

Recommendation 30: Reshape CAS program requirements to function better in a changed acquisition environment.

Problem

There has long been a sentiment within the government and defense industry that CAS program requirements lack sufficient nimbleness to accommodate the evolving acquisition environment. Except for changes in monetary thresholds, CAS program requirements have remained relatively static since the 1970s. This condition exists despite substantial changes in what DoD purchases, how DoD conducts purchases, and what contract vehicles DoD uses.

This condition also exists despite major legislative initiatives that have changed the landscape of government acquisition, such as the Competition in Contracting Act and the series of commercial item acquisition reforms such as the Federal Acquisition Streamlining Act (FASA), Federal Acquisition Reform Act (FARA), and Services Acquisition Reform Act (SARA).¹ Congress has prescribed preferences for both full and open competition and use of commercial items for acquiring products and services to satisfy government needs. Such prescribed preferences did not exist in the 1970s when CAS program requirements were instituted.

Independent studies conducted over time have consistently demonstrated that the government has faced substantial barriers to accessing important technologies because supplies exist that will not accept a CAS-covered contract.² CAS program requirements are not only incompatible with how business is conducted in today's marketplace, but they are incompatible with the way the government conducts its own business. The more prevalent concerns involving CAS program requirements are discussed below.

Background

CAS program requirements were instituted in the 1970s and generally have remained unchanged. The Section 809 Panel evaluated the compatibility of these requirements with modern government acquisition policies, procedures, and practices. Changes are needed that would help make CAS less of a burden for the defense acquisition community and less of a barrier to entry for companies looking to work with DoD. The panel's assessment focused on CAS applicability and exemptions (48 CFR 9903.201-1), types of CAS coverage (48 CFR 9903.201-2), and disclosure statement submission obligations (48 CFR 9903.202-1). CAS program requirements for foreign concerns and educational institutions are not part of this assessment.

As discussed above, Congress created the CAS Board (CASB) in 1970 to promulgate standards in the cost accounting practices followed by defense contractors.³ The standards were applicable to

¹ Deficit Reduction Act of 1984, Pub. L. No. 98-369 (1985). Federal Acquisition Streamlining Act of 1994, Pub. L. No. 103-355 (1994). FY 1996 NDAA, Pub. L. No. 104-106 (1996). FY 1996 NDAA, Pub. L. No. 104-106 (1996). FY 1996 NDAA, Pub. L. No. 104-106 (1996). FY 2004 NDAA, Pub. L. No. 108-136 (2003).

² The following are examples of such studies. Jacques S. Gansler, *Democracy's Arsenal: Creating a Twenty-First Century Defense Industry*, Cambridge, Mass.: The MIT Press, 2011, 34, 140-142, 186, 270-271. Advisory Panel, *Report of the Acquisition Advisory Panel to the Office of Federal Procurement Policy and the United States Congress*, January 2007, accessed March 28, 2018, https://www.acquisition.gov/sites/default/files/page_file_uploads/ACQUISITION-ADVISORY-PANEL-2007-Report_final.pdf.

³ An Act to Amend the Defense Production Act of 1950, and Other Purposes, Pub. L. No. 91-379 (1970).

negotiated national defense contracts in excess of \$100,000, except when the price negotiated was based on (a) established catalog or market prices of commercial items sold in substantial quantities to the general public (i.e., ‘commercial item exemption’) or (b) prices set by law or regulation. Congress directed that “In promulgating such standards, the Board shall take into account the probable costs of implementation compared to the probable benefits.”⁴

CAS program requirements were initially instituted in 1972.⁵ CAS applied to all negotiated national defense contracts in excess of \$100,000. The only exemptions were those established by Congress: a commercial item exemption and contracts for which prices were set by law or regulation. Contracts exceeding \$100,000 were referred to as *CAS-covered contracts*. What *in excess of \$100,000* meant was not expressly defined by either Congress or CASB. CASB’s preamble to the initial CAS program requirements referred to prime contract awards of negotiated national defense contracts.⁶ This concept was understood in practice to mean the face value of a negotiated national defense contract at the time of award.

CAS program requirements on filing disclosure statements, which is a contractor’s written description of its cost accounting practices, were also initially instituted in 1972. A separate disclosure statement was required to be submitted for each profit center, division, or similar organizational unit if their costs included in the face value of a negotiated national defense contract exceeded \$100,000. To lessen the administrative burden imposed on defense contractors at that time, the disclosure statement requirement was limited to companies which together with their subsidiaries received net awards of negotiated national defense prime contracts during FY 1971 totaling more than \$30 million. What was meant by *net awards* was not defined by CASB.

Any negotiated national defense contract in excess of \$100,000, unless exempted, was to contain the CAS clause. Procedurally, any solicitation for a negotiated national defense contract that might result in an award in excess of \$100,000 was to include the CAS notice alerting offerors that the contract might become CAS-covered and that a disclosure statement might be required. The CAS clause also set forth the obligation for prime contractors to apply CAS program requirements to subcontractors in the same manner as applied to prime contractors.

After the institution of CAS program requirements in 1972, CASB amended program requirements a number of times in a continuous effort to strike a balance, as Congress had directed, between the probable costs of implementing CAS and the probable benefits received. The more substantial amendments relevant to issues discussed here were the following (all of these amendments were later revised):

- In 1974, CASB added an exemption for CAS-covered contracts less than \$500,000.⁷ That is, although the CAS-covered contract threshold specified by Congress would continue to be \$100,000, CAS would not become effective until a contractor received a CAS-covered contract of \$500,000 or more. This contract was called the *trigger contract*. Once a trigger contract was

⁴ Ibid, Sec. 103.

⁵ 37 Fed. Reg. 4139 (Feb. 29, 1972).

⁶ Preamble A: Original Publication of Part 401, 2-29-72, FAR Appendix B.

⁷ 39 Fed. Reg. 44389 (Dec. 24, 1974).

awarded, all CAS-covered contracts subsequently awarded to that contractor would become subject to CAS.

- In 1977, CASB created two levels of CAS coverage: *modified* and *full*.⁸ Modified CAS coverage required compliance with only two standards: CAS 401, Consistency in Estimating, Accumulating, and Reporting Costs, and CAS 402, Consistency in Allocating Costs Incurred for the Same Purpose. These standards became known as the *consistency standards*. Full CAS coverage required compliance with all standards (presently, there are 19 standards).

Modified CAS coverage was available for any business unit which in its immediately preceding cost accounting period received less than \$10 million in CAS-covered awards, providing that the sum of such awards was less than 10 percent of the business unit's total sales during that period. Anything above this threshold required full CAS coverage.

Similar changes were also made to the threshold requiring disclosure statement submission. A disclosure statement was required for a single CAS-covered award of \$10 million or more. Also, a disclosure statement was to be submitted by any business unit, or segment of a company, receiving a CAS-covered contract if it received net awards of CAS-covered contracts totaling \$10 million or more in its preceding cost accounting period.

- In 1980, CASB added an exemption for any firm-fixed-price (FFP) contract or subcontract awarded without submission of any cost data, provided that the failure to submit such data was not attributable to a waiver of the requirement for certified cost or pricing data.⁹ At the time, CASB declined to narrow the exemption to *certified* cost or pricing data because, in the opinion of CASB, any cost data submitted would presumably be used by contracting officers; thus, the government would benefit from the application of CAS.

