

Recommendation 29: Revise 41 U.S.C. § 1501-1506 to designate the Cost Accounting Standards Board as an independent federal organization within the executive branch.

Problem

The CASB's current configuration within OFPP is ineffective at providing oversight for application of CAS to federal government contracts. CASB has only rarely met in recent years, and member positions often go unfilled for long periods. Meanwhile, changes to government contracting require ongoing updates to the standards and resolution of questions about CAS applicability. Because CASB has not been responsive to these changes, contractors are overly burdened by the need for added layers of compliance to many rules that have not kept pace with new business models. CASB needs to be reinvigorated as an independent organization and removed from OFPP.

Background

In 1970, Congress created the five-member CASB with authority to promulgate cost accounting standards designed to achieve more uniform and consistent cost accounting practices on national defense contracts and subcontracts.¹ The original CASB was part of what was then the General Accounting Office (GAO), and it was chaired by the Comptroller General. CASB met regularly and employed a staff of professional accountants who were responsible for conducting research and making recommendations to the board. Over the course of its existence, CASB promulgated 19 standards as well as detailed rules and regulations about the application of the statutory requirements to contracts and subcontracts.

The original CASB ceased to function at the end of FY 1981 when its funding expired and was not renewed. CAS and related regulations remained in effect, but in the absence of an active Board, there was no authority to make changes to CAS or regulations. It became clear that a functioning CASB was needed, and Congress created a new CASB in 1988 with the OFPP administrator as the board's chair.

For a variety of reasons, the new CASB did not begin to function until 1991.² The long delay in getting the new CASB functioning within OFPP has turned out to be prophetic. In recent years, dissatisfaction and frustration with the performance of CASB has grown. Notably, the Senate Armed Services Committee admitted in 2016 that it "is disappointed that the Federal Cost Accounting Standards Board does not currently have a quorum of members and has not met in over three years. Due to this situation, it is doubtful that any credible reform will emanate out of this board in the future."³ The board's inactivity is due to frequent changes in the identity of the OFPP Administrator and long

¹ Defense Production Act, Pub. L. No. 91-379, 84 Stat. 796, on August 15, 1970; codified at 50 U.S.C. App. 2179.

² The new Board's work was delayed for more than a year because there was a question about whether anyone currently employed by a government contractor or with other financial connections to the industry could serve as a private sector member of the Board without violating the Ethics in Government Act (18 U.S.C. § 208). The original sponsor of the OFPP legislation, Representative Jack Brooks, eventually informed the Administrator that Congress intended to create an exception to the Ethics Act. Based on advice from the Office of Government Ethics, the Administrator concluded that private sector representatives who were employees or consultants to contractor could serve on the Board as long as they recused themselves from the Board's consideration of matters such as waivers that were specifically and uniquely applicable to their employer or client.

³ FY 2017 NDAA, S. Rpt. No. 114-255 § 811 (2016).

periods during which that position was vacant, as well as other prolonged vacancies among board members.

CASB has responsibilities that have been neglected. The board has “exclusive authority to prescribe, amend, and rescind cost accounting standards, and interpretations of the standards” that govern “measurement, assignment, and allocation of costs to contracts with the [f]ederal [g]overnment.”⁴ As the sole organization with this authority, CASB must meet regularly and address issues promptly as they arise.

Discussion

For the past 30 years, CASB has failed to address urgent issues in a timely way. For example, Congress has twice changed pension funding requirements in a way that made those requirements inconsistent with CAS funding requirements—once in the Omnibus Budget Reconciliation Act of 1987, and the second time in the Pension Protection Act of 2006.⁵ CASB did not make changes in CAS requirements to eliminate the problems created by the 1987 Budget Act until 1995, and the contracting community was saved from what could have been a huge financial problem only because DoD issued a waiver permitting contractors to comply with the changed statutory requirements and ignore the conflicting CAS provisions until CASB changed the CAS provisions. A decade later, defense contractors identified a similar problem during the drafting of the Pension Protection Act of 2006. In response, Congress added a provision postponing the applicability of the statute to major defense contractors for 2 years, requiring CASB to issue final regulations harmonizing the CAS rules with the new statute and imposing a deadline on issuance of the harmonization rules.⁶ CASB missed that harmonization deadline by more than 2 years.⁷

The standards and regulations published by the original CASB need to be updated to reflect fundamental changes in the nature of government procurement over the last 30 years. CASB has known for years that growth in the use of indefinite quantity and task order contracts has created issues about coverage and cost impact that the original board never contemplated and that urgently require the current board’s attention. Since its establishment in 1988, the new board has not published any new regulations or modified any existing standard or regulation to address those issues. The 19 standards that the original board promulgated were written in an era when CAS applied only to defense contracts and when most major defense contracts were for hardware. Those standards are now applicable to all government agencies that are acquiring services, software, health care, and other solutions for which the original standards may be difficult to apply. Because CASB has failed to address these problems, a commercial company selling the same service or product that it sells in the commercial market may find that its contracts are potentially subject to CAS coverage because of one

⁴ Cost Accounting Standards, 41 U.S.C. § 1502.

⁵ Pub. L. No. 100–203, 101 Stat. 13301 (1987). Pension Protection Act of 2006, Pub. L. 109–280, 120 Stat. 780 (2006).

⁶ Section 106(d) of the Pension Protection Act of 2006, Pub. L. No. 109–280, 120 Stat. 780 (2006).

⁷ In fairness to the CAS Board, it worked closely with the government and with affected contractors to develop and implement a harmonization process that was designed to minimize disruption of the procurement cycle. The failure to meet the harmonization deadline was in part the result of negotiations with industry and the government to minimize disruption of the normal procurement process.

small line item in a hybrid contract, creating serious barriers to entry into the government market.⁸ The challenge of applying CAS to hybrid contracts is addressed in detail elsewhere in this *Volume 2 Report*.

When the new CASB was created in 1988, the decision to move the board to OFPP was driven by concerns that it would have been unconstitutional for the board to resume operations in GAO, which is not part of the executive branch.⁹ Although assigning responsibility for CAS to OFPP made sense in many ways, the activity of the CAS Board has been limited in the nearly 30 years it has been part of OFPP. The board recently resumed meetings in 2018 for what appears to be the first time in more than 6 years. Prior to that meeting, the most recent minutes posted on the Office of Management and Budget (OMB) website were from a meeting held October 5, 2011. Although there were reportedly meetings in 2017, there is no published evidence or record of them.

In response to the lack of activity by CASB, Section 820(a) of the FY 2017 NDAA required that CASB meet at least quarterly and publish in the Federal Register notice of each meeting and an agenda for each meeting.¹⁰ The FY 2017 NDAA also requires that CASB appoint an executive secretary and authorizes creation of two additional senior staff positions for the board. Those new NDAA provisions are not yet effective, and there is little evidence that things have changed. CASB continues to lack a chair due to the vacant OFPP Administrator position, and it has demonstrated little potential to address well-known issues.

The FY 2017 NDAA also created a Defense Cost Accounting Standards Board (Defense CASB), effective October 1, 2018, to be responsible for making recommendations about changes to CASB, to be exclusively responsible for implementation of the cost accounting standards in DoD, and to “develop standards to ensure that commercial operations performed by Government employees at the Department of Defense adhere to cost accounting standards (based on cost accounting standards established under section 1502 of title 41 or Generally Accepted Accounting Principles [GAAP]) that inform managerial decision making.”¹¹

Creation of the Defense CASB is an attempt to solve the problem of the nonfunctioning CASB. Adding another regulatory organization is the wrong solution. Government and industry representatives who spoke with the Section 809 Panel expressed they do not support creation of a Defense CASB. Stakeholders are concerned by the many unanswered questions raised by creating this board, including whether the new board will be biased toward DoD issues, and if the two boards will create competing sets of CAS.¹² Creation of a Defense CASB would almost certainly be counter-productive.

⁸ For example, if a software company enters into a contract with the Government to provide the same software and support services it offers in the commercial market at fixed prices, that contract would normally be exempt from CAS-coverage. If the contract includes a line item reimbursing the contractor for actual travel costs associated with providing support services, however, under the current regulations the entire contract could be CAS-covered because of that single cost-reimbursement line item. The value of the fixed price software and support services might be \$1 billion and the estimated value of the travel cost reimbursement might be only \$1 million, but the entire \$1.001 billion contract could be covered by CAS.

⁹ In *The Boeing Co. v. United States*, 680 F.2d 132 (Ct. Cl. 1982), the Court found that Boeing’s argument that the original CAS statute was unconstitutional was “by no means insubstantial.” *Id.* at 141.

¹⁰ Section 820 of the FY 2017 NDAA, Pub. L. No. 114-238, 130 Stat. 2000 (2017). Creation of Defense CASB codified at 10 U.S.C. § 190.

¹¹ Section 820(b) of the FY 2017 NDAA, Pub. L. No. 114-238, 130 Stat. 2000 (2017).

¹² See, for example, Paul E. Pompeo, “Senate Proposes Yet Another Cost Accounting Standards Board for Government Contractors,” *Arnold & Porter Advisory*, May 25, 2016, accessed May 15, 2018,

The most pressing problem with the current CASB formulation is the administration of the board at OFPP, partly due to a lack of leadership and subject matter expertise. The OFPP administrator position changes frequently and is often vacant, leaving the role in the hands of an acting administrator, most often a career civil servant versed in procurement policy, but without the requisite authority or experience in accounting and contract management to push forward needed CAS reforms.¹³ Currently the administrator position has been unfilled since January 2016. As a practical matter, when there is no Senate-confirmed administrator, nothing of substance happens at the CASB. Even when there is someone in the job, most OFPP administrators are not accountants, have not previously shown an interest in the issues within the board's jurisdiction, and are not experientially well-qualified to lead the board. Based on CASB's consistent lack of activity, OFPP administrators clearly have not prioritized CAS.

Housing CASB in OFPP has also proven a problem from a budgetary point of view. The original board had a large and experienced professional staff that performed its own independent research, did its own drafting, and provided high-quality advice to the board members. Since its move to OFPP, CASB has essentially had no staff of its own due to inadequate funding from OFPP.¹⁴ To the limited extent that it has done anything substantive, the OFPP CASB has effectively subcontracted its research and drafting to employees at other government agencies. Those employees are inevitably affected by their respective agency agendas and thus cannot provide the kind of independent analysis and advice that the board needs.

Nearly 20 years ago, these same issues were identified by a GAO CASB review panel created at the direction of Congress. The panel's 1999 report detailed the many problems resulting from the 1988 decision to place the CAS Board in OFPP.¹⁵ It concluded the following:

[P]lacement in OFPP/OMB has unduly constrained the Board's work and lent some credence to the contention that the Board's pronouncements have been unduly affected by procurement policy considerations...[T]he Panel believes that shifting the Board out of OFPP/OMB could reinforce its independence. This removal should facilitate the use of advisory committees, task forces, and staff for individual members, which would improve the CAS Board process and allow for greater acceptance of its pronouncements.¹⁶

<https://www.arnoldporter.com/en/perspectives/publications/2016/05/senate-proposes-yet-another>. John Chierichella and Adam Bartolanzo, "Defense Contractors to Face New Cost Accounting Oversight with Creation of Defense Cost Accounting Standards Board," Government Contracts & Investigations Blog, April 26, 2017, accessed May 15, 2018, <https://www.governmentcontractslawblog.com/2017/04/articles/departement-of-defense/cost-accounting-standards-board/>. Robert Kramer, "Committee on Government Business Discusses the New Defense Cost Accounting Standards Board Proposal," Financial Executives International, August 19, 2016, accessed May 15, 2018, <https://www.financialexecutives.org/Influence/Committees/Government-Business/News/Committee-on-Government-Business-Discusses-the-New.aspx>.

¹³ Since 2000, the position has been held by six appointed officials, with acting administrators for over six of those 18 years. (Administrators were Angela Styles, 2001-2003; David Safavian, 2004-2005; Paul Denett, 2006-2008; Dan Gordon, 2009-2011; Joe Jordan, 2011-2013; and Anne Rung, 2014-2016.)

¹⁴ Section 820 (a) of the FY 2017 NDAA, Pub. L. No. 114-238, 130 Stat. 2000 (2017) includes a provision that requires funding for a staff of three at the Board. The proposed statutory change will address, as needed, a source of funding for the positions.

¹⁵ GAO, *Future Role of the Cost Accounting Standards Board*, SP-99-1 (1999).

¹⁶ *Ibid*, 51.

Although placing CASB within OFPP may seem logical because of the ostensible relationship between procurement and cost accounting at the transactional level, CASB does not make procurement policy. It publishes very technical accounting rules about how costs on government contracts are measured, assigned to cost accounting periods, and allocated to individual contracts. The primary purpose of CAS and cost accounting regulations is to insure that the accounting for all costs charged on government contracts reflects sound and consistently applied principles, so costs are charged to contracts on the basis of demonstrable causal/beneficial relationships. The standards protect the government from abuses by contractors, but they also protect contractors from pressure by their government customers to manipulate accounting data in ways that do not reflect causal/beneficial relationships.

