the Government would pay 100 more than the contract cost accumulations that will result after the change. Yet, the Government will receive the same scope of work originally contracted for. This proposed approach does not appear to be in the best interests of Government, particularly, if the unilateral change resulted in the assignment of contractor costs to future periods and a higher level of contract cost accumulations is expected to be reflected in future CAS-covered contract prices.

However, if 30.606(c)(3)(iii) could be applied, then the CFAO could decrease the FP contract prices by 150 and decrease the flexible contract cost ceilings by 100. The Government would pay contract prices of 1,800, in the aggregate, for the same scope of work originally contracted for (i.e., the same as if deemed a desirable change). Payments of 1,800 would cover the contractor's total expected contract cost accumulations of 1,800, i.e., a fair and equitable resolution for the contracting parties.

By not mandating equitable contract price and cost ceiling adjustments in such circumstances, the underlying objectives of the consistency requirements of Cost Accounting Standard 9904.401 will simply erode. If a contractor can so change its cost accumulations due to a unilateral change made after contract award, then the Government should also be able to change the negotiated contract cost ceiling after contract award in order to maintain consistency and comparability (cost ceiling & cost accumulation comparisons). (See 9903.201-4(a), paragraph (a)(4)(ii).)

Example 4

Contracts:	Contract Price or Cost Ceiling	Estimated Cost Accumulations: After Change	Before Change	Increase (Decrease)	Increased (Decreased) Cost To Gov't.	At Contract Completion: Price Paid Before	Price Paid After (1)
Flexible	900	1000	900	100	100	900	900
FP	900	1050	900	150	-150	900	900
Totals	1800	2050	1800	250	-50	1800	1800

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Note 1 If 30.606(c)(3)(i) and (ii) are applied as proposed, no contract price or cost adjustment is required. Under the proposed "net" calculation method, there are "net" decreased costs to the Government of 50. The flexibly priced contract will incur a contract cost overrun of 100. If so, then work under the flexibly priced contract will stop when the contractor cost accumulations under the changed practice approach the contract's cost ceiling limitation. Hence, the Government will receive less work under the flexible contract than it would have received had the unilateral change not been made. Is not contractor performance of less work in exchange for the payment of a cost ceiling amount that contemplated contractor performance of more work an increased cost to the Government? The CFAO should be required to disallow the estimated increase in contract cost accumulations under flexibly priced contracts. The Government should receive the same scope of work it contracted for, without having to fund the resultant "unilateral accounting change" cost overrun.

30.606(a)(2) In addition to the proposed caveat, an analysis of the total payments that would be made if all affected contracts were individually adjusted (price or cost adjustments) is required so that the CFAO can determine whether one or more contracts are to be adjusted, or if an alternative method (30.606(d)) can be used to resolve the cost impact. Without such data, how can the CFAO determine that - the Government will not pay more, in the aggregate, than would be paid if the CFAO had adjusted all affected contracts -? (See preamble comment 6.)

Please note: The proposed mandatory processes for calculating and resolving "net" increased costs are not equivalent to individually adjusting all affected contracts. For unilateral changes, the proposed mandatory resolution process adjusts some but not all affected contracts. For noncompliances involving estimated costs, affected flexibly priced contract cost ceilings and target costs are excluded form the proposed adjustment process. If decreased costs exceed increased costs to the Government, then no contracts are adjusted.

30.606(c)(3) The proposed mandatory provisions in (c)(3)(i) and (ii) appear incompatible with the CASB provision at 9903.201-6(b) and the proposed permissive provision at (c)(3)(iii).

Application of the mandatory provisions at (c)(3)(i) and (ii), in conjunction with the mechanical calculation of increased cost to the Government, in the aggregate, at 30.604(h), may not always produce fair and equitable contract price or cost adjustments; or, be in the Government's best interests. (See comments on 30.604(h)(4).)