The CASB ceased operations in 1980.¹⁰ The prevailing view was that CASB had completed its mission to promote uniformity and consistency in cost accounting practices used in defense contracting. CASB's regulations, including its standards, however, continued to apply to existing and future negotiated national defense contracts. It was not long before it became obvious that some form of governance over CAS was needed to administer CASB regulations and standards.

A *new* CASB was established under the OFPP Act of 1988.¹¹ It had a different organizational placement, structure, membership, and staffing than the original CASB.¹² The most substantial effect of reestablishing CASB under OFPP was making CAS program requirements applicable to all federal contracts instead of only negotiated national defense contracts.

⁸ 42 Fed. Reg. 45625 (Sept. 12, 1977). The CASB also added an exemption for small business concerns.

⁹ 45 Fed. Reg. 62011 (Sept. 18, 1980). The proviso reflected CASB's concern that contracting officers could exempt CAS by waiving the submission of certified cost or pricing data. This proviso was removed in 1993.

¹⁰ The CASB was defunded by Congress for FY 1981.

¹¹ An Act to Amend and Extend the Office of Federal Procurement Policy Act, Pub. L. No. 100-679 (1988).

¹² These are often referred to as the *original CASB* (1972-1980) and *new CASB* (1988-present).

Government Accountability Office (GAO) CASB Review Panel

The most recent assessment of CAS program requirements was conducted by the GAO CASB Review Panel in 1999. As requested by Congress, GAO established a panel of CAS experts to make recommendations to Congress in view of the “far-reaching procurement reforms of recent years.”¹³ Consistent with Congress’s direction in 1970, the GAO panel sought to strike a balance between the probable costs of implementing CAS and the probable benefits received.

New to what was recognized to be included in CAS implementation costs was the GAO panel’s acknowledgement that, as several other studies had shown, some companies refused to do business with the government if the resulting contract was to be CAS-covered.¹⁴ The GAO panel learned through public testimony that some companies created isolated CAS-covered business units for the purpose of doing business with the government while keeping their other business units free from CAS exposure. The GAO panel understood that when companies refused to accept CAS-covered contracts, the government was denied access to benefits that went beyond measurable costs. Simply put, CAS is a barrier to market access.

The GAO panel’s assessment of CAS program requirements included a sensitivity analysis that measured the scope of CAS coverage in terms of dollars covered and business segments covered over varying monetary thresholds. Specifically, the analysis considered variations in the trigger contract threshold (then \$1 million) and full CAS-coverage threshold (then \$25 million).¹⁵ Varying the individual CAS-covered contract threshold (then \$500,000) was not considered to be a meaningful assessment.

The GAO panel noted that the government’s Federal Procurement Data System (FPDS), at that time, did not adequately capture CAS-coverage data. FPDS did not identify contract actions that were CAS-covered, and FPDS did not collect contract actions by CAS-covered business segments. The GAO panel instead used surrogate data developed from the Defense Contract Audit Agency’s (DCAA’s) defective pricing database. DCAA augmented this data with information obtained from its field offices on CAS-covered contracts not included in its defective pricing database. The surrogate data covered the 12-month period from April 1997 to March 1998.

The GAO panel’s sensitivity analysis is summarized in Table 4-1. The then *current state* for comparison purposes, as portrayed in the second column, was \$72 billion in CAS-covered contracts and 588 CAS-covered business segments under both full CAS coverage and modified CAS coverage.

¹³ GAO, *Future Role of the Cost Accounting Standards Board*, GAO SP-99-1, accessed February 27, 2018, <https://www.gao.gov/products/SP-99-1>.

¹⁴ The following are examples of such reports. H.R. Committee on Armed Services Structure of U.S. Defense Industrial Base Panel, *Report Future of the Defense Industrial Base* (1992). Acquisition Law Advisory Panel to the United States Congress, *Streamlining Defense Acquisition Laws*, accessed June 6, 2017, <http://www.dtic.mil/docs/citations/ADA262699>. Advisory Panel, *Report of the Acquisition Advisory Panel to the Office of Federal Procurement Policy and the United States Congress*, January 2007, accessed March 28, 2018, https://www.acquisition.gov/sites/default/files/page_file_uploads/ACQUISITION-ADVISORY-PANEL-2007-Report_final.pdf.

¹⁵ The trigger contract was limited to deciding between modified and full CAS-coverage. A contractor was not required to implement full CAS coverage until it received \$25 million in CAS-covered awards *and* one CAS-covered contract exceeded \$1 million.

**Table 4-1. GAO Panel’s Analysis of CAS Coverage in DoD Under Varying Scenarios
 April 1997 to March 1998 (Dollars in Billions)**

	Full Coverage = \$25 million & Trigger = \$1 million	Full Coverage = \$50 million & Trigger = \$5 million	Full Coverage = \$50 million & Trigger = \$7.5 million	Full Coverage = \$50 million & Trigger = \$10 million
Dollars Covered	\$72	\$71	\$70	\$69

Coverage Types	Number Segments	Number Segments	Number Segments	Number Segments
Full CAS	280	189	189	185
Modified CAS	308	173	<i>Unknown</i>	94
Total	588	362		279

The GAO panel observed that (a) raising the full CAS-coverage threshold from \$25 million to \$50 million and (b) raising the trigger contract threshold to \$5 million yielded a negligible reduction in CAS-covered dollars (i.e., from \$72 billion to \$71 billion) but substantially reduced the number of CAS-covered business segments (i.e., from 588 to 362).

Although the GAO panel was satisfied with recommending an increase in the threshold for full CAS coverage to \$50 million, it was concerned about raising the trigger contract threshold from \$5 million to \$10 million. At a trigger contract threshold of \$10 million, the number of CAS-covered business segments under modified CAS coverage would be reduced from 588 business segments to 94 business segments, with the sharpest decrease being in modified CAS coverage. The decrease in full CAS coverage was generally unaffected after a trigger contract threshold increase to \$5 million (i.e., from 189 to 185). The GAO panel did not elaborate on its concern about the reduction in modified CAS coverage and ultimately settled on recommending a trigger contract threshold of \$7.5 million.

The GAO panel’s recommendations were taken up by Congress under the FY 2000 NDAA as Streamlined Applicability of Cost Accounting Standards.¹⁶ The CASB implemented the Act’s provisions in 2000.¹⁷

The GAO panel’s efforts of 1999 stand as the most recent assessment of CAS program requirements. The panel’s deliberations included a variety of issues and perspectives presented in public hearings by government officials, defense contractors, commercial companies, professional and trade associations, and others regarding CAS program requirements.¹⁸ Other than recommending changes to the CAS monetary thresholds, with one exception regarding the exemption for certain FFP contracts, the GAO panel did not take up any of the other issues regarding CAS program requirements.

¹⁶ FY 2000 NDAA, Pub. L. No. 106–65, Section 8 (1999).

¹⁷ 65 Fed. Reg. 5990 (Feb. 7, 2000).

¹⁸ The GAO panel conducted public hearings June 16–18, 1998. Testimonies were offered by 30 interested parties.