Neither OFPP administrators nor OFPP staff have expertise about the kinds of technical accounting and contract management issues that CASB's standards and regulations address. By maintaining an association between CAS and OFPP, CASB could make judgments biased toward procurement policy rather than content-neutral rules about how and when costs are charged to government contracts. To perform its functions adequately and efficiently, CASB should be an independent organization within the Executive Branch.

The 1999 GAO CASB review panel laid out criteria that a new CASB should meet. Among other things, GAO recommended there is a continued need for a CASB and that CASB should be an independent agency that is not "subject to the control of any other government agency that may have conflicting procurement policy/funding concerns."¹⁷ Members should represent government and private industry, retaining a government majority. These members should be part-time; the chair may be a full-time employee. The panel also emphasized the board's authority: "the Board's regulations should be binding and take precedence over other regulations regarding the allocation, measurement, and assignment of costs."¹⁸ These criteria should be heeded in the creation of a reinvigorated CASB.

The 1999 GAO CASB review panel devoted an entire chapter to the organization of CASB, with extensive findings on how to structure its composition, where to locate the board's operations, what types of restructuring authorities were needed to accomplish the recommendations, and what restructuring authorities were already permitted CASB's enabling legislation.¹⁹ GAO proposed three alternatives to ensure CASB retained its impartiality and operated more efficiently, but that could also be designed to address the board's rulemaking requirements to ensure any regulations would be binding and not subject to constitutional challenge.

The first option recommended the General Services Administration (GSA) house the CASB's operations and provide administrative support to the board as an independent agency with its own appropriated funding. The second option was to place CASB within DoD as an independent agency with appropriated funding, but the 1999 GAO CASB review panel noted a substantial risk that the agency with the most CAS-covered contracts (DoD) could unduly influence the promulgation of the CAS for procurement policy reasons. The third option was to authorize CASB as a completely independent federal agency outside any existing agency, but that alternative was limited by the potentially high cost

¹⁷ Ibid, 52.

¹⁸ Ibid, 52.

¹⁹ Ibid, 46-56.

to the government to establish the CAS Board outside of a host federal agency. To date, none of these options have been initiated or addressed in any detail until they resurfaced in the context of the Section 809 Panel's streamlining mandate.

Contemplating those alternatives, both the Section 809 Panel and the 1999 GAO CAS Review Panel independently concluded that CASB should be an independent organization, outside of OFPP. The board needs to be physically located in an existing agency required to provide office space and facilities, including clerical support, but this agency should have no responsibility for CASB's substantive work. The GAO review panel noted that GSA provides a physical location for a number of government entities that are not part of GSA, making it a suitable home for CASB's offices.

The GSA model resolves the housing problem by moving CASB out of OFPP, but it does not address how to ensure the constitutionality of any regulatory promulgation. Both panels recognize that for regulations to be binding, members of any CASB should be officers of the United States under the Appointments Clause (Article II, Section 2, Clause 2 of the Constitution.)²⁰ To address this challenge, the Section 809 Panel recommends that any statutory enactment enabling the physical move of CASB out of OFPP also designate the OMB director as the principal officer over CASB with the authority to delegate CASB members to act as officers of the United States. OFPP should remain responsible for the mechanics of publishing the regulations in the Code of Federal Regulations, where they have been located since 1993, but it will have no responsibility for determining the substance of the CAS requirements.²¹

Concurrent with the physical move outside OFPP, independence could be assured in the statute by, among other things, establishing appointment rules for CASB members that assure impartiality through specific-term appointments; create limitations on removal to misconduct, malfeasance or not performing the functions of the office; and specify that CASB members will not be subject to the supervision of anyone at OMB. Models for such an administrative construct include the DoD Board of Actuaries²² and the Federal Energy Regulatory Commission.²³

Section 809 Panel analysis of CASB's inability to perform its mission identifies its location within OFPP as a core problem. CASB has a vital role to play in updating and overseeing cost accounting standards and regulations, and this role must be resumed. The Section 809 Panel has provided recommended changes to CAS program requirements, detailed in recommendations addressed elsewhere in this Volume 2 Report, and a reconstituted CASB is the appropriate organization to implement these recommendations.

²⁰ Ibid, 49.

²¹ Cost Accounting Standards Board, 48 CFR 99.

²² 10 U.S.C. § 183(b)(2), Department of Defense Board of Actuaries, "Members: The members of the Board shall serve for a term of 15 years, except that a member of the Board appointed to fill a vacancy occurring before the end of the term for which the member's predecessor was appointed shall only serve until the end of such term."

²³ 42 U.S.C. § 7171 (b), Appointment and Administration, Federal Energy Regulatory Commission, "...Member shall hold office for a term of 5 years and may be removed ...only for inefficiency, neglect of duty, or malfeasance in office."

Conclusions

CASB should be removed from OFPP. Such a move will require legislative action and a commitment to long-term, adequate funding. Legislation should be enacted that includes the following features:

- CASB should be physically located in GSA, which will provide office space and facilities, including clerical support. GSA will have no responsibility for CASB's substantive work.
- CASB should have a budget sufficient to support a full-time, permanent staff of at least three people.
- CASB should be part of the Executive Branch, but completely independent of any department of any other agency.
- The existing requirements for CASB to meet at least quarterly and to publish minutes of its meetings should be retained.
- Section 820 of the FY 2017 NDAA creating a Defense CASB should be repealed.
- CASB should have five members, much like the current board, with the following qualifications:
 - The CASB chair should be either a full-time government employee or a part-time special government employee. In either case, the chair should have extensive experience in administering and managing as a senior government official major CAS-covered contracts negotiated and awarded using the methods required by FAR Part 15.
 - Two members of CASB should be government employees, at least one of whom should be from DoD, both with experience in administering and managing CAS-covered contracts negotiated and awarded using the methods required by FAR Part 15. Government auditors and investigators should not be eligible to serve as members of CASB, both to avoid conflicts of interest and because they typically lack the administrative and management experience needed.
 - One member should be a senior employee or retired senior employee of a government contractor with substantial experience in the private sector involving administration and management of CAS-covered contracts negotiated and awarded using the methods required by FAR Part 15.
 - One member should be from the accounting profession, with substantial professional experience as an accountant involving CAS-covered contracts negotiated and awarded using the methods required by FAR Part 15.
- Authority to appoint the members of the CAS Board should be vested in the Director of OMB.
- There should be rules for member appointment, including the chair, that include limits on removal; appointment terms consistent with the length of experience necessary to govern, administer and reform CAS; and that provide for independence in the decisional and regulation process free from supervision by OMB.

- The statute creating CASB should also direct that the board’s standards and regulations will continue to be published by OFPP, and/or other relevant regulatory bodies, in Part 99 of 48 CFR.
- Disestablish the Cost Accounting Standards Board and remove its statute from chapter 15 of Title 41 (“Division B, Office of Federal Procurement Policy”). Create a new independent board codified in Title 31 (“Financial Management”).

Implementation

Legislative Branch

- Modify the 41 U.S.C. § 1501–1506 as described above.
- Modify 48 C.F.R. chapter 99.

Executive Branch

- Make administrative arrangements to house and support CASB operations.

Implications for Other Agencies

- CAS is applicable to all federal agencies, and all agencies would be affected by the recommended statutory revisions.

Recommendations 29 and 30

RECOMMENDED REPORT LANGUAGE

SEC 901. Cost Accounting Standards Board

This section would disestablish the current Cost Accounting Standards Board (CASB) that resides at the Office of Federal Procurement Policy. It would re-establish the CASB as an independent organization within the executive branch and revise qualifications for CASB members. The committee notes the board has met only intermittently since its creation in 1988, which hinders its ability to respond to CAS matters in a timely and effective manner. In disestablishing the current CASB, this section would remove its charter from title 41, United States Code, and create a new independent board codified in title 31, United States Code.

This section also would repeal Section 820 of the National Defense Authorization Act for Fiscal Year 2017 (Public Law 114-238), which created the Defense Cost Accounting Standards Board, eliminating the potential confusion of having two competing CAS Boards.

SEC. 902. Applicability of Cost Accounting Standards

This section would update program requirements for cost accounting standards (CAS). It would update various thresholds, exemptions, and types of coverage for CAS. The committee notes that these program requirements have not been significantly revised since the 1970s despite substantial changes in technology, pricing policies, and business practices.

The section would raise the thresholds for CAS coverage, full CAS coverage, and the disclosure statement of contractor cost accounting practices. This section also would clarify guidance for application of CAS to hybrid contracts and indefinite delivery vehicles, as well as ensure the CAS clause is included only in contracts or parts of contracts that require CAS coverage. The section would remove the requirement to submit cost or pricing data for fixed price contracts or subcontracts awarded with adequate price competition.

The committee is aware that reducing burdensome accounting requirements may improve the government's access to innovative non-traditional companies while retaining oversight for cost accounting on large contracts.

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[(1) This draft assumes as current law the amendments effective as of Oct. 1, 2018, made by section 820 of the National Defense Authorization Act for Fiscal Year 2017 (P. L. 114-328; 130 Stat. 2273, 2276).

[(2) Section 901 generally has an effective date of four months after enactment. See subsection (f).

[(3) The draft legislative text below is followed by a “Sections Affected” display, showing the text of the provision of law affected by the draft legislative text.]

1 TITLE IX—COST ACCOUNTING STANDARDS

2 SEC. 901. COST ACCOUNTING STANDARDS BOARD.

3 (a) DISESTABLISHMENT OF CURRENT BOARDS.—

4 (1) TITLE 41 BOARD.—The Cost Accounting Standards Board provided for under
5 section 1501 of title 41, United States Code, is disestablished.

6 (2) TITLE 10 BOARD.—The Defense Cost Accounting Standards Board provided
7 for under section 190 of title 10, United States Code, is disestablished.

8 (b) ESTABLISHMENT OF NEW BOARD OUTSIDE OF OFPP.—

9 (1) ESTABLISHMENT; MEMBERSHIP.—Subtitle III of title 31, United States Code, is
10 amended by adding at the end the following new chapter:

11 “CHAPTER 41—COST ACCOUNTING STANDARDS

“Sec.

“4101. Cost Accounting Standards Board.

“4102. Cost accounting standards.

“4103. Contract price adjustment.

“4104. Effect on other standards and regulations

“4105. Examinations.

“4106. Authorization of appropriations.

12 “§ 4101. Cost Accounting Standards Board

13 “(a) ORGANIZATION.—There is in the executive branch of the Government an
14 independent board known as the Cost Accounting Standards Board.

15 “(b) MEMBERSHIP.—

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1 “(1) APPOINTMENT.—The Board consists of five members who shall be appointed
2 by the Director of the Office of Management and Budget from among persons
3 experienced in Government contract cost accounting. The Director shall designate one of
4 the members to serve as Chair of the Board.

5 “(2) QUALIFICATIONS.—

6 “(A) IN GENERAL.—The members of the Board shall have qualifications as
7 follows:

8 “(i) CHAIR.—The member designated by the Director to serve as
9 Chair of the Board—

10 “(I) shall be a full-time Government employee or a part-
11 time special Government employee;

12 “(II) shall have extensive experience as a senior
13 Government official in administering and managing contracts
14 described in subparagraph (B); and

15 “(III) may not be the Administrator of the Office of Federal
16 Procurement Policy or an employee of the Office of Federal
17 Procurement Policy.

18 “(ii) GOVERNMENT REPRESENTATIVES.—Two members of the
19 Board shall be representatives of the Government who have experience in
20 administering and managing contracts described in subparagraph (B), one
21 of whom shall be an officer or employee of the Department of Defense
22 (who may not be a Government auditor or investigator) and the other of

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1 whom shall be an officer or employee of a department or agency other
2 than the Department of Defense.

3 “(iii) SENIOR CONTRACTOR EMPLOYEE.—One member of the Board
4 shall be an individual in the private sector who is a senior employee, or
5 retired senior employee, of a Government contractor with substantial
6 experience in the private sector involving administration and management
7 of contracts described in subparagraph (B).

8 “(iv) MEMBER OF ACCOUNTING PROFESSION.—One member of the
9 Board shall be a member of the accounting profession with substantial
10 professional experience as an accountant with contracts described in
11 subparagraph (B).

12 “(B) CONTRACTS DESCRIBED.—For purposes of subparagraph (A),
13 contracts described in this subparagraph are Government contracts negotiated on
14 the basis of cost and awarded under Federal acquisition regulations governing
15 negotiated procurements.

16 “(3) TERM OF OFFICE.—

17 “(A) LENGTH OF TERM.—The members of the Board shall serve for a term
18 of four years.

19 “(B) REQUIREMENT RELATING TO DOD BOARD MEMBER.—A member
20 serving on the Board under paragraph (2)(A)(ii) as a representative of the
21 Department of Defense may not continue to serve after ceasing to be an officer or
22 employee of the Department of Defense.

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1 “(4) VACANCY.—A vacancy on the Board shall be filled in the same manner in
2 which the original appointment was made. A member appointed to fill a vacancy serves
3 for the remainder of the term for which that member's predecessor was appointed.