The proposed provision at (c)(3)(iii) provides the CFAO "may" adjust contract prices, including cost ceilings and or target costs, provided contract prices are not increased in the aggregate. This appears predicated on the CASB regulatory provision at 9903.201-6(b), but the FAR proposal makes it subservient to the mandatory provisions at (c)(3)(i) and (ii) which do not sanction such adjustments. Consequently, the proposed rule appears to conflict with the CAS rules, as amended on June 14, 2000.

Suggestion: Delete (c)(3)(i) and (ii) and make the proposed provisions at (c)(3)(iii) mandatory, for consistency with the CAS rues. They require contract price adjustments (net upward adjustments limited to net downward adjustments for FP and flexibly priced contracts, i.e., no increased cost to the Government, in the aggregate, for the same scope of contract work). Also

needed is a mandatory provision requiring the CFAO to disallow accumulated costs under flexibly priced contracts, but only for the portion of estimated increased cost accumulations that remains in a cost overrun condition after contract cost ceiling adjustments, if any, are made.

Also, the CFAO should be required to determine, for all affected contracts, the aggregate amount the Government would have paid to obtain the same amount of contract work if the unilateral change had not occurred and the aggregate amount that the Government will pay after the CFAO's contemplated actions are taken to resolve the unilateral change. A comparison of the two payment totals would assist the CFAO in determining if the contemplated actions will result in a fair and equitable resolution. (The comparisons envisioned would be similar to the examples discussed under 30.604(h)(4)).

Processing Noncompliances

30.605(h)(3) Delete the incorrect parenthetical statement. Proposed 30.606(c)(4)(iii) does (and should) provide for the adjustment of contract cost ceilings and target prices.

30.605(h)(5) Flexibly priced contract cost ceilings or target costs are excluded form the prescribed method for determining increased costs in the aggregate for noncompliances that involve estimating costs. The proposed requirement is only applied to FP contracts. The proposed coverage ignores the cost impact on negotiated flexibly priced contract cost ceilings or target costs that were understated or overstated due to a contractor's proposal that contained estimated costs which were based on the use of a noncompliant practice.

This proposed exclusion can understate the potential increased cost to the Government and appears inconsistent with the governing CASB provision at 9903.201-6(d) and proposed 30.606(c)(4)(iii). Proposed 30.605(h)(5) and the mandatory provisions at 30.606(c)(4)(i) and (ii) make it appear as if contractors can use a noncompliant cost accounting practice to estimate proposed contract costs for flexibly priced contracts with impunity.

Proposed 30.605(h)(5) should be revised to include flexibly priced contracts.

To achieve equitable resolutions and to protect the Government's interests, certain "noncompliant" flexibly priced contract cost ceilings and target costs may need to be adjusted. Please consider the following examples involving noncompliant estimated costs.

Example A

Contract	Negotiated Non Compliant Price	Price if Compliant Practice used	30.605(h)(5) Increased (Decreased) cost to US	Contract Cost Accumulations If Compliant Practice	Part 30 Price Adj.	Part 30 Payments After Adj. (1)
Cost ceiling	1100	1000	0	1000	0	1000 or *1100?*

Note 1 In this example, the contractor used a noncompliant practice to estimate proposed contract costs which resulted in the negotiation of an overstated contract cost ceiling. Contract

cost accumulations reflect use of compliant practices. If the noncompliant cost ceiling is left unadjusted (based on proposed 30.605(h)(5) and 30.606(c)(4)(i) and (ii)), and the contractor performs only the contracted for work, then the contract would experience a cost under run. The contract price would be reduced by 100 at contract closeout. Payments to the contractor would total 1,000. However, the contractor could also perform more work than contracted for. If so, the awarding agency would pay 1,100 and receive more contract work than it had contracted for, i.e., 100 more than if a compliant practice had been used to estimate costs. It is not clear to this commenter why the Government would not want to save the 100 by adjusting the overstated contract cost ceiling promptly, upon determining the noncompliance.