Current Data on CAS Coverage

Since the GAO panel's review in 1999, enhancements in FPDS structure and processes have provided an improved view into DoD CAS-covered contracts, albeit still an imperfect view because there remain limitations in FPDS data collection protocols (e.g., actual CAS-covered contracts, type of CAS coverage, identification of CAS-covered business segments, CAS-covered subcontracts, CAS application to orders). The FPDS process has become more rigorous in that contracting officers must complete a contract action report (CAR) and confirm its accuracy prior to release of a contract award.¹⁹ The CAR must then be imported into FPDS within 3 business days after contract award. The chief acquisition officer of each agency must submit to GAO an annual certification that the agency's CAR data for the preceding fiscal year was complete and accurate.²⁰ These requirements are intended to improve the quality of reported FPDS data.

FPDS has a specific data element for CAS coverage. Data Element 6L (Cost Accounting Standards Clause) asks if the CAS clause has been included in the awarded contract. Possible answers include the following:²¹

- Y = Yes, CAS clause included in the awarded contract
- N = No, CAS waiver approved
- X = Not applicable, exempt from CAS

The CAS clause, in its present form, could be regarded as self-deleting in that the CAS clause contains wording that states CAS applies unless the contract is otherwise exempt. Inclusion of the CAS clause in a contract, in and of itself, does not mean that the contract is actually CAS-covered. The contract could be exempt on a number of grounds.

Other than FPDS, there is no management information system within DoD that captures CAS-coverage information across DoD's supplier base. The Defense Contract Audit Agency (DCAA) no longer maintains the databases that were used to develop surrogate CAS-coverage data for the GAO panel in 1999. The Mechanization of Contract Administration Services (MOCAS) used by the Defense Contract Management Agency (DCMA) has limited value because its database is populated from the same original source that populates FPDS and only includes contracts over which DCMA has contract administration cognizance.

Despite these limitations, FPDS still provides a credible means for assessing the CAS program requirement issues discussed here. FPDS was queried for all contract actions that contained "Yes" in Data Element 6L for initial contract awards (identified as "Modification 0") occurring during the 5-year period spanning FY 2012 through FY 2016. The query was designed to return certain information, such as contract number, solicitation number, contract value, contract type, extent of competition, submission of cost or pricing data, and small business identification. Inspection of the query results

¹⁹ Responsibilities, FAR 4.604(b).

²⁰ Ibid, (c).

²¹ GSA, *Federal Procurement Data System-Next Generation (FPDS-NG) Data Element Dictionary, Version 1.4*, accessed March 28, 2018, https://www.fpds.gov/downloads/Version_1.4_specs/FPDSNG_DataDictionary_V1.4.pdf.

illuminated the need to analyze contract awards in two separate groupings: definitive contracts and indefinite delivery vehicles (IDVs). Summary results are presented in Table 4-2 below.

**Table 4-2. Prime Contract Awards Containing CAS Clause Per FPDS Base and All Options Value^(Note 1)
 FY 2012 through FY 2016 (Dollars in Billions)**

	2012	2013	2014	2015	2016
Dollars ^(Note 2)	\$74	\$50	\$46	\$38	\$105
Contracts	995	907	801	859	947

IDVs					
Dollars ^(Note 3)					
Contracts	744	715	706	742	735

Totals exclude contracts awarded to educational institutions, governmental entities, and small businesses, as best as could be determined from FPDS coding protocols.

Notes:

- (1) CAS coverage is determined by face value of a contract at the time of award. Subsequent modifications (unless they add new work) and funding actions do not affect this determination. The Base and All Options Value (FPDS Data Element 3A) was considered the most appropriate value for determining CAS-covered dollars.
- (2) Definitive contract dollar totals were somewhat skewed by the award of three unusually large TRICARE managed care support contracts by the Defense Health Agency (one in 2012; two in 2016).
- (3) The Base and All Options Value for an IDV is meaningless because it bears no meaningful relationship to the value of orders that are actually placed under the IDV. The Base and All Options Value for some IDVs under a given solicitation was the same full amount of the total anticipated acquisition, and thus would vastly overstate DoD’s CAS coverage. In other instances, the Base and All Options Value for some IDVs had no awarded value (i.e., face value = 0).

The amounts shown in Table 4-2 are not intended to be a tabulation of DoD CAS-covered awards for FY 2012 through FY 2016. Instead, the results were used to identify CAS coverage under certain conditions for a more directed assessment. The FPDS search tools, copies of contracts and related solicitations, and other databases, such as MOCAS, provided additional information about contract awards.

Discussion

The Section 809 Panel examined CAS program requirements with a view toward streamlining and improving the efficiency and effectiveness of the defense acquisition process and maintaining defense technology advantage. The acquisition environment in which CAS was created in 1972 is not the acquisition environment of today. Not only have DoD acquisition policies, procedures, and practices evolved, but also improvements in areas such as technology, business practices, pricing policies, and oversight have lessened the government’s contract cost accounting risks.

CAS Monetary Thresholds

There are four monetary thresholds within CAS program requirements that determine the nature and extent of CAS-coverage:

- The CAS-covered contract threshold is tied to the Truth in Negotiations Act (TINA) threshold, which was recently raised from \$750,000 to \$2 million, effective July 1, 2018.²² The CAS-covered

²² FY 2013 NDAA, Pub. L. No. 112–239 (2012), as amended through Pub. L. No. 115–91, Sec. 811 (2017).

contract threshold automatically changes when the TINA threshold is changed.²³ The GAO panel did not recommend any change to the CAS-covered contract threshold.

- The trigger contract threshold is now \$7.5 million, based on the GAO panel’s recommendation. CAS does not apply until a contractor receives a CAS-covered award of \$7.5 million or more. Once that threshold is reached, all CAS-covered contracts subsequently awarded to that contractor are subject to CAS.
- The current full CAS-coverage threshold, based on the recommendation of the GAO panel, is a CAS-covered contract of \$50 million or more. Contracts below this threshold are subject to modified CAS-coverage. In 1993, CASB added CAS 405, Accounting for Unallowable Costs, and CAS 406, Cost Accounting Period to modified CAS-coverage.²⁴
- Presently, the threshold for requiring a disclosure statement is \$50 million in total CAS-covered contracts. A disclosure statement is not required, however, for individual business segments of a contractor that have CAS-covered contracts that are valued at less than \$10 million and represent less than 30 percent of sales.

Since the GAO panel’s recommended threshold increases in 1999, the Consumer Price Index for all urban consumers has risen 47 percent. To set a floor for considering threshold increases, the thresholds for the trigger contract, full CAS coverage, and disclosure statement should be increased by 47 percent. The results are shown in Table 4-3. The CAS-covered contract threshold is evaluated separately because of its ties to TINA threshold increases that have occurred since 1999 based on the Consumer Price Index for All Urban Consumers.

Table 4-3. Effect of Increasing CAS Monetary Thresholds Based on Consumer Price Index for All Urban Consumers (Dollars in Millions)

Threshold	Now	Indexed	Minimum
Trigger contract threshold	\$7.5	\$11	\$10
Full CAS-coverage threshold	\$50	\$74	\$75
Disclosure statement threshold	\$50	\$74	\$75

The results displayed in Table 4-3 suggest that the trigger contract threshold be raised to not less than \$10 million and the full CAS-coverage and disclosure statement thresholds be raised to not less than \$75 million. This approach merely applies the effects of inflation on the thresholds, as of 2017. Given the challenge presented to the Section 809 Panel, other ways of structuring monetary thresholds within CAS program requirements should be considered.