4 “(5) LIMITATION ON REMOVAL.—A member of the Board may be removed by the
5 Director only for misconduct or failure to perform functions vested in the Board.

6 “(c) MEETINGS.—The Board shall meet not less than once each quarter and shall publish
7 in the Federal Register notice of each meeting and its agenda before such meeting is held.”.

8 (2) DUTIES.—Section 4101 of title 31, United States Code, as added by paragraph
9 (1), is amended by adding after subsection (c) the following new subsection:

10 “(d) DUTIES.—The Board shall have the following duties:

11 “(1) To ensure that the cost accounting standards used by Federal contractors rely,
12 to the maximum extent practicable, on commercial standards and accounting practices
13 and systems.

14 “(2) To review on an ongoing basis any cost accounting standards established
15 under section 4102 of this title (or section 1502 of title 41) and to conform such
16 standards, where practicable, to Generally Accepted Accounting Principles.

17 “(3) To annually review disputes involving such standards brought to the boards
18 established in section 7105 of title 41 (relating to agency boards of contract appeals) or
19 Federal courts and consider whether greater clarity in such standards could avoid such
20 disputes.”.

21 (3) ANNUAL REPORT.—Section 4101 of title 31, United States Code, as added by
22 paragraph (1), is amended by adding after subsection (d), as added by paragraph (2), the
23 following new subsection:

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1 “(e) ANNUAL REPORT.—

2 “(1) REPORT REQUIRED.—The Board shall submit to the specified congressional
3 committees an annual report describing the actions taken during the prior year—

4 “(A) to conform the cost accounting standards established under section
5 4102 of this title with Generally Accepted Accounting Principles, including
6 actions to—

7 “(i) prescribe standards and regulations that have contributed to
8 increasing consistency and uniformity of accounting practices on
9 Government contracts; and

10 “(ii) identify regulatory changes made as a result of the review
11 process in subsection (c)(3); and

12 “(B) to minimize the burden on contractors while protecting the interests
13 of the Federal Government.

14 “(2) SPECIFIED CONGRESSIONAL COMMITTEES.—In this subsection, the term
15 ‘specified congressional committees’ means—

16 “(A) the Committee on Armed Services, the Committee on Homeland
17 Security and Governmental Affairs, and the Committee on Appropriations of the
18 Senate; and

19 “(B) the Committee on Armed Services, the Committee on Oversight and
20 Government Reform, and the Committee on Appropriations of the House of
21 Representatives.”.

22 (4) ADMINISTRATIVE AND PERSONNEL MATTERS.—

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1 (A) TRANSFERS.—Subsections (f), (g), (h), and (i) of section 1501 of title
2 41, United States Code, are transferred to section 4101 of title 31, United States
3 Code, as added by paragraph (1), and added at the end.

4 (B) CHANGES TO REFERENCES TO ADMINISTRATOR OF OFPP.—Subsections
5 (f), (g), (h)(2), and (i)(3) of such section, as so transferred, are amended by
6 striking “Administrator” and inserting “Director”.

7 (5) OFFICES.—Section 4101 of title 31, United States Code, as added by
8 paragraph (1), is further amended by adding at the end the following new subsection:

9 “(j) LOCATION OF OFFICE SPACE.—The Administrator of General Services, in providing
10 office space for the Board, shall ensure that the Board is not co-located with the Office of
11 Federal Procurement Policy.”.

12 (6) INITIAL APPOINTMENTS.—

13 (A) TIME LIMIT FOR INITIAL APPOINTMENTS.—The Director of the Office of
14 Management and Budget shall make the initial appointment of members of the
15 Board under section 4101(b) of title 31, United States Code, as added by
16 paragraph (1), within 120 days after the date of the enactment of this Act.

17 (B) TERMS OF MEMBERS FIRST APPOINTED.—Notwithstanding the term
18 length specified in paragraph (3) of such section, of the members first appointed
19 to the Board—

20 (i) two (including the Chair) shall be appointed for a term of six
21 years;

22 (ii) two shall be appointed for a term of four years; and

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1 (iii) one, who shall be the member appointed under paragraph
2 (2)(A)(i) of such section as an officer or employee of the Department of
3 Defense, shall be appointed for a term of two years.

4 (B) The table of chapters at the beginning of subtitle III of such title is amended
5 by adding at the end the following new item:

“41. Cost Accounting Standards4101”

6 (b) TRANSFER OF OTHER SECTIONS OF TITLE 41 CHAPTER.—Sections 1502, 1503, 1504,
7 1505, and 1506 of title 41, United States Code, are transferred to chapter 41 of title 31, United
8 States Code, as added by subsection (a), added at the end, and redesignated as sections 4102,
9 4103, 4104, 4105, and 4106, respectively.

10 (c) AMENDMENTS TO REVISED CHAPTER.—

11 (1) SECTION 4102.—Subsection (a)(2) of section 4102 of title 31, United States
12 Code, as transferred and redesignated by subsection (b), is amended by striking the
13 paragraph heading and the first sentence and inserting the following: “RULES AND
14 PROCEDURES.—The Board shall prescribe rules and procedures governing actions of the
15 Board under this chapter.”.

16 (2) SECTION 4103.—Section 4103 of such title, as transferred and redesignated
17 by subsection (b), is amended—

18 (A) in subsection (a), by striking “of this title” and inserting “of title 41”;
19 and

20 (B) in subsection (b), by striking “section 1502(f)(2)” and inserting
21 “section 4102(f)(2)”.

22 (3) SECTION 4104.—Section 4104 of such title, as transferred and redesignated by
23 subsection (b), is amended—

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- 1 (A) in subsection (a)—
- 2 (i) by inserting “by the Cost Accounting Standards Board under
- 3 chapter 15 of title 41 or” after “regulations prescribed”; and
- 4 (ii) by striking “this division” both places it appears in paragraph
- 5 (2) and inserting “this chapter”; and
- 6 (B) in subsection (b)—
- 7 (i) by inserting “of the Office of Federal Procurement Policy” after
- 8 “Administrator”; and
- 9 (ii) by striking “of this title” and inserting “of title 41”.

10 (d) CONFORMING REPEALS.—

11 (1) TITLE 41.—Title 41, United States Code, is amended as follows:

12 (A) **Chapter 15 is repealed.**

13 (B) The table of chapters at the beginning of subtitle I is amended by

14 striking the item relating to chapter 15.

15 (2) TITLE 10.—Title 10, United States Code, is amended as follows:

16 (A) **Section 190 is repealed.**

17 (B) The table of sections at the beginning of chapter 7 is amended by

18 striking the item relating to section 190.

19 (e) COMPTROLLER GENERAL REPORT.—Section 820(c) of the National Defense

20 Authorization Act for Fiscal Year 2017 (Public Law 114-328; 130 Stat. 2276) is amended by

21 striking “section 1501 of title 41” and inserting “section 4101 of title 31”.

22 (f) EFFECTIVE DATE.—

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1 (1) GENERAL RULE.—Except as provided in paragraphs (2) and (3), this section
2 and the amendments made by this section shall take effect on the first day of the first
3 month beginning more than 120 days after the date of the enactment of this Act.

4 (2) INITIAL APPOINTMENT OF MEMBERS OF NEW BOARD.—Subsection (a)(6) shall
5 take effect on the date of the enactment of this Act.

6 (3) DOD BOARD.—Subsections (a)(2) and (d)(2) shall take effect on the date of the
7 enactment of this Act.

8 **SEC. 902. APPLICABILITY OF COST ACCOUNTING STANDARDS.**

9 (a) REVISION TO THRESHOLD FOR CONTRACTS COVERED BY COST ACCOUNTING
10 STANDARDS.—Paragraph (1)(B) of subsection (b) of section 4102 of title 31, United States Code,
11 as transferred and redesignated by section 901(b), is amended by striking “the amount set forth
12 in” and all that follows and inserting “\$25,000,000.”.

13 (b) REPEAL OF CERTAIN STATUTORY EXEMPTIONS.—Paragraph (1)(C) of such subsection
14 is amended—

15 (1) by inserting “or” at the end of clause (i);

16 (2) by striking the semicolon at the end of clause (ii) and inserting a period; and

17 (3) by striking clauses (iii) and (iv).

18 (c) EFFECTIVE DATE.—The amendments made by this section shall apply with respect to
19 any contract awarded after the date of the enactment of this Act.

[Showing proposed changes to Chapter 15 of title 41, United States Code, including transfer of that chapter to a new chapter 41 of title 31, United States Code. Matter to be omitted is shown in ~~strike thru~~; matter to be inserted is shown in **bold underlined**]

CHAPTER ~~15~~ 41—COST ACCOUNTING STANDARDS

COST ACCOUNTING STANDARDS

[Note: The proposal would transfer Chapter 15 of title 41, USC, to a new Chapter 41 of title 31, USC, WITH the amendments shown below]

Sec.

1501 4101. Cost Accounting Standards Board.

1502 4102. Cost accounting standards.

1503 4103. Contract price adjustment.

1504 4104. Effect on other standards and regulations.

1505 4105. Examinations.

1506 4106. Authorization of appropriations.

§1501 4101. Cost Accounting Standards Board

~~(a) ORGANIZATION.~~—The Cost Accounting Standards Board is an independent board in the Office of Federal Procurement Policy.

(a) ORGANIZATION.—**There is in the executive branch of the Government an independent board known at the Cost Accounting Standards Board.**

~~(b) MEMBERSHIP.~~—

~~(1) NUMBER OF MEMBERS, CHAIRMAN, AND APPOINTMENT.~~—The Board consists of 5 members. One member is the Administrator, who serves as Chairman. The other 4 members, all of whom shall have experience in Federal Government contract cost accounting, are as follows:

~~(A) 2 representatives of the Federal Government—~~

~~(i) one of whom is a representative of the Department of Defense appointed by the Secretary of Defense; and~~

~~(ii) one of whom is an officer or employee of the General Services Administration appointed by the Administrator of General Services.~~

~~(B) 2 individuals from the private sector, each of whom is appointed by the Administrator, and—~~

~~(i) one of whom is a representative of industry; and~~

~~(ii) one of whom is particularly knowledgeable about cost accounting problems and systems and, if possible, is a representative of a public accounting firm.~~

~~(2) TERM OF OFFICE.~~—

~~(A) LENGTH OF TERM.~~—The term of office of each member, other than the Administrator, is 4 years. The terms are staggered, with the terms of 2 members expiring in the same year, the term of another member expiring the next year, and the term of the last member expiring the year after that.

~~(B) INDIVIDUAL REQUIRED TO REMAIN WITH APPOINTING agency.~~—A member appointed under paragraph (1)(A) may not continue to serve after ceasing to be an officer or employee of the agency from which that member was appointed.

~~(3) VACANCY.~~—A vacancy on the Board shall be filled in the same manner in which the original appointment was made. A member appointed to fill a vacancy serves for the remainder of the term for which that member's predecessor was appointed.

(b) MEMBERSHIP.—

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(1) APPOINTMENT.—The Board consists of five members who shall be appointed by the Director of the Office of Management and Budget from among persons experienced in Government contract cost accounting. The Director shall designate one of the members to serve as Chair of the Board.

(2) QUALIFICATIONS.—

(A) IN GENERAL.—The members of the Board shall have qualifications as follows:

(i) CHAIR.—The member designated by the Director to serve as Chair of the Board—

(I) shall be a full-time Government employee or a part-time special Government employee;

(II) shall have extensive experience as a senior Government official in administering and managing contracts described in subparagraph (B); and

(III) may not be the Administrator of the Office of Federal Procurement Policy or an employee of the Office of Federal Procurement Policy.

(ii) GOVERNMENT REPRESENTATIVES.—Two members of the Board shall be representatives of the Government who have experience in administering and managing contracts described in subparagraph (B), one of whom shall be an officer or employee of the Department of Defense (who may not be a Government auditor or investigator) and the other of whom shall be an officer or employee of a department or agency other than the Department of Defense.

(iii) SENIOR CONTRACTOR EMPLOYEE.—One member of the Board shall be an individual in the private sector who is a senior employee, or retired senior employee, of a Government contractor with substantial experience in the private sector involving administration and management of contracts described in subparagraph (B).

(iv) MEMBER OF ACCOUNTING PROFESSION.—One member of the Board shall be a member of the accounting profession with substantial professional experience as an accountant with contracts described in subparagraph (B).

(B) CONTRACTS DESCRIBED.—For purposes of subparagraph (A), contracts described in this subparagraph are Government contracts negotiated on the basis of cost and awarded under Federal acquisition regulations governing negotiated procurements.

(3) TERM OF OFFICE.—

(A) LENGTH OF TERM.—The members of the Board shall serve for a term of four years.

(B) REQUIREMENT RELATING TO DOD BOARD MEMBER.—A member serving on the Board under paragraph (2)(A)(ii) as a representative of the Department of Defense may not continue to serve after ceasing to be an officer or employee of the Department of Defense.

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(4) VACANCY.—A vacancy on the Board shall be filled in the same manner in which the original appointment was made. A member appointed to fill a vacancy serves for the remainder of the term for which that member's predecessor was appointed.