Example B

Contract	Negotiated Non Compliant Price	Price if compliant practice used	30.606(h)(5) Increased (Decreased) cost to US	Contract Cost Accumulations If Compliant Practice	Part 30 Price Adj.	Part 30 Payments After Adj. (1)
Cost ceiling	1100	1000	0	1000	0	1000
FP	1000	1100	-100	1100	0	1000
Totals	2100	2100	-100	2100	0	2000

Note 1 This example is a continuation of Example A. It adds a negotiated FP contract price that was understated due to concurrent contractor use of the same noncompliant practice. No price adjustments are made. Under proposed 30.605(h)(5) and 30.606(c)(4)(i) and (ii), an aggregate upward FP price adjustment is prohibited and the potential downward adjustment to the flexible priced contract is excluded from consideration. Contractor cost accumulations would total 2,100 but payments would only total 2,000. The equity of this proposed approach appears questionable. The Government would have paid 2,100, in the aggregate, if there were no noncompliance, and there would be no aggregate increased cost to the Government (2,100 vs. 2,100). Contract price adjustments, with no aggregate increase in contract prices under proposed 30.606(c)(4)(iii), could alleviate these types of situations.

Example C

Contract	Negotiated Non Compliant Price	Price if Compliant Practice used	30.605(h)(5) Increased (Decreased) cost to US	Contract Cost Accumulations If Compliant Practice	Part 30 Price Adj.	Part 30 Payments After Adj. (1)
Cost ceiling	1000	1100	0	1100	0	1000

Note 1 Due to a noncompliance, the negotiated contract cost ceiling for performing the contracted for work is understated by 100. Since the contractor will not be reimbursed for costs incurred in excess of the understated cost ceiling, contract performance will be halted prior to completion of the contemplated contract work. One remedy for resolving such noncompliances would be to disallow contract cost accumulations to the extent that the negotiated cost ceiling was understated.

Example D

Contract	Negotiated Non Compliant Price	Price if Compliant Practice used	30.605(h)(5) Increased (Decreased) cost to US	Contract Cost Accumulations If Compliant Practice	Part 30 Price Adj.	Part 30 Payments After Adj. (1)
Cost ceiling	1000	1100	0	1100	0	1000
FP	1100	1000	100	1000	-100	1000
Totals	2100	2100	100	2100	-100	2000

Note 1 This example is a continuation of example C. It adds a negotiated FP contract price that was overstated due to concurrent contractor use of the same noncompliant practice. As proposed, the FP would be adjusted downward by 100 due to the calculated increased cost to the Government. However, under 30.605(h)(5) and 30.606(c)(4)(ii), the understated cost ceiling can not be adjusted upward, since flexibly priced contracts are excluded from the adjustment process. A corresponding upward adjustment to the flexibly priced contract would result in the performance of the contracted for work and resolve the pending cost overrun.

30.605(h)(8) Revise the proposed coverage to include flexibly priced contracts.

30.606(c)(4) The proposed mandatory provisions at (c)(4)(i) and (ii) appear incompatible with the CASB provisions at 9903.201(6)(d) and proposed (c)(4)(iii).

30.606(c)(4)(i) By not sanctioning upward adjustments to FP contracts, CFAO's will be limited in the actions they can take. As proposed, the prescribed actions may not result in inequitable resolutions or be in the Government's best interests. (See comments on 30.605(h)(5).)

30.606(c) (4)(ii) As proposed, FP contract prices would only be subject to downward price adjustment if there are "net" increased costs to the Government. Flexibly priced contracts are excluded from the adjustment process. The proposed approach to only recover the aggregate increased cost to the Government for FP contracts can result in inequities. (See comments on 30.605(h)(5).)

30.606(c)(4)(iii) Suggestions: For consistency with CASB 9903.201-6)(d), delete (c)4)(i) and (ii). In (c)(4)(iii), replace the word "may" with "shall" and add a mandatory provision to disallow compliant contract cost accumulations under flexibly priced contracts when the negotiated contract cost ceiling was understated due to a noncompliant practice that was used to estimate proposed costs. (See Example C under the comments on 30.605(h)(5).