When the \$500,000 trigger contract exemption was created in 1974, CASB was persuaded—only 2 years after instituting the initial CAS program requirements— that “maximum benefit to the Government

²³ The TINA threshold is to be periodically adjusted for inflation. Prior to the recent threshold increase to \$2 million, the inflation adjustment was aligned with the Consumer Price Index for All Urban Consumers (base year = 1994). Now, the inflation adjustment will be made under the provisions of Inflation Adjustments of Acquisition-Related Dollar Thresholds, 41 U.S.C. § 1908 (base year = 2000).

²⁴ 58 Fed. Reg. 58798 (Nov. 4, 1993).

with minimum cost can be achieved by limiting the mandatory application of its standards to contractors who receive awards which constitute a substantial majority of the national defense procurement dollars.”²⁵ The CASB essentially adopted the Pareto Principle which postulates that roughly 80 percent of the effects come from 20 percent of the causes. The CASB observed the following regarding the volume of DoD prime contract awards for FY 1973:

*[S]ome 70 percent of the prime contractors of the Department of Defense did not receive one or more negotiated awards in excess of \$500,000 in Fiscal Year 1973. Thus, only 30 percent, or approximately 750 prime contractors, who received contract awards totaling \$20 billion, would continue to be covered. The exemption [trigger contract] would remove coverage from only about 10 percent of the dollar value of annual DOD awards.*²⁶

The CASB’s observation matched what was reported by DoD for prime contract awards for FY 1973.²⁷ Specifically, that report aggregated DoD prime contract awards by size and competitive status.²⁸ Pertinent amounts for negotiated awards, both competitive and noncompetitive, are shown below in Table 4-4.

²⁵ Preamble F to Amendments of 12-24-74, FAR Appendix B.

²⁶ 39 Fed. Reg. 44389 (Dec. 24, 1974).

²⁷ OASD (Comptroller), *Prime Contract Awards - Size Distribution Fiscal Year 1973 (ADA954446)*, Table 4, accessed May 3, 2018, <http://www.dtic.mil/dtic/tr/fulltext/u2/a954446.pdf>.

²⁸ CASB did not exempt negotiated FFP contracts awarded without submission of any cost data until 1980.

Table 4-4. Negotiated Prime Contract Awards FY 1973 (Dollars in Millions)

Award Size	Awards	Distribution	Dollars	Distribution
More than \$500,000	6,758	27%	\$19,637	86%
Between \$100,000 and \$500,00	18,001	73%	\$3,291	14%
Totals	24,759	100%	\$22,928	100%

As shown in DoD’s report on prime contract awards for FY 1973, by installing the trigger contract at \$500,000, the CAS coverage would still be applied to 86 percent of the dollars for negotiated prime contract awards.²⁹ Yet, at the same time, the CAS administrative requirements associated with 73 percent of prime contract awards would be removed. In other words, by applying CAS to only 27 percent of awards, 86 percent of the dollars would be covered by CAS.

The GAO panel performed a similar type of analysis in 1999.³⁰ Raising the threshold for full CAS coverage from \$25 million to \$50 million and raising the trigger contract threshold from \$1 million to \$7.5 million would reduce dollars covered by \$2 billion (i.e., from \$72 billion to \$70 billion, roughly 3 percent).³¹ At the same time, the number of business segments covered would be reduced from 588 to between 362 and 279 (about 45 percent), and almost all of that reduction was in modified CAS-coverage.³²

FPDS, notwithstanding its limitations, still provides the means to take a fresh look at CAS coverage. What can be said about FPDS is that it has captured the universe of potentially CAS-covered contracts. Contracts shown in FPDS as not containing the CAS clause would not be regarded as potentially CAS-covered contracts. Once the FPDS database is further culled to remove likely circumstances of exempted contracts, such as awards less than \$2 million (recently increased CAS-covered contract threshold); formally advertised awards; and awards to educational institutions, governmental entities, and small businesses, then the database becomes more usable for CAS analysis purposes. Using 5 years of contract award data, as opposed to the 1-year period previously used by CASB in 1974 and the GAO panel in 1999, adds credibility to the analysis.

The Section 809 Panel analyzed contract awards containing the CAS clause for DoD-definitive contracts awarded from FY 2012 through FY 2016, as reported by FPDS. IDVs were excluded because of their nature and distortive effect. Also removed from the analysis were the three TRICARE managed care support contracts, as they were likely to distort the results. A summary of reductions in CAS coverage at various breakpoints for potential CAS-covered contract thresholds is shown in Table 4-5.

²⁹ OASD (Comptroller), *Prime Contract Awards - Size Distribution Fiscal Year 1973 (ADA954446)*, accessed May 3, 2018, <http://www.dtic.mil/dtic/tr/fulltext/u2/a954446.pdf>.

³⁰ GAO, *Future Role of the Cost Accounting Standards Board*, SP-99-1 (1999).

³¹ *Ibid.*, 28.

³² *Ibid.*, 29.

Table 4-5. Definitive Contracts with CAS Clause Per FPDS Impact on Percent of CAS-Coverage at Various CAS-Covered Contract Thresholds FY 2012–FY 2016

CAS-Covered Contract Threshold	Dollars Covered	Contracts Covered	Contractors Covered ³³
\$2 million ^(Note)	100%	100%	100%
\$5 million	99%	70%	61%
\$10 million	96%	49%	44%
\$25 million	92%	29%	28%

Note: The \$2 million threshold represents the current state, effective July 1, 2018. Per FPDS, there were 711 contractors receiving 3,326 contracts worth \$233.2 billion in definitive contracts containing the CAS clause (net of exclusions discussed above).³⁴

As shown in Table 4-5, raising the CAS-covered contract threshold had a relatively modest effect on reducing dollars of CAS coverage, but the reduction of CAS-covered contracts and, by implication, CAS-covered contractors was significant. One reason for this is that the size of DoD contract awards has increased substantially over the years. For example, in FY 1973, only about 2 percent of total negotiated prime contracts over the then existing CAS-covered contract threshold of \$100,000 in DoD exceeded \$10 million.³⁵ For FY 2012 through FY 2016, about 36 percent of definitive contracts over \$750,000 containing the CAS clause exceeded \$10 million, and they accounted for 96 percent of the dollars.

The results shown in Table 4-3 almost mirror what was observed by CASB in 1974 when installing the trigger contract: by applying CAS to only 28 percent of awards, 92 percent of the dollars would be covered by CAS. If 92 percent of DoD prime contract dollars can still be CAS covered at a \$25 million threshold, then the CAS-covered contract threshold should be decoupled from the TINA threshold altogether and set accordingly. At \$25 million, the threshold would be high enough to render the trigger contract unnecessary, and it could be eliminated as well.