(5) LIMITATION ON REMOVAL.—A member of the Board may be removed by the Director only for misconduct or failure to perform functions vested in the Board.

(c) MEETINGS.—The Board shall meet not less than once each quarter and shall publish in the Federal Register notice of each meeting and its agenda before such meeting is held.

~~(c) DUTIES.—The Board shall—~~

~~(1) ensure that the cost accounting standards used by Federal contractors rely, to the maximum extent practicable, on commercial standards and accounting practices and systems;~~

~~(2) within one year after the date of enactment of this subsection, and on an ongoing basis thereafter, review any cost accounting standards established under section 1502 of this title and conform such standards, where practicable, to Generally Accepted Accounting Principles; and~~

~~(3) annually review disputes involving such standards brought to the boards established in section 7105 of this title or Federal courts, and consider whether greater clarity in such standards could avoid such disputes.~~

(d) DUTIES.—The Board shall have the following duties:

(1) To ensure that the cost accounting standards used by Federal contractors rely, to the maximum extent practicable, on commercial standards and accounting practices and systems.

(2) To review on an ongoing basis any cost accounting standards established under section 4102 of this title (or section 1502 of title 41) and to conform such standards, where practicable, to Generally Accepted Accounting Principles.

(3) To annually review disputes involving such standards brought to the boards established in section 7105 of title 41 (relating to agency boards of contract appeals) or Federal courts and consider whether greater clarity in such standards could avoid such disputes.

~~(d) MEETINGS.—The Board shall meet not less than once each quarter and shall publish in the Federal Register notice of each meeting and its agenda before such meeting is held.~~

~~(e) REPORT.—The Board shall annually submit a report to the congressional defense committees, the Committee on Oversight and Government Reform of the House of Representatives, and the Committee on Homeland Security and Governmental Affairs of the Senate describing the actions taken during the prior year—~~

~~(1) to conform the cost accounting standards established under section 1502 of this title with Generally Accepted Accounting Principles; and~~

~~(2) to minimize the burden on contractors while protecting the interests of the Federal Government.~~

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(e) ANNUAL REPORT.—

(1) REPORT REQUIRED.—The Board shall submit to the specified congressional committees an annual report describing the actions taken during the prior year—

(A) to conform the cost accounting standards established under section 4102 of this title with Generally Accepted Accounting Principles, including actions to—

(i) prescribe standards and regulations that have contributed to increasing consistency and uniformity of accounting practices on Government contracts; and

(ii) identify regulatory changes made as a result of the review process in subsection (c)(3); and

(B) to minimize the burden on contractors while protecting the interests of the Federal Government.

(2) SPECIFIED CONGRESSIONAL COMMITTEES.—In this subsection, the term “specified congressional committees” means—

(A) the Committee on Armed Services, the Committee on Homeland Security and Governmental Affairs, and the Committee on Appropriations of the Senate; and

(B) the Committee on Armed Services, the Committee on Oversight and Government Reform, and the Committee on Appropriations of the House of Representatives.

(f) SENIOR STAFF.—The ~~Administrator~~ **Director**, after consultation with the Board—

(1) without regard to the provisions of title 5 governing appointments in the competitive service—

(A) shall appoint an executive secretary; and

(B) may appoint, or detail pursuant to section 3341 of title 5, two additional staff members; and

(2) may pay those employees without regard to the provisions of chapter 51 and subchapter III of chapter 53 of title 5 relating to classification and General Schedule pay rates, except that those employees may not receive pay in excess of the maximum rate of basic pay payable for level IV of the Executive Schedule.

(g) OTHER STAFF.—The ~~Administrator~~ **Director** may appoint, fix the compensation of, and remove additional employees of the Board under the applicable provisions of title 5.

(h) DETAILED AND TEMPORARY PERSONNEL.—For service on advisory committees and task forces to assist the Board in carrying out its functions and responsibilities—

(1) the Board, with the consent of the head of a Federal agency, may use, without reimbursement, personnel of that agency; and

(2) the ~~Administrator~~ **Director**, after consultation with the Board, may procure temporary and intermittent services of personnel under section 3109(b) of title 5.

(i) COMPENSATION.—

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(1) OFFICERS AND EMPLOYEES OF THE GOVERNMENT.—Members of the Board who are officers or employees of the Federal Government, and officers and employees of other agencies of the Federal Government who are used under subsection (h)(1), shall not receive additional compensation for services but shall continue to be compensated by the employing department or agency of the officer or employee.

(2) APPOINTEES FROM PRIVATE SECTOR.—Each member of the Board appointed from the private sector shall receive compensation at a rate not to exceed the daily equivalent of the rate for level IV of the Executive Schedule for each day (including travel time) in which the member is engaged in the actual performance of duties vested in the Board.

(3) TEMPORARY AND INTERMITTENT PERSONNEL.—An individual hired under subsection (h)(2) may receive compensation at a rate fixed by the ~~Administrator~~ **Director**, but not to exceed the daily equivalent of the rate for level V of the Executive Schedule for each day (including travel time) in which the individual is properly engaged in the actual performance of duties under this chapter.

(4) TRAVEL EXPENSES.—While serving away from home or regular place of business, Board members and other individuals serving on an intermittent basis under this chapter shall be allowed travel expenses in accordance with section 5703 of title 5.

(j) LOCATION OF OFFICE SPACE.—The Administrator of General Services, in providing office space for the Board, shall ensure that the Board is not co-located with the Office of Federal Procurement Policy.

§1502 4102. Cost accounting standards

(a) AUTHORITY.—

(1) COST ACCOUNTING STANDARDS BOARD.—The Cost Accounting Standards Board has exclusive authority to prescribe, amend, and rescind cost accounting standards, and interpretations of the standards, designed to achieve uniformity and consistency in the cost accounting standards governing measurement, assignment, and allocation of costs to contracts with the Federal Government.

(2) ~~ADMINISTRATOR FOR FEDERAL PROCUREMENT POLICY.—The Administrator, after consultation with the Board, shall prescribe rules and procedures governing actions of the Board under this chapter.~~ **RULES AND PROCEDURES.—The Board shall prescribe rules and procedures governing actions of the Board under this chapter.** The rules and procedures shall require that any action to prescribe, amend, or rescind a standard or interpretation be approved by majority vote of the Board.

(b) MANDATORY USE OF STANDARDS.—

(1) SUBCONTRACT.—

(A) DEFINITION.—In this paragraph, the term “subcontract” includes a transfer of commercial items between divisions, subsidiaries, or affiliates of a contractor or subcontractor.

(B) WHEN STANDARDS ARE TO BE USED.—Cost accounting standards prescribed under this chapter are mandatory for use by all executive agencies and by contractors and subcontractors in estimating, accumulating, and reporting costs

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in connection with the pricing and administration of, and settlement of disputes concerning, all negotiated prime contract and subcontract procurements with the Federal Government in excess of the amount set forth in section 2306a(a)(1)(A)(i) of title 10 as the amount is adjusted in accordance with applicable requirements of law **\$25,000,000**.

(C) NONAPPLICATION OF STANDARDS.—Subparagraph (B) does not apply to—

(i) a contract or subcontract for the acquisition of a commercial item; **or**

(ii) a contract or subcontract where the price negotiated is based on a price set by law or regulation;

~~(iii) a firm, fixed-price contract or subcontract awarded on the basis of adequate price competition without submission of certified cost or pricing data; or~~

~~(iv) a contract or subcontract with a value of less than \$7,500,000 if, when the contract or subcontract is entered into, the segment of the contractor or subcontractor that will perform the work has not been awarded at least one contract or subcontract with a value of more than \$7,500,000 that is covered by the standards.~~

(2) EXEMPTIONS AND WAIVERS BY BOARD.—The Board may—

(A) exempt classes of contractors and subcontractors from the requirements of this chapter; and

(B) establish procedures for the waiver of the requirements of this chapter for individual contracts and subcontracts.

(3) WAIVER BY HEAD OF EXECUTIVE AGENCY.—

(A) IN GENERAL.—The head of an executive agency may waive the applicability of the cost accounting standards for a contract or subcontract with a value of less than \$100,000,000 if that official determines in writing that the segment of the contractor or subcontractor that will perform the work—

(i) is primarily engaged in the sale of commercial items; and

(ii) would not otherwise be subject to the cost accounting standards under this section.

(B) IN EXCEPTIONAL CIRCUMSTANCES.—The head of an executive agency may waive the applicability of the cost accounting standards for a contract or subcontract under exceptional circumstances when necessary to meet the needs of the agency. A determination to waive the applicability of the standards under this subparagraph shall be set forth in writing and shall include a statement of the circumstances justifying the waiver.

(C) RESTRICTION ON DELEGATION OF AUTHORITY.—The head of an executive agency may not delegate the authority under subparagraph (A) or (B) to an official in the executive agency below the senior policymaking level in the executive agency.

(D) CONTENTS OF FEDERAL ACQUISITION REGULATION.—The Federal Acquisition Regulation shall include—

(i) criteria for selecting an official to be delegated authority to grant waivers under subparagraph (A) or (B); and

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(ii) the specific circumstances under which the waiver may be granted.

(E) REPORT.—The head of each executive agency shall report the waivers granted under subparagraphs (A) and (B) for that agency to the Board on an annual basis.

(c) REQUIRED BOARD ACTION FOR PRESCRIBING STANDARDS AND INTERPRETATIONS.—Before prescribing cost accounting standards and interpretations, the Board shall—

(1) take into account, after consultation and discussions with the Comptroller General, professional accounting organizations, contractors, and other interested parties—

(A) the probable costs of implementation, including any inflationary effects, compared to the probable benefits;

(B) the advantages, disadvantages, and improvements anticipated in the pricing and administration of, and settlement of disputes concerning, contracts; and

(C) the scope of, and alternatives available to, the action proposed to be taken;

(2) prepare and publish a report in the Federal Register on the issues reviewed under paragraph (1);

(3)(A) publish an advanced notice of proposed rulemaking in the Federal Register to solicit comments on the report prepared under paragraph (2);

(B) provide all parties affected at least 60 days after publication to submit their views and comments; and

(C) during the 60-day period, consult with the Comptroller General and consider any recommendation the Comptroller General may make; and

(4) publish a notice of proposed rulemaking in the Federal Register and provide all parties affected at least 60 days after publication to submit their views and comments.

(d) EFFECTIVE DATES.—Rules, regulations, cost accounting standards, and modifications thereof prescribed or amended under this chapter shall have the full force and effect of law, and shall become effective within 120 days after publication in the Federal Register in final form, unless the Board determines that a longer period is necessary. The Board shall determine implementation dates for contractors and subcontractors. The dates may not be later than the beginning of the second fiscal year of the contractor or subcontractor after the standard becomes effective.

(e) ACCOMPANYING MATERIAL.—Rules, regulations, cost accounting standards, and modifications thereof prescribed or amended under this chapter shall be accompanied by prefatory comments and by illustrations, if necessary.

(f) IMPLEMENTING REGULATIONS.—The Board shall prescribe regulations for the implementation of cost accounting standards prescribed or interpreted under this section. The regulations shall be incorporated into the Federal Acquisition Regulation and shall require contractors and subcontractors as a condition of contracting with the Federal Government to—

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(1) disclose in writing their cost accounting practices, including methods of distinguishing direct costs from indirect costs and the basis used for allocating indirect costs; and

(2) agree to a contract price adjustment, with interest, for any increased costs paid to the contractor or subcontractor by the Federal Government because of a change in the contractor's or subcontractor's cost accounting practices or a failure by the contractor or subcontractor to comply with applicable cost accounting standards.

(g) NONAPPLICABILITY OF CERTAIN SECTIONS OF TITLE 5.—Functions exercised under this chapter are not subject to sections 551, 553 to 559, and 701 to 706 of title 5.

~~§1503~~ **4103. Contract price adjustment**

(a) DISAGREEMENT CONSTITUTES A DISPUTE.—If the Federal Government and a contractor or subcontractor fail to agree on a contract price adjustment, including whether the contractor or subcontractor has complied with the applicable cost accounting standards, the disagreement will constitute a dispute under chapter 71 ~~of this title~~ **of title 41**.

(b) AMOUNT OF ADJUSTMENT.—A contract price adjustment undertaken under ~~section 1502(f)(2)~~ **section 4102(f)(2)** of this title shall be made, where applicable, on relevant contracts between the Federal Government and the contractor that are subject to the cost accounting standards so as to protect the Federal Government from payment, in the aggregate, of increased costs, as defined by the Cost Accounting Standards Board. The Federal Government may not recover costs greater than the aggregate increased cost to the Federal Government, as defined by the Board, on the relevant contracts subject to the price adjustment unless the contractor made a change in its cost accounting practices of which it was aware or should have been aware at the time of the price negotiation and which it failed to disclose to the Federal Government.

(c) INTEREST.—The interest rate applicable to a contract price adjustment is the annual rate of interest established under section 6621 of the Internal Revenue Code of 1986 (26 U.S.C. 6621) for the period. Interest accrues from the time payments of the increased costs were made to the contractor or subcontractor to the time the Federal Government receives full compensation for the price adjustment.