Also require an analysis of payments that would result if contemplated contract price and cost adjustments were made or no actions were taken to resolve the cost impact. The equity concerns discussed under 30.606(a)(2) and 30.606(c)(3)(iii) apply equally to noncompliances.

30.606(c)(5)(ii) The proposed coverage should be conformed to the changes suggested for 30.606(c)(4)(iii).

1999-025-9

Raytheon

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September 2, 2003

General Services Administration
FAR Secretariat (MVA)
1800 F Street, NW, Room 4035
ATTN: Laurie Duarte
Washington, DC 20405

Subject: FAR Case 1999-025

Dear Ms. Duarte:

Raytheon Company appreciates the opportunity to provide you with our comments regarding the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council proposed amendment to FAR Parts 30 and 52.

Raytheon Company participated in and supports the Aerospace Industry Association (AIA) position regarding this proposed amendment. While our comments and concerns are covered within that correspondence, we would like to highlight the following:

Raytheon supports the Councils efforts to clarify the process for determining and resolving cost impacts and believes there are favorable aspects of the proposed amendment. For example, the proposed cost impact process begins without having to prepare a general dollar magnitude (GDM) proposal. In addition, the Cognizant Federal Agency Official (CFAO) has the ability to make materiality determinations at any time during the process. While preparing a GDM may be inevitable, these are certainly steps in the right direction that help provide flexibility and reduce burdensome administrative tasks. Another important favorable aspect of the proposed amendment is the regulatory recognition of retroactive changes in cost accounting practices. This, without a doubt, adds flexibility.

While there are some favorable aspects of this proposed amendment, there are unfavorable aspects as well. Raytheon Company has significant concern with certain areas of the proposed rule. For example, some of the proposed provisions are unnecessarily prescriptive and as a result, the flexibility that this amendment is trying to achieve is limited. One example would be the detailed requirements that are mandated for GDMs. In many cases, very high level GDMs are all that is needed to determine if an impact is going to be immaterial, while in other cases, a GDM with more detail may be necessary. The GDMs require more flexibility than is provided for in the proposed amendment. Another example would be the proposed requirements for calculating quarterly interest payments associated with overpayments or underpayments for noncompliance.

In our opinion, the provisions for calculating increased costs to the Government in the aggregate requires the use of a method that is mathematically incorrect and, in some cases, will result in the Government recovering more cost than is permitted by law. Increased costs to the Government, in the aggregate, should be equal to the difference between what the Government will pay on its CAS-covered contracts, if no adjustments are made for a change in cost accounting practices or CAS noncompliance, and what would have been paid if the cost accounting practices had not changed or noncompliance occurred.

The provisions that require the inclusion of closed contracts in cost impact calculations potentially expands the period for requiring cost impact adjustments. It is not practical to include closed contracts and years with negotiated final overhead rates in cost impact calculations. It is not reasonable to assume a contractor would be able to adequately pull together the data supporting a cost impact analysis that could potentially go back over 30 years, especially in light of Industry mergers, acquisitions, and consolidations.

Raytheon Company believes this proposed rule is very significant and has far reaching consequences. The rule deals with a very specialized area within the Government contracting regulations and as such, it is difficult to put forth in writing, that which can be better expressed in an open dialogue. As such, we recommend a public working group session be held to discuss in detail the comments and recommendations being provided on this proposed amendment. Working meetings of this type, subsequent to receipt of public comments on the proposed rule, would enable Government and Industry representatives to have a better understanding of each party's concerns. If the Government were amenable to such a meeting, we would be pleased to participate.

We will be pleased to discuss any questions or comments you may have regarding this correspondence. Thank you for your consideration.

Sincerely,

T J Murphy

Terence J. Murphy
Assistant Controller, Government Accounting

Copy furnished:
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