The results shown in Table 4-3 and Table 4-5 raise the question of not only how much to increase CAS monetary thresholds, but more importantly, how to structure the CAS-covered contract threshold for the future. TINA and CAS serve different purposes. TINA provides the government with remedies for contractor-supplied pricing data that was not accurate, not complete, or not current. TINA is a specific remedy to a specific contract action. CAS imposes systemic requirements on contractor cost accounting practices, whether at modified or full CAS-coverage levels. CAS contractually imposes an obligation for the contractor to adjust contract prices if that contractor decides to change its cost accounting practices during the life of the contract. As such, CAS has broader ramifications than TINA, and this is why CAS is a major reason companies refuse to accept a CAS-covered contract.

³³ FPDS does not record CAS coverage by business segment. To simplify analysis, definitive contracts awarded to the same contractor at different contractor locations were consolidated into a single contractor name, as best as could be determined.

³⁴ Section 809 Panel analysis of FPDS data collected September 2017.

³⁵ OASD (Comptroller), *Prime Contract Awards - Size Distribution Fiscal Year 1973 (ADA954446)*, Table 4, accessed May 3, 2018, <http://www.dtic.mil/dtic/tr/fulltext/u2/a954446.pdf>.

In setting the CAS-covered contract threshold at \$25 million, there are other important risk mitigation factors to consider. First, the FAR imposes what is essentially modified CAS-coverage to all contracts falling under FAR Part 31 cost principles.³⁶ A comparison between modified CAS-coverage and the corresponding FAR provisions is shown in Table 4-6. Simply put, any contractor finding relief from a CAS-covered contract threshold of \$25 million would still be subjected to essentially the same requirements under the FAR. The difference would be that such contracts would not be deemed CAS covered and subjected to CAS administrative requirements.

Table 4-6. Modified CAS Coverage vs FAR Cost Principles

Cost Accounting Standard	Federal Acquisition Regulation
CAS 401, Consistency in Estimating, Accumulating, and Reporting Costs	No specific FAR requirement, although some principles are applied elsewhere (e.g., TINA)
CAS 402, Consistency in Allocating Costs Incurred for the Same Purpose	31.202, Direct Costs 31.203, Indirect Costs
CAS 405, Accounting for Unallowable Costs	31.201-6, Accounting for Unallowable Costs
CAS 406, Cost Accounting Period	31.203, Indirect Costs

With passage of the Sarbanes-Oxley Act of 2002, there have been improvements in the private sector’s efforts to build effective safeguards into risk management infrastructure.³⁷ Although Sarbanes-Oxley’s principal focus is on financial reporting, including compliance with GAAP, a higher degree of importance is placed on a company’s internal controls. The underlying assumption is that an enhanced compliance structure increases confidence in a company’s financial reporting. Compliance with contract obligations is an area of focus. For government contractors, compliance includes safeguards over government contract cost accounting. From a CAS perspective, the basic elements found in modified CAS coverage would need to be present in a defense contractor’s internal control systems.

CAS & Hybrid Contracts

A hybrid contract describes a situation in which portions of a given contract (i.e., contract line item number (CLIN)), have different pricing and payment terms. Examples of such situations could be as follows:

- Part of a contract was awarded based on adequate pricing competition with no certified cost or pricing data provided by the contractor, but other parts of the same contract were not included in the evaluated price for contract award. This situation might occur when the government intends to negotiate pricing for the other parts after contract award, possibly with the submission of certified cost or pricing data.

³⁶ Several FAR cost principles also adopt cost accounting measurement and allocation requirements from certain standards.

³⁷ Sarbanes–Oxley Act of 2002, Pub. L. No. 107–204 (2002).

- Part of a contract contained commercial items that were priced using commercial pricing techniques without submission of certified cost or pricing data, but other parts of the same contract were based on negotiated pricing using certified cost or pricing data. This situation might occur when part of a contract for commercial items contains an item not considered a commercial item (i.e., major modification not performed commercially) and the price for that item was separately negotiated with submission of certified cost or pricing data.
- A contract has different contract type structures among the various CLINs, such as FFP pricing for some CLINs (e.g., unit prices for supplies and services) and cost reimbursement terms for other CLINs (e.g., travel, other direct charges).

In hybrid contracts, parts of a contract could be otherwise exempt from CAS program requirements if those parts had stood alone as a separate contract. The overriding question in such situations is if parts of a contract can be considered exempt from CAS and, if so, how such exemptions would be applied to CAS program requirements. For example, should a \$20 million contract that contained \$15 million in FFP CLINs awarded without submission of certified cost or pricing data be regarded as a \$20 million contract or \$5 million contract for CAS purposes? The answer would impose different CAS program requirements.

Even if hybrid contracts do not involve a portion that would be considered otherwise exempt, there still can be administrative concerns. For example, when aggregating CAS-covered contracts for purposes of determining the cost effects of changes in cost accounting practice, how should hybrid contracts be treated?

The CASB has long been aware of the hybrid contract issue. The CASB acknowledged the existence of such conditions as early as 1974:

Reduction of contract price by exclusion of commercial items. Some commentators, in reading the introductory comments to the Board's initial publication of this exemption, interpreted the phrase "minimum contract amount requiring compliance" in a manner not at all intended by the Board. These commentators interpreted this phrase to permit the price of a contract subject to standards to be reduced by the value of those individual contract items or subassemblies of final contract items whose prices could be considered to be "catalog" or "market" prices, if sold separately. They requested that the regulation be clarified to reflect their interpretation of the Board's introductory comments.

Those requesting this clarification misunderstood the Board's intentions. The Board does not intend that the price of a contract be adjusted to exclude the price of items or subassemblies which, if purchased separately, might be exempt from the Board's promulgations. Consequently, the change in the regulation requested by commentators on this point would be completely inappropriate.³⁸

The issue of hybrid contracts in 1974 was mostly related to contracts for commercial items. Portions of the contract were based on established catalog prices; other portions were based on cost data. The full contract was regarded as CAS-covered. Subsequent commercial item acquisition reforms that occurred

³⁸ 39 Fed. Reg. 44389 (Dec. 24, 1974).

in the 1990s, including creating a uniform contract format for commercial items that did not contain the CAS clause, partially alleviated the concern. The issue persists today in other areas as the government consolidates its requirements under omnibus contracts with multiple acquisition options (e.g., competed, sole source), proposal data requirements (i.e., certified cost or pricing data, cost or pricing data, other cost or pricing data), and payment provisions (e.g., FFP, time and material [T&M], cost reimbursement). In the past, private industry on multiple occasions had asked CASB to provide guidance, but without success.³⁹ Private industry presented testimony before the GAO panel on the issue, also without any action taken. For example, the Government Electronic and Information Technology Association stated:

[T]he CAS Board has not yet acted on the issue of hybrid commercial contracts ... This might occur, for example, on a firm-fixed price contract for commercial items, which contains a relatively minor provision ... for on-site maintenance to be paid on a time and materials basis. Assuming that the time and materials contract line item does not qualify for an exemption, is the entire contract CAS-covered or just the time and materials contract line item? In deciding the extent of CAS-coverage and Disclosure Statement obligations is the determining value the entire contract or just the time and materials portion?⁴⁰

DoD contracting officers are instructed to prepare multiple CARs when the contract action includes line items with more than one type of contract pricing arrangement (e.g., fixed-price, cost-plus-fixed-fee).⁴¹ A separate CAR is required for each type of contract pricing arrangement having a dollar value greater than \$5 million for that type. During FY 2012 through FY 2016, FPDS reported 204 definitive contracts with multiple CARs, denoting the presence of hybrid contracts. The number of hybrid contracts is likely to be larger in view of the \$5 million reporting criterion for each hybrid CLIN.