~~§1504~~ **4104. Effect on other standards and regulations**

(a) PREVIOUSLY EXISTING STANDARDS.—All cost accounting standards, waivers, exemptions, interpretations, modifications, rules, and regulations prescribed **by the Cost Accounting Standards Board under chapter 15 of title 41 or** by the Cost Accounting Standards Board under section 719 of the Defense Production Act of 1950 (50 U.S.C. App. 2168)—

(1) remain in effect until amended, superseded, or rescinded by the Board under this chapter; and

(2) are subject to the provisions of ~~this division~~ **this chapter** in the same manner as if prescribed by the Board under ~~this division~~ **this chapter**.

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(b) INCONSISTENT AGENCY REGULATIONS.—To ensure that a regulation or proposed regulation of an executive agency is not inconsistent with a cost accounting standard prescribed or amended under this chapter, the Administrator **of the Office of Federal Procurement Policy**, under the authority in sections 1121, 1122(a) to (c)(1), 1125, 1126, 1130, 1131, and 2305 ~~of this title~~ **of title 41** shall rescind or deny the promulgation of the inconsistent regulation or proposed regulation and take other appropriate action authorized under sections 1121, 1122(a) to (c)(1), 1125, 1126, 1130, 1131, and 2305.

(c) COSTS NOT SUBJECT TO DIFFERENT STANDARDS.—Costs that are the subject of cost accounting standards prescribed under this chapter are not subject to regulations established by another executive agency that differ from those standards with respect to the measurement, assignment, and allocation of those costs.

§1505 4105. Examinations

To determine whether a contractor or subcontractor has complied with cost accounting standards prescribed under this chapter and has followed consistently the contractor's or subcontractor's disclosed cost accounting practices, an authorized representative of the head of the agency concerned, of the offices of inspector general established under the Inspector General Act of 1978 (5 U.S.C. App.), or of the Comptroller General shall have the right to examine and copy documents, papers, or records of the contractor or subcontractor relating to compliance with the standards.

§1506 4106. Authorization of appropriations

Necessary amounts may be appropriated to carry out this chapter.

Recommended Changes to 48 CFR Chapter 99

Chapter 99 - Cost Accounting Standards Board, Office of Federal Procurement Policy, Office of Management and Budget

- Part 9900 - Scope of Chapter (§ 9900.000)
- Subchapter A - Administration (Parts 9901 - 9902)
- Subchapter B - Procurement Practices and Cost Accounting Standards (Parts 9903 - 9906-9999)

Part 9900 - Scope of Chapter

This chapter describes policies and procedures for applying the Cost Accounting Standards (CAS) to negotiated contracts and subcontracts. This chapter does not apply to sealed bid contracts or to any contract with a small business concern (see 9903.201-1(b) for these and other exemptions).

Chapter 99, Subchapter A - Administration

- Part 9901 - Rules and Procedures (§§ 9901.301 - 9901.317)
- Part 9902 [Reserved]

Part 9901 - Rules and Procedures

9901.301 thru 9901.305

No Changes

9901.306 Standards applicability.

Cost Accounting Standards promulgated by the Board shall be mandatory for use by all executive agencies and by contractors and subcontractors in estimating, accumulating, and reporting costs in connection with pricing and administration of, and settlement of disputes concerning, all negotiated prime contract and subcontract procurements with the United States Government in excess of ~~\$500,000~~ **\$25 million**, other than contracts or subcontracts that have been exempted by the Board's regulations.

9901.307 thru 9901.317

No Changes

Part 9902 [Reserved]

Part 9903 - Contract Coverage

Part 9903, Subpart 9903.1 - General

9903.101 Cost Accounting Standards.

Public Law 100-679 (41 U.S.C. 422) requires certain contractors and subcontractors to comply with Cost Accounting Standards (CAS) and to disclose in writing and follow consistently their cost accounting practices.

9903.102 OMB approval under the Paperwork Reduction Act.

The Paperwork Reduction Act of 1980 (Pub. L. 96-511) imposes a requirement on Federal agencies to obtain approval from the Office of Management and Budget (OMB) before collecting information from ten or more members of the public. The information collection and recordkeeping requirements contained in this regulation have been approved by OMB. OMB has assigned Control Numbers 0348-0051 and 0348-0055 to the paperwork, recordkeeping and forms associated with this regulation.

Part 9903, Subpart 9903.2 - CAS Program Requirements

- 9903.201 Contract requirements.
- 9903.201-1 CAS applicability.
- 9903.201-2 Types of CAS coverage.
- 9903.201-3 Solicitation provisions.
- 9903.201-4 Contract clauses.
- 9903.201-5 Waiver.
- 9903.201-6 Findings.
- 9903.201-7 Cognizant Federal agency responsibilities.
- 9903.201-8 Compliant accounting changes due to external restructuring activities.
- 9903.202 Disclosure requirements.
- 9903.202-1 General requirements.
- 9903.202-2 Impracticality of submission.
- 9903.202-3 Amendments and revisions.
- 9903.202-4 Privileged and confidential information.
- 9903.202-5 Filing Disclosure Statements.
- 9903.202-6 Adequacy of Disclosure Statement.
- 9903.202-7 [Reserved]
- 9903.202-8 Subcontractor Disclosure Statements.
- 9903.202-9 Illustration of Disclosure Statement Form, CASB-DS-1.
- 9903.202-10 Illustration of Disclosure Statement Form, CASB DS-2.

9903.201 Contract requirements.

9903.201-1 CAS applicability.

(a)(1) This subsection describes the rules for determining whether a proposed contract or subcontract is exempt from CAS. (See 9904 or 9905, as applicable.) Negotiated contracts not exempt in accordance with 9903.201-1(b) shall be subject to CAS. A CAS-covered contract may be subject to full, modified or other types of CAS coverage. The rules for determining the applicable type of CAS coverage are in 9903.201-2.

(2) For purposes of determining CAS applicability, the term “subcontract” includes a transfer of commercial items between divisions, subsidiaries, or affiliates of a contractor or subcontractor.

(3) For hybrid contracts (see definition at 9903.301), the exemptions at 9903.201-1(b) shall be applied to any portion of a contract or subcontract where CAS would not apply if that portion were awarded as a separate contract or subcontract. The dollar value of the portion exempted shall not be considered in applying any dollar threshold set forth in 9903.

(4) For indefinite delivery vehicles (see definition at 9903.301), the CAS applicability determination shall be made separately for each order placed under the indefinite delivery vehicle.

(b) The following categories of contracts and subcontracts are exempt from all CAS requirements:

(1) Sealed bid contracts.

~~(2) Negotiated contracts and subcontracts not in excess of the Truth in Negotiations Act (TINA) threshold, as adjusted for inflation (41 U.S.C. 1908 and 41 U.S.C. 1502(b)(1)(B)). For purposes of this paragraph (b)(2), an order issued by one segment to another segment shall be treated as a subcontract.~~
[Reserved]

(3) Contracts and subcontracts with small businesses.

(4) Contracts and subcontracts with foreign governments or their agents or instrumentalities or, insofar as the requirements of CAS other than 9904.401 and 9904.402 are concerned, any contract or subcontract awarded to a foreign concern.

(5) Contracts and subcontracts in which the price is set by law or regulation.

~~(6) Firm fixed priced, fixed priced with economic price adjustment (provided that price adjustment is not based on actual costs incurred), time and materials, and labor hour c~~
Contracts and subcontracts for the acquisition of commercial items.

~~(7) Contracts or subcontracts of less than \$7.5 million, provided that, at the time of award, the business unit of the contractor or subcontractor is not currently performing any CAS covered contracts or subcontracts valued at \$7.5 million or greater.~~ **[Reserved]**

(8) - (12) [Reserved]

(13) Subcontractors under the NATO PHM Ship program to be performed outside the United States by a foreign concern.

(14) [Reserved]

(15) ~~Firm fixed price~~ **Any portion of a negotiated fixed-price type** contracts or subcontracts (**see definition at 9903.301**) awarded on the basis of ~~adequate price competition~~ **price analysis** without submission of **certified** cost or pricing data.

9903.201-2 Types of CAS coverage.

(a) Full coverage. Full coverage requires that the business unit comply with all of the CAS specified in part 9904 that are in effect on the date of the contract award and with any CAS that become applicable because of later award of a CAS-covered contract. Full coverage applies to contractor business units that -

(1) Receive a single CAS-covered contract award of ~~\$50~~ **\$100** million or more; or

(2) Received ~~\$50~~ **\$100** million or more in net CAS-covered awards during its preceding cost accounting period.

(b) Modified coverage.

(1) Modified CAS coverage requires only that the contractor comply with Standard 9904.401, Consistency in Estimating, Accumulating, and Reporting Costs, Standard 9904.402, Consistency in Allocating Costs Incurred for the Same Purpose, Standard 9904.405, Accounting for Unallowable Costs and Standard 9904.406, Cost Accounting Standard - Cost Accounting Period. Modified, rather, than full, CAS coverage may be applied to a covered contract of less than ~~\$50~~ **\$100** million awarded to a business unit that received less than ~~\$50~~ **\$100** million in net CAS-covered awards in the immediately preceding cost accounting period.

(2) If any one contract is awarded with modified CAS coverage, all CAS-covered contracts awarded to that business unit during that cost accounting period must also have modified coverage with the following exception: if the business unit receives a single CAS-covered contract award of ~~\$50~~ **\$100** million or more, that contract must be subject to full CAS coverage. Thereafter, any covered contract awarded in the same cost accounting period must also be subject to full CAS coverage.

(3) A contract awarded with modified CAS coverage shall remain subject to such coverage throughout its life regardless of changes in the business unit's CAS status during subsequent cost accounting periods.

(c) Coverage for educational institutions -

Not addressed here

(d) Subcontracts. Subcontract awards subject to CAS require the same type of CAS coverage as would prime contracts awarded to the same business unit. In measuring total net CAS-covered awards for a year, a transfer by one segment to another shall be deemed to be a subcontract award by the transferor.

(e) Foreign concerns.

Not addressed here

9903.201-3 Solicitation provisions.

(a) Cost Accounting Standards Notices and Certification.

(1) The contracting officer shall insert the provision set forth below, Cost Accounting Standards Notices and Certification, in solicitations for proposed contracts **that are likely to be** subject to CAS as specified in 9903.201.

(2) When a hybrid contract is contemplated (see definition at 9903.301), the contracting officer shall, to the maximum extent practicable, identify the portions of the proposed contract that are likely to be exempted from CAS pursuant to 9903.201-1(a)(3).

(3) For indefinite delivery vehicles (see definition at 9903.301), the CAS Disclosure Statement shall be deferred until an order will meet the criteria specified in the solicitation provision.

(4) The provision allows offerors to -

(i) Certify their Disclosure Statement status;

(ii) [Reserved]

(iii) Claim exemption from full CAS coverage and elect modified CAS coverage when appropriate; and

(iv) Certify whether award of the contemplated contract would require a change to existing cost accounting practices.

(25) If an award to an educational institution is contemplated prior to July 1, 1997, the contracting officer shall use the basic provision set forth below with its Alternate I, unless the contract is to be performed by an FFRDC (see 9903.201(c)(5)), or the provision at 9903.201(c)(6) applies.

Not addressed here

Cost Accounting Standards Notices and Certification (JUL 2011 TBD)

Note:

This notice does not apply to small businesses or foreign governments.

This notice is in three parts, identified by Roman numerals I through III.

Offerors shall examine each part and provide the requested information in order to determine Cost Accounting Standards (CAS) requirements applicable to any resultant contract.

If the offeror is an educational institution, Part II does not apply unless the contemplated contract will be subject to full or modified CAS-coverage pursuant to 9903.201-2(c)(5) or 9903.201-2(c)(6).

Not addressed here

I. Disclosure Statement - Cost Accounting Practices and Certifications

(a) Any contract in excess of ~~the Truth in Negotiations Act (TINA) threshold, as adjusted for inflation (41 U.S.C. 1908 and 41 U.S.C. 1502(b)(1)(B))~~ **\$25 million**, resulting from this solicitation, except for those contracts which are exempt as specified in 9903.201-1.

(b) Any offeror submitting a proposal which, if accepted, will result in a contract subject to the requirements of 48 CFR, chapter 99 must, as a condition of contracting, submit a Disclosure Statement as required by 9903.202. When required, the Disclosure Statement must be submitted as a part of the offeror's proposal under this solicitation unless the offeror has already submitted a Disclosure Statement disclosing the practices used in connection with the pricing of this proposal. If an applicable Disclosure Statement has already been submitted, the offeror may satisfy the requirement for submission by providing the information requested in paragraph (c) of Part I of this provision.

Caution: In the absence of specific regulations or agreement, a practice disclosed in a Disclosure Statement shall not, by virtue of such disclosure, be deemed to be a proper, approved, or agreed-to-practice for pricing proposals or accumulating and reporting contract performance cost data.