To present a more specific understanding of the nature and purpose of hybrid contracts, the Section 809 Panel selected a sample of hybrid contracts from the definitive contract population for electronic copies of selected contracts and obtained associated solicitations. Pertinent information was also acquired via the FPDS search tool. A synopsis of selected acquisitions is presented below.

- In 2016, the Air Force awarded a contract, with full and open competition, for computer facilities management services covering a base period and five option periods. The awarded value was \$72.9 million. The contract contained 274 CLINs, of which 231 were FFP, 35 were cost reimbursement for incidental costs (e.g., travel, supplies, directed overtime), and six were award fee provisions. The cost reimbursement CLINs accounted for about 17 percent of the contract value with the estimated values being inserted in the solicitation by contracting officers and not evaluated for award. Certified cost or pricing data were expressly not required, but supporting data other than certified cost and pricing data were requested for indirect labor rates. Because a portion of the contract requirements was on a cost reimbursable basis, offerors

³⁹ For example, Council of Defense and Space Industry Associations letters to Dr. Steven Kelman, CASB Chairman, May 15, 1996, and July 30, 1997.

⁴⁰ Dan C. Heinemeier, "Issues on the Applicability of Cost Accounting Standards," in *Future Role of the Cost Accounting Standards Board* (Collingdale, PA: Diane Publishing, 1999), 316-317.

⁴¹ Reporting Data, DFARS PGI 204.606(1)(ii)(A)(2).

were instructed to provide a copy of their disclosure statement; identification of CAS compliance, if applicable; and any CAS violations and subsequent corrections.

- In 2014, the Army awarded a contract, with full and open competition, for information technology and telecom facility operation and maintenance covering a base period and five option periods. The awarded value was \$516.7 million. The contract contained 73 CLINs, of which 12 were FFP, 21 were fixed-price-incentive (FPI), 20 were cost-plus-fixed-fee (CPFF), and 20 were T&M. The FPI arrangement, which represented 66 percent of the contract price, included both cost and performance incentives. Section L of the solicitation did not specify if certified cost or pricing data were required, although FPDS indicated that none were requested. Offerors were instructed to submit price proposals in a preset template.

Certain contracts awarded by the Defense Health Agency (DHA) possibly reveal another type of hybrid contract involving costs included in the contract value that are not actually incurred by the contractor in the performance of the contract. These might be described as *pass-through* expenditures. In 2015, DHA issued a solicitation for managed care support for DoD's TRICARE program covering 6 years (plus an option for 6 additional months). The award was to be based on adequate price competition, and no cost or pricing data were required. The resulting contract would contain 30 CLINs of which 11 were FFP, seven were CPFF, five were cost reimbursement, and seven were fixed fee. The CPFF CLINs were for patient claims that were to be reimbursed by the contractor under TRICARE guidelines and then vouchered to the government paying office. The claims were not costs of performance incurred by the contractor, but rather, they were obligations incurred by the TRICARE beneficiaries (e.g., doctor bills, hospital bills). The remainder of the contract is essentially FFP awarded on the basis of adequate price competition and otherwise exempted from CAS program requirements. The patient claims represented 94 percent of the two contracts (\$55 billion of \$58 billion) awarded under this particular solicitation. The two contracts contained the CAS clause.

The concern about hybrid contracts is not curtailing government practices for creating contracting vehicles intended to promote economy and efficiency in acquiring supplies and services. It is instead about the lack of CASB guidance on how to treat hybrid contracts when applying CAS program requirements. It seems appropriate to expressly recognize within CASB regulations existence of hybrid contracts and to provide guidance on how to apply CAS program requirements. The benefit would not only be a more precise application of CAS, but it might also bring more companies into the government marketplace if such application were better understood.

CAS and IDVs

IDVs enable government purchasers to establish contracts with single or multiple sources to satisfy requirements over an extended period.⁴² Industry has referred to IDVs as *hunting licenses*, mostly because they impose contract obligations and require resources solely for the future chance to win work under the IDV. According to FPDS, the predominant contract type has been indefinite delivery contracts (IDC), but basic ordering agreements (BOAs) and blanket purchase agreements (BPAs) have been used for the same reason.

⁴² Definitions, FAR 4.601, defines IDVs as an indefinite delivery contract or agreement having one or more ordering provisions.

The FPDS data for IDVs have limited value; although data are collected at the IDV level, the important events occur at the order level. Examining IDVs by dollars is meaningless because the amounts bear no relationship to the value of orders actually placed under IDVs. FPDS does, however, provide some insight into issues concerning CAS program requirements for IDVs, shown in Table 4-7.

**Table 4-7. Number of IDV Awards Containing CAS Clause Per FPDS
 FY 2012–FY 2016**

Type	2012	2013	2014	2015	2016
BOA	80	59	68	79	96
BPA	14	13	4	6	6
IDC ^(Note)	650	643	634	657	633
Total	744	715	706	742	735

Note: FAR 16.5 defines indefinite delivery contracts as definite-quantity contracts, requirements contracts, and indefinite-quantity contracts.

The 3,642 IDVs reported for FY 2012 through FY 2016 together amounted to 2,435 acquisitions. The data reported at the IDV level tended to be FFP contracts (65 percent), awarded under full and open competition (47 percent), with no submission of cost or pricing data (53 percent). Many multiple award IDVs provided the mechanism for placing an order under a variety of circumstances, which included the possibility of requiring the submission of certified cost or pricing data during order placement.

To gain a better insight into the nature of IDVs, the Section 809 Panel selected a sample of IDCs for each service from among the largest acquisitions in terms of numbers of separate contracts issued under a particular solicitation. Electronic copies of selected contracts and associated solicitations were obtained. Some information was acquired via the FPDS search tools. A synopsis of each sampled acquisition is presented below. Each of these contracts, according to FPDS, contained the CAS clause.

- In 2013, the Army awarded multiple IDCs to 41 different contractors for support services through FY 2018. The awards were made with full and open competition, and no cost or pricing data were obtained. Offerors were instructed to propose ceiling labor rates for base and option periods. The contract contained different pricing terms for various CLINs (i.e., FFP, CPFF, cost reimbursement) which allowed pricing arrangements to be established separately for each order. The cumulative total of all task orders was not to exceed \$495 million, and the contract minimum was \$2,500. The face value of each of the 41 contracts awarded was \$495 million (aggregated as \$20.3 billion in FPDS). As of the end of FY 2016, funds totaling about \$193 million had been obligated, with almost 90 percent going to just five contractors. Obligations for the contract minimum had been issued to 24 contractors.
- In 2012, the Navy awarded multiple IDCs to 43 different contractors for training services through FY 2020. The awards were made with full and open competition, and no cost or pricing data were obtained. Offerors were instructed to provide direct labor rates and indirect expense rates for evaluation purposes only that were expressly not considered to be certified cost or pricing data. The contract contained different pricing terms for various CLINs (i.e., FFP, FPI, CPFF, CPIF) which allowed pricing arrangements to be established separately for each order. The contract provided for the possibility that cost or pricing data might be obtained at the time

of order placement. The cumulative total of all task orders was not to exceed \$780 million, and the contract minimum was \$1,000. The face value of each of the 43 contracts awarded was \$780 million (aggregated as \$33.5 billion in FPDS). As of the end of FY 2016, task orders obligations totaling roughly \$58 million had been issued, with 97 percent going to just five contractors. Obligations for the contract minimum had been issued to 37 contractors.

- In 2015, the Air Force awarded multiple IDCs to 25 different contractors for training systems through FY 2025. The awards were made with full and open competition, and no cost or pricing data were obtained. Offerors were instructed to propose FFP level-of-effort (FFP/LOE) wrap rates for labor. As adequate price competition was expected, no additional cost information was requested. The contract type would be established per individual task order (i.e., FFP, FFP/LOE, FPI, LH, T&M, CPIF, CPFF). The contract provided for the possibility that cost or pricing data might be obtained at the time of order placement. The cumulative total of all task orders was not to exceed \$20.9 billion, and the contract minimum was \$1,000. The face value of each of the 25 contracts awarded was \$20.9 billion (aggregated as \$522.5 billion in FPDS). According to FPDS, task orders obligations totaling about \$57 million had been issued, with 99 percent going to just four contractors. Obligations for the contract minimum had been issued to 20 contractors.

In each case the IDC was structured as an administrative vehicle for placing orders during the base year and option periods under a variety of pricing arrangements. Each sampled contract was conducted under full and open competition. Each solicitation in different ways expressly stated that the pricing information was not *certified* cost or pricing data. Subsequent orders would be placed under a variety of possible acquisition methods, order types, and price evaluation methods. Very few of the awarded contracts had received orders beyond the minimum.

In 1976, one of the first issues addressed by the DoD CAS Working Group concerned the question of CAS applicability to basic agreements and BOAs. The question posed was whether a basic agreement or BOA should include in its overall valuation for CAS threshold purposes individual orders that were valued less than the CAS-covered contract threshold (then \$100,000). The question was answered from a broader perspective; that is, because basic agreements and BOAs were expressly not contracts according to the ASPR (now FAR), CAS applicability was to be determined separately for each order.⁴³ This guidance has not been incorporated into CASB regulations or the FAR, but it is understood to still be in effect.⁴⁴ There is no DoD CAS Working Group guidance concerning IDCs which, unlike basic agreements, BOAs, and BPAs, are considered to be contracts. IDCs include definite-quantity contracts, requirements contracts, and indefinite-quantity contracts (see FAR Subpart 16.5).

In addition to the obvious hybrid contract issues concerning IDVs, excluding basic agreements, BOAs, and BPAs, the question regarding IDCs is how to consider their value for purposes of applying CAS monetary thresholds when the contract price on the face of the contract has no meaning. As seen from

⁴³ DoD CAS Working Group Paper 76-2, "Application of CAS to Contract Modifications and to Orders Placed Under Basic Agreements – Interim Guidance," (Feb. 24, 1976) in *Code of Federal Regulations, 1949-1984*, U.S. Government Printing Office, 1980.

⁴⁴ DCAA, *Contract Audit Manual*, 8-102.2b, accessed March 28, 2018, http://www.dcaa.mil/Content/Documents/cam/Chapter_08_-_Cost_Accounting_Standards.pdf.

the examples, the face value of many IDCs awarded under a given solicitation was the full projected value of the acquisition. Also, in many other cases, the face value of the IDC was \$0.

As the sampled IDCs reveal, the CAS clause was included in the IDC based on the prospect (however unlikely) of obtaining certified cost or pricing data at order placement. The government was, in effect, postponing CAS coverage decisions until the time of order placement. The CASB regulations do not accommodate this condition because CAS determinations on contracts are made at the time of contract award. Given the widespread use of IDCs, guidance is needed in this area for much the same reasoning as with hybrid contracts. CASB regulations should adopt the DoD CAS Working Group guidance for all IDVs, including IDCs, notwithstanding their inherent legal differences from basic agreements, BOAs, and BPAs.

CAS and Commercial Items

From the outset, CAS program requirements have been exempted on contracts for commercial items. Until 1994, this exemption was expressed as “contracts where price was based on established catalog or market prices of commercial items sold in substantial quantities to the general public.”⁴⁵ This same exemption had long been applied to TINA.

During the 1990s, there was a movement toward greater use of commercial items to satisfy government requirements. One of the impediments was the obsolete wording of the CAS (and TINA) commercial item exemption. The notion of a catalog price of something sold in substantial quantities to the general public was far too static to be applied in the rapidly evolving commercial marketplace. *Something sold* implied something was available in the market that was sold enough times to become a *substantial quantity*. This view denied the government access to the newest products and leading-edge commercial technologies. The commercial marketplace was progressing toward more bundled solutions as opposed to market basket offerings suggested by the notion of catalog pricing. If the government was going to achieve its goal of greater use of commercial items, then it needed to change its perception of catalog and market price. Accordingly, Congress in 1994, under FARA, replaced the catalog and market price wording to simply “contracts and subcontracts for the acquisition of commercial items.”⁴⁶

At the time, CASB chose not to use the wording adopted by Congress and instead limited the exemption to FFP contracts and FP contracts with economic price adjustment (FFP/EPA), provided that the price adjustment was not based on actual costs incurred.⁴⁷ This choice caused an immediate conflict with the FAR because there were more contract types permitted by Congress for the acquisition of commercial items than recognized by CASB. The conflict was further exacerbated by CASB’s failure to keep up with the pace of change as more permissible contract types were added for the acquisition of commercial items.

Why CASB found it necessary to single out FFP/EPA based on actual costs incurred was never adequately explained. The CASB admitted that such contracts were “rarely used, if ever.” The controls imposed by the FAR on FFP/EPA based on actual costs incurred would seem to have negated the

⁴⁵ 37 Fed. Reg. 4139 (Feb. 29, 1972).

⁴⁶ FY 1996 NDAA, Pub. L. No. 104–106, Sec. 4205 (1996), codified at Cost Accounting Standards, 41 U.S.C. § 1502(b)(1)(C)(i).

⁴⁷ 62 Fed. Reg. 31294 (Jun. 6, 1997).

necessity to apply CAS to this contract type (see FAR 16.203-4). The risks to the government had to be miniscule. Moreover, in taking this action, CASB created another hybrid contract situation: part of the FFP/EPA contract would be FFP, and part would be cost reimbursement.

The commercial item exemption in its current state under CAS program requirements is as follows (48 CFR 9903.201-1(b)(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 contracts and subcontracts for the acquisition of commercial items.

On October 5, 2011, CASB approved a proposed rule for publication to bring the commercial item exemption wording in line with what had been adopted by Congress: “contracts and subcontracts for the acquisition of commercial items.”⁴⁸ The proposed rule was not published until a year later.⁴⁹ Few public comments were received, with none of them having any import to the proposed change. What was proposed by CASB was simply the wording used by Congress and codified at 41 U.S.C. § 1502(b)(1)(C)(i). A final rule has not yet been issued by CASB.