(c) Check the appropriate box below:

(1) Certificate of Concurrent Submission of Disclosure Statement.

The offeror hereby certifies that, as a part of the offer, copies of the Disclosure Statement have been submitted as follows: (i) Original and one copy to the cognizant Administrative Contracting Officer (ACO) or cognizant Federal agency official authorized to act in that capacity, as applicable, and (ii) one copy to the cognizant Federal auditor.

(Disclosure must be on Form No. CASB DS-1 or CASB DS-2, as applicable. Forms may be obtained from the cognizant ACO or cognizant Federal agency official acting in that capacity and/or from the looseleaf version of the Federal Acquisition Regulation.)

Date of Disclosure Statement:

Name and Address of Cognizant ACO or Federal Official where filed:

The offeror further certifies that the practices used in estimating costs in pricing this proposal are consistent with the cost accounting practices disclosed in the Disclosure Statement.

(2) Certificate of Previously Submitted Disclosure Statement. The offeror hereby certifies that the required Disclosure Statement was filed as follows:

Date of Disclosure Statement:

Name and Address of Cognizant ACO or Federal Official where filed:

The offeror further certifies that the practices used in estimating costs in pricing this proposal are consistent with the cost accounting practices disclosed in the applicable Disclosure Statement.

(3) Certificate of Monetary Exemption.

The offeror hereby certifies that the offeror, together with all divisions, subsidiaries, and affiliates under common control, did not receive net awards of negotiated prime contracts and subcontracts subject to CAS totaling ~~\$50~~ \$100 million or more in the cost accounting period immediately preceding the period in which this proposal was submitted.

The offeror further certifies that if such status changes before an award resulting from this proposal, the offeror will advise the Contracting Officer immediately.

(4) Certificate of Interim Exemption.

The offeror hereby certifies that (i) the offeror first exceeded the monetary exemption for disclosure, as defined in (3) above, in the cost accounting period immediately preceding the period in which this offer was submitted and (ii) in accordance with 9903.202-1, the offeror is not yet required to submit a Disclosure Statement. The offeror further certifies that if an award resulting from this proposal has not been made within 90 days after the end of that period, the offeror will immediately submit a revised certificate to the Contracting Officer, in the form specified under subparagraph (c)(1) or (c)(2) of Part I of this provision, as appropriate, to verify submission of a completed Disclosure Statement.

CAUTION: Offerors currently required to disclose because they were awarded a CAS-covered prime contract or subcontract of ~~\$50~~ \$100 million or more in the current cost accounting period may not claim this exemption (4). Further, the exemption applies only in connection with proposals submitted before expiration of the 90-day period following the cost accounting period in which the monetary exemption was exceeded.

II. Cost Accounting Standards - Eligibility for Modified Contract Coverage

If the offeror is eligible to use the modified provisions of 9903.201-2(b) and elects to do so, the offeror shall indicate by checking the box below. Checking the box below shall mean that the resultant contract is subject to the Disclosure and Consistency of Cost Accounting Practices clause in lieu of the Cost Accounting Standards clause.

The offeror hereby claims an exemption from the Cost Accounting Standards clause under the provisions of 9903.201-2(b) and certifies that the offeror is eligible for use of the Disclosure and Consistency of Cost Accounting Practices clause because during the cost accounting period immediately preceding the period in which this proposal was submitted, the offeror received less than ~~\$50~~ **\$100** million in awards of CAS-covered prime contracts and subcontracts. The offeror further certifies that if such status changes before an award resulting from this proposal, the offeror will advise the Contracting Officer immediately.

CAUTION: An offeror may not claim the above eligibility for modified contract coverage if this proposal is expected to result in the award of a CAS-covered contract of ~~\$50~~ **\$100** million or more or if, during its current cost accounting period, the offeror has been awarded a single CAS-covered prime contract or subcontract of ~~\$50~~ **\$100** million or more.

III. Additional Cost Accounting Standards Applicable to Existing Contracts

The offeror shall indicate below whether award of the contemplated contract would, in accordance with subparagraph (a)(3) of the Cost Accounting Standards clause, require a change in established cost accounting practices affecting existing contracts and subcontracts.

Yes No

(End of provision)

Alternate I (OCT 1994). Insert the following subparagraph (5) at the end of Part I of the basic clause:

Not addressed here

9903.201-4 Contract clauses.

(a) Cost Accounting Standards.

(1) **Upon the contracting officer's affirmative written determination that the awarded contract will be CAS-covered, pursuant to 9903.201,** ~~the contracting officer shall insert as full text~~ the clause set forth below, Cost Accounting Standards, **only in negotiated CAS-covered** contracts, unless ~~the contract is exempted (see 9903.201-1),~~ the contract is subject to modified coverage (see 9903.201-2), or the clause prescribed in paragraph (e) of this section is used.

(2) **When a hybrid contract is contemplated (see definition at 9903.301), the contracting officer shall, to the maximum extent practicable, identify the portions of the proposed contract that are exempted from CAS pursuant to 9903.201-1(a)(3).**

(23) The clause below requires the contractor to comply with all CAS specified in part 9904, to disclose actual cost accounting practices (applicable to CAS-covered contracts only), and to follow disclosed and established cost accounting practices consistently.

Cost Accounting Standards (JUL 2011 TBD)

~~(a) Unless the contract is exempt under 9903.201-1 and 9903.201-2, the provisions of 9903 are incorporated herein by reference and the Contractor in connection with this contract, shall -~~

(1) (CAS-covered Contracts Only) By submission of a Disclosure Statement, disclosed in writing the Contractor's cost accounting practices as required by 9903.202-1 through 9903.202-5 including methods of distinguishing direct costs from indirect costs and the basis used for allocating indirect costs. The practices disclosed for this contract shall be the same as the practices currently disclosed and applied on all other contracts and subcontracts being performed by the Contractor and which contain a Cost Accounting Standards (CAS) clause. If the Contractor has notified the Contracting Officer that the Disclosure Statement contains trade secrets, and commercial or financial information which is privileged and confidential, the Disclosure Statement shall be protected and shall not be released outside of the Government.

(2) Follow consistently the Contractor's cost accounting practices in accumulating and reporting contract performance cost data concerning this contract. If any change in cost accounting practices is made for the purposes of any contract or subcontract subject to CAS requirements, the change must be applied prospectively to this contract and the Disclosure Statement must be amended accordingly. If the contract price or cost allowance of this contract is affected by such changes, adjustment shall be made in accordance with subparagraph (a)(4) or (a)(5) of this clause, as appropriate.

(3) Comply with all CAS, including any modifications and interpretations indicated thereto contained in part 9904, in effect on the date of award of this contract or, if the Contractor has submitted cost or pricing data, on the date of final agreement on price as shown on the Contractor's signed certificate of current cost or pricing data. The Contractor shall also comply with any CAS (or modifications to CAS) which hereafter become applicable to a contract or subcontract of the Contractor. Such compliance shall be required prospectively from the date of applicability of such contract or subcontract.

(4)(i) Agree to an equitable adjustment as provided in the Changes clause of this contract if the contract cost is affected by a change which, pursuant to subparagraph (a)(3) of this clause, the Contractor is required to make to the Contractor's established cost accounting practices.

(ii) Negotiate with the Contracting Officer to determine the terms and conditions under which a change may be made to a cost accounting practice, other than a change made under other provisions of subparagraph (a)(4) of this clause; provided that no agreement may be made under this provision that will increase costs paid by the United States.

(iii) When the parties agree to a change to a cost accounting practice, other than a change under subdivision (a)(4)(i) of this clause, negotiate an equitable adjustment as provided in the Changes clause of this contract.

(5) Agree to an adjustment of the contract price or cost allowance, as appropriate, if the Contractor or a subcontractor fails to comply with an applicable Cost Accounting Standard, or to follow any cost accounting practice consistently and such failure results in any increased costs paid by the United States. Such adjustment shall provide for recovery of the increased costs to the United States, together

with interest thereon computed at the annual rate established under section 6621(a)(2) of the Internal Revenue Code of 1986 (26 U.S.C. 6621(a)(2)) for such period, from the time the payment by the United States was made to the time the adjustment is effected. In no case shall the Government recover costs greater than the increased cost to the Government, in the aggregate, on the relevant contracts subject to the price adjustment, unless the Contractor made a change in its cost accounting practices of which it was aware or should have been aware at the time of price negotiations and which it failed to disclose to the Government.

(b) If the parties fail to agree whether the Contractor or a subcontractor has complied with an applicable CAS in part 9904 or a CAS rule or regulation in part 9903 and as to any cost adjustment demanded by the United States, such failure to agree will constitute a dispute under the Contract Disputes Act (41 U.S.C. 601).

(c) The Contractor shall permit any authorized representatives of the Government to examine and make copies of any documents, papers, or records relating to compliance with the requirements of this clause.

(d) The contractor shall include in all negotiated subcontracts which the Contractor enters into, the substance of this clause, except paragraph (b), and shall require such inclusion in all other subcontracts, of any tier, including the obligation to comply with all CAS in effect on the subcontractor's award date or if the subcontractor has submitted cost or pricing data, on the date of final agreement on price as shown on the subcontractor's signed Certificate of Current Cost or Pricing Data. If the subcontract is awarded to a business unit which pursuant to 9903.201-2 is subject to other types of CAS coverage, the substance of the applicable clause set forth in 9903.201-4 shall be inserted. This requirement shall apply only to negotiated subcontracts in excess of ~~the Truth in Negotiations Act (TINA) threshold, as adjusted for inflation (41 U.S.C. 1908 and 41 U.S.C. 1502(b)(1)(B))~~ **\$25 million**, except that the requirement shall not apply to negotiated subcontracts otherwise exempt from the requirement to include a CAS clause as specified in 9903.201-1.

(e) For indefinite delivery vehicles (see definition at 9903.301), the CAS applicability determination shall be made separately for each order at the time of order placement.

(f) If subsequent to award of this contract, it is established that the contract, or portions thereof, should not have been determined to be CAS-covered at the time of award under the provisions of 9903.201, this clause, or portions thereof, will be deemed as inapplicable to the contract.

(End of clause)

(b) [Reserved]

(c) Disclosure and Consistency of Cost Accounting Practices.

(1) Upon the contracting officer's affirmative written determination that the awarded contract will be subject to modified CAS-coverage, pursuant to 9903.201-2, the contracting officer shall insert as full text the clause set forth below, Disclosure and Consistency of Cost Accounting Practices, only in

negotiated **CAS-covered** contracts when the contract amount is over the Truth in Negotiations Act (TINA) threshold, as adjusted for inflation (41 U.S.C. 1908 and 41 U.S.C. 1502(b)(1)(B)) **\$25 million**, but less than **\$50 \$100 million**, and the offeror certifies it is eligible for and elects to use modified CAS coverage (see 9903.201-2, unless the clause prescribed in paragraph (d) of this subsection is used).

(2) When a hybrid contract is contemplated (see definition at 9903.301), the contracting officer shall, to the maximum extent practicable, identify the portions of the proposed contract that are exempted from CAS pursuant to 9903.201-1(a)(3).

(23) The clause below requires the contractor to comply with CAS 9904.401, 9904.402, 9904.405, and 9904.406, to disclose (if it meets certain requirements) actual cost accounting practices, and to follow consistently disclosed and established cost accounting practices.

Disclosure and Consistency of Cost Accounting Practices (JUL 2011 TBD)

(a) The Contractor, in connection with this contract, shall -

(1) Comply with the requirements of 9904.401, Consistency in Estimating, Accumulating, and Reporting Costs; 9904.402, Consistency in Allocating Costs Incurred for the Same Purpose; 9904.405, Accounting for Unallowable Costs; and 9904.406, Cost Accounting Standard - Cost Accounting Period, in effect on the date of award of this contract, as indicated in part 9904.

(2) (CAS-covered Contracts Only) If it is a business unit of a company required to submit a Disclosure Statement, disclose in writing its cost accounting practices as required by 9903.202-1 through 9903.202-5. If the Contractor has notified the Contracting Officer that the Disclosure Statement contains trade secrets and commercial or financial information which is privileged and confidential, the Disclosure Statement shall be protected and shall not be released outside of the Government.

(3)(i) Follow consistently the Contractor's cost accounting practices. A change to such practices may be proposed, however, by either the Government or the Contractor, and the Contractor agrees to negotiate with the Contracting Officer the terms and conditions under which a change may be made. After the terms and conditions under which the change is to be made have been agreed to, the change must be applied prospectively to this contract, and the Disclosure Statement, if affected, must be amended accordingly.

(ii) The Contractor shall, when the parties agree to a change to a cost accounting practice and the Contracting Officer has made the finding required in 9903.201-6(c) that the change is desirable and not detrimental to the interests of the Government, negotiate an equitable adjustment as provided in the Changes clause of this contract. In the absence of the required finding, no agreement may be made under this contract clause that will increase costs paid by the United States.

(4) Agree to an adjustment of the contract price or cost allowance, as appropriate, if the Contractor or a subcontractor fails to comply with the applicable CAS or to follow any cost accounting practice, and such failure results in any increased costs paid by the United States. Such adjustment shall provide for recovery of the increased costs to the United States, together with interest thereon computed at the

annual rate established under section 6621(a)(2) of the Internal Revenue Code of 1986 (26 U.S.C. 6621(a)(2)) for such period, from the time the payment by the United States was made to the time the adjustment is effected.

(b) If the parties fail to agree whether the Contractor has complied with an applicable CAS rule, or regulation as specified in parts 9903 and 9904 and as to any cost adjustment demanded by the United States, such failure to agree will constitute a dispute under the Contract Disputes Act (41 U.S.C. 601).

(c) The Contractor shall permit any authorized representatives of the Government to examine and make copies of any documents, papers, and records relating to compliance with the requirements of this clause.

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

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

(2) This requirement shall apply only to negotiated subcontracts in excess of ~~the Truth in Negotiations Act (TINA) threshold, as adjusted for inflation (41 U.S.C. 1908 and 41 U.S.C. 1502(b)(1)(B))~~ **\$25 million**.

(3) The requirement shall not apply to negotiated subcontracts otherwise exempt from the requirement to include a CAS clause as specified in 9903.201-1.

(End of clause)

(d) [Reserved]

(e) Cost Accounting Standards - Educational Institutions.

Not addressed here

(f) Disclosure and Consistency of Cost Accounting Practices - Foreign Concerns.

Not addressed here

9903.201-5 Waiver.

(a) The head of an executive agency may waive the applicability of the Cost Accounting Standards for a contract or subcontract with a value of less than ~~\$15~~ \$100 million, if that official determines, in writing, that the business unit of the contractor or subcontractor that will perform the work -

(1) Is primarily engaged in the sale of commercial items; and

(2) Would not otherwise be subject to the Cost Accounting Standards under this Chapter.

(b) The head of an executive agency may waive the applicability of the Cost Accounting Standards for a contract or subcontract under exceptional circumstances when necessary to meet the needs of the agency. A determination to waive the applicability of the Cost Accounting Standards by the agency head shall be set forth in writing, and shall include a statement of the circumstances justifying the waiver.

(c) The head of an executive agency may not delegate the authority under paragraphs (a) and (b) of this section, to any official below the senior policymaking level in the agency.

(d) The head of each executive agency shall report the waivers granted under paragraphs (a) and (b) of this section, for that agency, to the Cost Accounting Standards Board, on an annual basis, not later than 90 days after the close of the Government's fiscal year.

(e) Upon request of an agency head or his designee, the Cost Accounting Standards Board may waive all or any part of the requirements of 9903.201-4(a), Cost Accounting Standards, or 9903.201-4(c), Disclosure and Consistency of Cost Accounting Practices, with respect to a contract subject to the Cost Accounting Standards. Any request for a waiver shall describe the proposed contract or subcontract for which the waiver is sought and shall contain -

(1) An unequivocal statement that the proposed contractor or subcontractor refuses to accept a contract containing all or a specified part of a CAS clause and the specific reason for that refusal;

(2) A statement as to whether the proposed contractor or subcontractor has accepted any prime contract or subcontract containing a CAS clause;

(3) The amount of the proposed award and the sum of all awards by the agency requesting the waiver to the proposed contractor or subcontractor in each of the preceding 3 years;

(4) A statement that no other source is available to satisfy the agency's needs on a timely basis;

(5) A statement of alternative methods considered for fulfilling the need and the agency's reasons for rejecting them;

(6) A statement of steps being taken by the agency to establish other sources of supply for future contracts for the products or services for which a waiver is being requested; and

(7) Any other information that may be useful in evaluating the request.

(f) Except as provided by the Cost Accounting Standards Board, the authority in paragraph (e) of this section shall not be delegated.

9903.201-6 Findings.

(a) Required change -

(1) Finding. Prior to making any equitable adjustment under the provisions of paragraph (a)(4)(i) of the contract clause set forth in 9903.201-4(a) or 9903.201-4(e), or paragraph (a)(3)(i) of the contract clause set forth in 9903.201-4(c), the Contracting Officer shall make a finding that the practice change was required to comply with a CAS, modification or interpretation thereof, that subsequently became applicable to the contract; or, for planned changes being made in order to remain CAS compliant, that the former practice was in compliance with applicable CAS and the planned change is necessary for the contractor to remain in compliance.

(2) Required change means 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. It also includes a prospective change to a disclosed or established cost accounting practice when the cognizant Federal agency official determines that the former practice was in compliance with applicable CAS and the change is necessary for the contractor to remain in compliance.

(b) Unilateral change -

(1) Findings. Prior to making any contract price or cost adjustment(s) under the change provisions of paragraph (a)(4)(ii) of the contract clause set forth in 9903.201-4(a) or 9903.201-4(e), or paragraph (a)(3)(ii) of the contract clause set forth in 9903.201-4(c), the Contracting Officer shall make a finding that the contemplated contract price and cost adjustments will protect the United States from payment of increased costs, in the aggregate; and that the net effect of the adjustments being made does not result in the recovery of more than the estimated amount of such increased costs.

(2) Unilateral change by a contractor means a change in cost accounting practice from one compliant practice to another compliant practice that a contractor with a CAS-covered contract(s) elects to make that has not been deemed desirable by the cognizant Federal agency official and for which the Government will pay no aggregate increased costs.

(3) Action to preclude the payment of aggregate increased costs by the Government. In the absence of a finding pursuant to paragraph (c) of this subsection that a compliant change is desirable, no agreement may be made with regard to a change to a cost accounting practice that will result in the payment of aggregate increased costs by the United States. For these changes, the cognizant Federal agency official shall limit upward contract price adjustments to affected contracts to the amount of downward contract price adjustments of other affected contracts, i.e., no net upward contract price adjustment shall be permitted.

(c) Desirable change -

(1) Finding. Prior to making any equitable adjustment under the provisions of paragraph (a)(4)(iii) of the contract clause set forth in 9903.201-4(a) or 9903.201-4(e), or paragraph (a)(3)(ii) of the contract clause set forth in 9903.201-4(c), the cognizant Federal agency official shall make a finding that the change to a cost accounting practice is desirable and not detrimental to the interests of the Government.

(2) Desirable change means a compliant change to a contractor's established or disclosed cost accounting practices that the cognizant Federal agency official 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 affected by the change. The cognizant Federal agency official's finding need not be based solely on the cost impact that a proposed practice change will have on a contractor's or subcontractor's current CAS-covered contracts. The change to a cost accounting practice may be determined to be desirable even though existing contract prices and/or cost allowances may increase. The determination that the change to a cost accounting practice is desirable, should be made on a case-by-case basis.

(3) Once a determination has been made that a compliant change to a cost accounting practice is a desirable change, associated management actions that also have an impact on contract costs should be considered when negotiating contract price or cost adjustments that may be needed to equitably resolve the overall cost impact of the aggregated actions.

(4) Until the cognizant Federal agency official has determined that a change to a cost accounting practice is deemed to be a desirable change, the change shall be considered to be a change for which the Government will not pay increased costs, in the aggregate.

(d) Noncompliant cost accounting practices -

(1) Findings. Prior to making any contract price or cost adjustment(s) under the provisions of paragraph (a)(5) of the contract clause set forth in 9903.201-4(a) or 9903.201-4(e), or paragraph (a)(4) of the contract clause set forth in 9903.201-4(c), the Contracting Officer shall make a finding that the contemplated contract price and cost adjustments will protect the United States from payment of increased costs, in the aggregate; and that the net effect of the adjustments being made does not result in the recovery of more than the estimated amount of such increased costs. While individual contract prices, including cost ceilings or target costs, as applicable, may be increased as well as decreased to resolve an estimating noncompliance, the aggregate value of all contracts affected by the estimating noncompliance shall not be increased.

9903.201-7 Cognizant Federal agency responsibilities.

(a) The requirements of part 9903 shall, to the maximum extent practicable, be administered by the cognizant Federal agency responsible for a particular contractor organization or location, usually the Federal agency responsible for negotiating indirect cost rates on behalf of the Government. The cognizant Federal agency should take the lead role in administering the requirements of part 9903 and coordinating CAS administrative actions with all affected Federal agencies. When multiple CAS-covered contracts or more than one Federal agency are involved, agencies should discourage Contracting Officers from individually administering CAS on a contract-by-contract basis. Coordinated administrative actions will provide greater assurances that individual contractors follow their cost accounting practices consistently under all their CAS-covered contracts and that changes in cost accounting practices or CAS noncompliance issues are resolved, equitably, in a uniform overall manner.

(b) Federal agencies shall prescribe regulations and establish internal policies and procedures governing how agencies will administer the requirements of CAS-covered contracts, with particular emphasis on inter-agency coordination activities. Procedures to be followed when an agency is and is not the cognizant Federal agency should be clearly delineated. Internal agency policies and procedures shall provide for the designation of the agency office(s) or officials responsible for administering CAS under the agency's CAS-covered contracts at each contractor business unit and the delegation of necessary contracting authority to agency individuals authorized to administer the terms and conditions of CAS-covered contracts, e.g., Administrative Contracting Officers (ACOs) or other agency officials authorized to perform in that capacity. Agencies are urged to coordinate on the development of such regulations.

9903.201-8 Compliant accounting changes due to external restructuring activities.

The contract price and cost adjustment requirements of this part 9903 are not applicable to compliant cost accounting practice changes directly associated with external restructuring activities that are subject to and meet the requirements of 10 U.S.C. 2325.

9903.202 Disclosure requirements.

9903.202-1 General requirements.

(a) A Disclosure Statement is a written description of a contractor's cost accounting practices and procedures. The submission of a new or revised Disclosure Statement is not required for any non-CAS-covered contract or from any small business concern.

(b) Completed Disclosure Statements are required in the following circumstances:

(1) Any business unit that is selected to receive a CAS-covered contract or subcontract of ~~\$50~~ **\$100** million or more shall submit a Disclosure Statement before award.

(2) Any company which, together with its segments, received net awards of negotiated prime contracts and subcontracts subject to CAS totaling ~~\$50~~ **\$100** million or more in its most recent cost accounting period, must submit a Disclosure Statement before award of its first CAS-covered contract in the immediately following cost accounting period. However, if the first CAS-covered contract is received within 90 days of the start of the cost accounting period, the contractor is not required to file until the end of 90 days.

(c) When a Disclosure Statement is required, a separate Disclosure Statement must be submitted for each segment whose costs included in the total price of any CAS-covered contract or subcontract exceed the Truth in Negotiations Act (TINA) threshold, as adjusted for inflation (41 U.S.C. 1908 and 41 U.S.C. 1502(b)(1)(B)) ~~\$25 million~~ **\$25 million** unless (i) The contract or subcontract is of the type or value exempted by 9903.201-1, ~~or~~

(ii) ~~In the most recently completed cost accounting period the segment's CAS covered awards are less than 30 percent of total segment sales for the period and less than \$10 million.~~

(d) Each corporate or other home office that allocates costs to one or more disclosing segments performing CAS-covered contracts must submit a Part VIII of the Disclosure Statement.

(e) Foreign contractors and subcontractors who are required to submit a Disclosure Statement may, in lieu of filing a Form No CASB-DS-1, make disclosure by using a disclosure form prescribed by an agency of its Government, provided that the Cost Accounting Standards Board determines that the information disclosed by that means will satisfy the objectives of Public Law 100-679. The use of alternative forms has been approved for the contractors of the following countries:

(1) Canada.

(2) Federal Republic of Germany.

(3) United Kingdom.

(f) Educational institutions - disclosure requirements.

Not addressed here

9903.202-2 Impracticality of submission.

9903.202-3 Amendments and revisions.

9903.202-4 Privileged and confidential information.

9903.202-5 Filing Disclosure Statements.

9903.202-6 Adequacy of Disclosure Statement.

9903.202-7 [Reserved]

9903.202-8 Subcontractor Disclosure Statements.

9903.202-9 Illustration of Disclosure Statement Form, CASB-DS-1.

No changes to the sections noted above

9903.202-10 Illustration of Disclosure Statement Form, CASB DS-2.

Not addressed here

Part 9903, Subpart 9903.3 - CAS Rules and Regulations

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9903.301 Definitions.

(a) The definitions set forth below apply to this chapter 99.

Accrued benefit cost method. See 9904.412-30.

Accumulating costs. See 9904.401-30.

Actual cash value. See 9904.416-30.

Actual cost. See 9904.401-30 for the broader definition and 9904.407-30 for a more restricted definition applicable only to the standard on the use of standard costs for direct material and direct labor.

Actuarial assumption. See 9904.412-30 or 9904.413-30.

Actuarial cost method. See 9904.412-30 or 9904.413-30.

Actuarial gain and loss. See 9904.412-30 or 9904.413-30.

Actuarial liability. See 9904.412-30 or 9904.413-30.

Actuarial valuation. See 9904.412-30 or 9904.413-30.

Allocate. See 9904.402-30, 9904.403-30, 9904.406-30, 9904.410-30, 9904.411-30, 9904.418-30 or 9904.420-30.

Asset accountability unit. See 9904.404-30.

Assignment of cost to cost accounting periods. See 9903.302-1(b).

Bid and proposal (B&P) cost. See 9904.420-30.

Business unit. See 9904.410-30, 9904.411-30 or 9904.414-30.

CAS-covered contract, as used in this part, means any negotiated contract or subcontract in which a CAS clause is required to be included.

Category of material. See 9904.411-30.

Change to a cost accounting practice. See 9903.302-2.

Compensated personal absence. See 9904.408-30.

Cost accounting practice. See 9903.302-1.

Cost input. See 9904.410-30.

Cost objective. See 9904.402-30, 9904.406-30, 9904.410-30 or 9904.411-30.

Cost of capital committed to facilities. See 9904.414-30.

Currently performing, as used in this part, means that a contractor has been awarded a contract, but has not yet received notification of final acceptance of all supplies, services, and data deliverable under the contract (including options).

Deferred compensation. See 9904.415-30.

Defined-benefit pension plan. See 9904.412-30.

Defined-contribution pension plan. See 9904.412-30.

Direct cost. See 9904.402-30 or 9904.418-30.

Directly associated cost. See 9904.405-30.

Disclosure statement, as used in this part, means the Disclosure Statement required by 9903.202-1.

Entitlement. See 9904.408-30.

Estimating costs. See 9904.401-30.

Expressly unallowable cost. See 9904.405-30.

Facilities capital. See 9904.414-30.

Final cost objective. See 9904.402-30 or 9904.410-30.

Fiscal year. See 9904.406-30.

Fixed-price type contract, as used in 9903.201-1(b)(15), means any contract of the type described in 48 CFR Subpart 16.2.

Funded pension cost. See 9904.412-30.

Funding agency. See 9904.412-30.

General and administrative (G&A) expense. See 9904.410-30 or 9904.420-30.

Home office. See 9904.403-30 or 9904.420-30.

Hybrid contract means a contract or subcontract that contains multiple contract types within its overall structure.

Immediate-gain actuarial cost method. See 9904.413-30.

Indefinite delivery vehicle means an indefinite delivery contract or agreement that has one or more of the following clauses:

(1) 48 CFR 52.216-18, "Ordering"

(2) 48 CFR 52.216-19, "Order Limitations"

(3) 48 CFR 52.216-20, "Definite Quantity"

(4) 48 CFR 52.216-21, "Requirements"

(5) 48 CFR 52.216-22, "Indefinite Quantity"

(6) Any other clause allowing ordering.

Independent research and development (IR&D) cost. See 9904.420-30.

Indirect cost. See 9904.402-30, 9904.405-30, 9904.418-30 or 9904.420-30.

Indirect cost pool. See 9904.401-30, 9904.402-30, 9904.406-30 or 9904.418-30.

Insurance administration expenses. See 9904.416-30.

Intangible capital asset. See 9904.414-30 or 9904.417-30.

Labor cost at standard. See 9904.407-30.

Labor-rate standard. See 9904.407-30.

Labor-time standard. See 9904.407-30.

Material cost at standard. See 9904.407-30.

Material inventory record. See 9904.411-30.

Material-price standard. See 9904.407-30.

Material-quantity standard. See 9904.407-30.

Measurement of cost. See 9904.302-1(c).

Moving average cost. See 9904.411-30.

Multiemployer pension plan. See 9904.412-30.

Negotiated subcontract, as used in this part, means any subcontract except a firm fixed-price subcontract made by a contractor or subcontractor after receiving offers from at least two persons not associated with each other or with such contractor or subcontractor, providing

- (1) The solicitation to all competitors is identical,
- (2) Price is the only consideration in selecting the subcontractor from among the competitors solicited, and
- (3) The lowest offer received in compliance with the solicitation from among those solicited is accepted.

Net awards, as used in this chapter, means the total value of negotiated CAS-covered prime contract and subcontract awards, including the potential value of contract options, received during the reporting period minus cancellations, terminations, and other related credit transactions.

Normal cost. See 9904.412-30 or 9904.413-30.

Operating revenue. See 9904.403-30.

Original complement of low cost equipment. See 9904.404-30.

Pay-as-you-go cost method. See 9904.412-30.

Pension plan. See 9904.412-30 or 9904.413-30.

Pension plan participant. See 9904.413-30.

Pricing. See 9904.401-30.

Production unit. See 9904.407-30.

Projected average loss. See 9904.416-30.

Projected benefit cost method. See 9904.412-30 or 9904.413-30.

Proposal. See 9904.401-30.

Repairs and maintenance. See 9904.404-30.

Reporting costs. See 9904.401-30.

Residual value. See 9904.409-30.

Segment. See 9904.403-30, 9904.410-30, 9904.413-30 or 9904.420-30.

Self-insurance. See 9904.416-30.

Self-insurance charge. See 9904.416-30.

Service life. See 9904.409-30.

Small business, as used in this part, means any concern, firm, person, corporation, partnership, cooperative, or other business enterprise which, under 15 U.S.C. 637(b)(6) and the rules and regulations of the Small Business Administration in part 121 of title 13 of the Code of Federal Regulations, is determined to be a small business concern for the purpose of Government contracting.

Spread-gain actuarial cost method. See 9904.413-30.

Standard cost. See 9904.407-30.

Tangible capital asset. See 9904.403-30, 9904.404-30, 9904.409-30, 9904.414-30 or 9904.417-30.

Termination gain or loss. See 9904.413-30.

Unallowable cost. See 9904.405-30.

Variance. See 9904.407-30.

Weighted average cost. See 9904.411-30.

(b) The definitions set forth below are applicable exclusively to educational institutions and apply to this chapter 99.

Not addressed here

9903.302 Definitions, explanations, and illustrations of the terms, “cost accounting practice” and “change to a cost accounting practice.”

9903.302-1 Cost accounting practice.

Cost accounting practice, as used in this part, means any disclosed or established accounting method or technique which is used for allocation of cost to cost objectives, assignment of cost to cost accounting periods, or measurement of cost.

(a) Measurement of cost, as used in this part, encompasses accounting methods and techniques used in defining the components of cost, determining the basis for cost measurement, and establishing criteria for use of alternative cost measurement techniques. The determination of the amount paid or a change in the amount paid for a unit of goods and services is not a cost accounting practice. Examples of cost accounting practices which involve measurement of costs are

- (1) The use of either historical cost, market value, or present value;
- (2) The use of standard cost or actual cost; or
- (3) The designation of those items of cost which must be included or excluded from tangible capital assets or pension cost.

(b) Assignment of cost to cost accounting periods, as used in this part, refers to a method or technique used in determining the amount of cost to be assigned to individual cost accounting periods. Examples of cost accounting practices which involve the assignment of cost to cost accounting periods are requirements for the use of specified accrual basis accounting or cash basis accounting for a cost element.

(c) Allocation of cost to cost objectives, as used in this part, includes both direct and indirect allocation of cost. Examples of cost accounting practices involving allocation of cost to cost objectives are the accounting methods or techniques used to accumulate cost, to determine whether a cost is to be directly or indirectly allocated to determine the composition of cost pools, and to determine the selection and composition of the appropriate allocation base.

9903.302-2 Change to a cost accounting practice.

Change to a cost accounting practice, as used in this part, means any alteration in a cost accounting practice, as defined in 9903.302-1, whether or not such practices are covered by a Disclosure Statement, except for the following:

(a) The initial adoption of a cost accounting practice for the first time a cost is incurred, or a function is created, is not a change in cost accounting practice. The partial or total elimination of a cost or the cost of a function is not a change in cost accounting practice. As used here, function is an activity or group of activities that is identifiable in scope and has a purpose or end to be accomplished.

(b) The revision of a cost accounting practice for a cost which previously had been immaterial is not a change in cost accounting practice.

9903.302-3 Illustrations of changes which meet the definition of “change to a cost accounting practice.”

(a) The method or technique used for measuring costs has been changed.

(b) The method or technique used for assignment of cost to cost accounting periods has been changed.

(c) The method or technique used for allocating costs has been changed.

9903.302-4 Illustrations of changes which do not meet the definition of “Change to a cost accounting practice.”

9903.303 Effect of filing Disclosure Statement.

(a) A disclosure of a cost accounting practice by a contractor does not determine the allowability of particular items of cost. Irrespective of the practices disclosed by a contractor, the question of whether or not, or the extent to which, a specific element of cost is allowed under a contract remains for consideration in each specific instance. Contractors are cautioned that the determination of the allowability of cost items will remain a responsibility of the contracting officers pursuant to the provisions of the applicable procurement regulations.

(b) The individual Disclosure Statement may be used in audits of contracts or in negotiation of prices leading to contracts. The authority of the audit agencies and the contracting officers is in no way abrogated by the material presented by the contractor in his Disclosure Statement. Contractors are cautioned that their disclosures must be complete and accurate; the practices disclosed may have a significant impact on ways in which contractors will be required to comply with Cost Accounting Standards.

9903.304 Concurrent full and modified coverage.

Contracts subject to full coverage may be performed during a period in which a previously awarded contract subject to modified coverage is being performed. Compliance with full coverage may compel the use of cost accounting practices that are not required under modified coverage. Under these circumstances the cost accounting practices applicable to contracts subject to modified coverage need not be changed. Any resulting differences in practices between contracts subject to full coverage and those subject to modified coverage shall not constitute a violation of 9904.401 and 9904.402. This principle also applies to contracts subject to modified coverage being performed during a period in which a previously awarded contract subject to full coverage is being performed.

9903.305 Materiality.

In determining whether amounts of cost are material or immaterial, the following criteria shall be considered where appropriate; no one criterion is necessarily determinative:

- (a) The absolute dollar amount involved. The larger the dollar amount, the more likely that it will be material.
- (b) The amount of contract cost compared with the amount under consideration. The larger the proportion of the amount under consideration to contract cost, the more likely it is to be material.
- (c) The relationship between a cost item and a cost objective. Direct cost items, especially if the amounts are themselves part of a base for allocation of indirect costs, will normally have more impact than the same amount of indirect costs.
- (d) The impact on Government funding. Changes in accounting treatment will have more impact if they influence the distribution of costs between Government and non-Government cost objectives than if all cost objectives have Government financial support.
- (e) The cumulative impact of individually immaterial items. It is appropriate to consider whether such impacts:
 - (1) Tend to offset one another, or
 - (2) Tend to be in the same direction and hence to accumulate into a material amount.
- (f) The cost of administrative processing of the price adjustment modification shall be considered. If the cost to process exceeds the amount to be recovered, it is less likely the amount will be material.

9903.306 Interpretations.

In determining amounts of increased costs in the clauses at 9903.201-4(a), Cost Accounting Standards, 9903.201- 4(c), Disclosure and Consistency of Cost Accounting Practices, and 9903.201-4(d), Consistency in Cost Accounting, the following considerations apply:

- (a) 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.
- (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.

(c) The statutory requirement underlying this interpretation is that the United States not pay increased costs, including a profit enlarged beyond that in the contemplation of the parties to the contract when the contract costs, price, or profit is negotiated, by reason of a contractor's failure to use applicable Cost Accounting Standards, or to follow consistently its cost accounting practices. In making price adjustments under the Cost Accounting Standards clause at 9903.201-4(a) in fixed price or cost reimbursement incentive contracts, or contracts providing for prospective or retroactive price redetermination, the Federal agency shall apply this requirement appropriately in the circumstances.

(d) The contractor and the contracting officer may enter into an agreement as contemplated by subdivision (a)(4)(ii) of the Cost Accounting Standards clause at 9903.201-4(a), covering a change in practice proposed by the Government or the contractor for all of the contractor's contracts for which the contracting officer is responsible, provided that the agreement does not permit any increase in the cost paid by the Government. Such agreement may be made final and binding, notwithstanding the fact that experience may subsequently establish that the actual impact of the change differed from that agreed to.

(e) An adjustment to the contract price or of cost allowances pursuant to the Cost Accounting Standards clause at 9903.201-4(a) may not be required when a change in cost accounting practices or a failure to follow Standards or cost accounting practices is estimated to result in increased costs being paid under a particular contract by the United States. This circumstance may arise when a contractor is performing two or more covered contracts, and the change or failure affects all such contracts. The change or failure may increase the cost paid under one or more of the contracts, while decreasing the cost paid under one or more of the contracts. In such case, the Government will not require price adjustment for any increased costs paid by the United States, so long as the cost decreases under one or more contracts are at least equal to the increased cost under the other affected contracts, provided that the contractor and the affected contracting officers agree on the method by which the price adjustments are to be made for all affected contracts. In this situation, the contracting agencies would, of course, require an adjustment of the contract price or cost allowances, as appropriate, to the extent that the increases under certain contracts were not offset by the decreases under the remaining contracts.

(f) Whether cost impact is recognized by modifying a single contract, several but not all contracts, or all contracts, or any other suitable technique, is a contract administration matter. The Cost Accounting Standards rules do not in any way restrict the capacity of the parties to select the method by which the cost impact attributable to a change in cost accounting practice is recognized.

9903.307 Cost Accounting Standards Preambles.

No changes