CAS and Cost Data

Since the initial installation of CAS program requirements in 1972, there has been an on-going debate over the appropriateness of applying CAS to contracts for which price was not based on cost data. There was no progress until 1980, when CASB added an exemption for FFP contracts awarded without submission of cost data.⁵⁰ The CASB continued to hold the narrow view that any cost data submitted, no matter the reason, should make contracts subject to CAS. The CASB stated:

Situations occur in which cost data are submitted in support of a price but are not certified because the award is designated as adequate price competition. Whether the data are used in a particular case can be difficult to establish. The Board however is satisfied that such data would not be submitted unless they were to be used.

Subsequently, it has been argued that cost data submitted by a contractor for reasons other than establishing contract price should not make contracts subject to CAS. Examples of other reasons for submitting cost data included cost data used for price realism purposes (i.e., assessing an offeror’s understanding of program requirements) or used for evaluating compensation plans (i.e., assessing an offeror’s ability to attract skilled technicians needed to perform the work). During this time, in concert with the commercial item acquisition reforms, there was a movement within the government to better define what was and what was not certified cost or pricing data. In 1995, the government created a *bright-line test* by creating two categories of cost data: (a) cost or pricing data and (b) information other

⁴⁸ Minutes of the October 5, 2011 CASB Meeting, accessed March 28, 2018, https://obamawhitehouse.archives.gov/sites/default/files/omb/procurement/casb/minutes/casb-70-meeting_minutes.pdf.

⁴⁹ 77 Fed. Reg. 69422 (Nov. 19, 2012).

⁵⁰ 45 Fed. Reg. 62011 (Sept. 18, 1980).

than cost or pricing data.⁵¹ Cost or pricing data meant certified cost or pricing data. All other cost or pricing data was information other than cost or pricing data.

The cost data issue was taken up by the GAO panel in 1999. The GAO panel recommended that CAS be exempt on FFP contracts for which the government did not obtain certified cost or pricing data at the time of award. The GAO panel reached this conclusion because when certified cost or pricing data were not obtained, the safeguards provided by CAS would, consequently, not be necessary.

The GAO panel's recommendation was enacted by Congress under the FY 2000 NDAA, as previously mentioned. Congress added the phrase "on the basis of adequate price competition" to the exemption—something the GAO panel had not recommended. The added phrase has the effect of being more limiting because "adequate price competition" is just one of the techniques set forth in the FAR to perform price analysis, as opposed to cost analysis. Certified cost or pricing data is not obtained when performing price analysis. The legislative history is unclear on why Congress included this phrase. The CASB implemented Congress's version in 2000.⁵²

A later advisory panel concluded in 2007 that, notwithstanding the so-called bright-line test, confusion remained about what cost or pricing data should be obtained by contracting officers to assess price reasonableness.⁵³ That panel observed instances in which cost or pricing data had not been obtained in situations when such data should have been obtained and placed blame on the bright-line test. In 2010, in response to that advisory panel's recommendations, the categories of cost data set forth in the FAR were reaggregated from two groupings into three groupings at FAR 2.101: (a) certified cost or pricing data, (b) cost or pricing data, and (c) data other than certified cost or pricing data.⁵⁴

The FAR's new three categories of cost data created an immediate conflict with CASB's exemption which had been based on the FAR's previous two categories of cost data. On October 5, 2011, CASB published a proposed rule to change the exemption wording to "submission of *certified* cost or pricing data" [emphasis added] in order to be compatible with the FAR's new definition.⁵⁵ A final rule was only recently issued by CASB.⁵⁶ Presently, the exemption at 48 CFR 9903.201-1(b)(15), in its limiting form, is as follows: "Firm-fixed-price contracts or subcontracts awarded on the basis of adequate price competition without submission of cost or pricing data."

Notwithstanding CASB's pending rule exempting FFP contracts awarded without submission of certified cost or pricing data, practical problems remain. First, there are fixed-price contract types, other than FFP, where price is not based on certified cost or pricing data. The universe of fixed-price type contracts is much broader than FFP contracts (see FAR 16.2). Second, the present wording does not recognize that adequate price competition is just one of the price analysis techniques described in

⁵¹ 60 Fed. Reg. 48208 (Sep 18, 1995).

⁵² 65 Fed. Reg. 5990 (Feb. 7, 2000).

⁵³ Acquisition Advisory Panel, *Report of the Acquisition Advisory Panel to the Office of Federal Procurement Policy and the United States Congress, January 2007*, accessed March 28, 2018, https://www.acquisition.gov/sites/default/files/page_file_uploads/ACQUISITION-ADVISORY-PANEL-2007-Report_final.pdf.

⁵⁴ 75 Fed. Reg. 53135 (Aug. 30, 2010). FPDS does not presently capture the distinction between certified cost or pricing and noncertified cost or pricing data. FPDS only records whether cost or pricing data was obtained.

⁵⁵ 76 Fed. Reg. 61660 (Oct. 5, 2011).

⁵⁶ 83 Fed. Reg. 8634 (Feb. 28, 2018).

FAR 15.404-1 for evaluating pricing proposals. Price analysis does not rely on the submission of certified cost or pricing data. As it stands, the exemption at 48 CFR 9903.201-1(b)(15) runs counter to many of the procurement reforms installed over the years. To be fully useful, the exemption needs to apply to any fixed-price type contract whose price is based on price analysis without the submission of certified cost or pricing data. The three conditions of (a) fixed-price type contract, (b) price analysis, and (c) no certified cost or pricing data should be enough control the application of such an exemption.

CAS Notices and Clauses

When CASB published its CAS notice and CAS clause in 1972, it was reasonably clear that CASB intended the CAS notice be inserted in solicitations *likely* to result in a CAS-covered contract and that the CAS clause be inserted *only* in contracts that were actually CAS covered. Today, as made obvious from the FPDS data for the 5-year period FY 2012 through FY 2016, the CAS clause is being placed in contracts that are not likely to have been CAS covered. For example, Table 4-8 shows the number of contracts containing the CAS clause that were awarded under full and open competition or did not require the submission of cost or pricing data. Both conditions could be a reason for exempting the contract from CAS, although it is recognized that CAS might still apply in certain situations (e.g., CPFF contract awarded with full and open competition, hybrid contracts).

Table 4-8. Percentage of Contracts Awarded by Numbers of Actions Full and Open Competition or No Cost or Pricing Data Per FPDS FY 2012—FY 2016

Type	Definitive Contracts (Note 1)	Acquisitions Using IDCs (Note 2)
Full & Open Competition	51%	50%
No Cost or Pricing Data	43%	54%

Notes:

(1) Based on definitive contracts valued over \$750,000 at time of award.

(2) Based on acquisitions using IDCs valued over \$750,000 at time of award. IDCs aggregated by acquisitions rather than by contracts to avoid distortive effect of multiple contracts awarded under a single acquisition (see discussion on IDVs).

This condition was caused, in part, by the way the CAS clause was initially crafted by CASB. The CAS clause begins with the provision, “Unless the contract is exempt under 9903.201–1 [exemptions] and 9903.201–2 [modified CAS-coverage].”⁵⁷ This verbiage creates the impression that the CAS clause is self-deleting or, as some have observed, self-initiating. Such an approach may have been reasonable in 1972 given the low monetary threshold for a CAS-covered contract (then \$100,000) and the few exemptions available. Almost all prime contract awards of negotiated national defense contracts would have been CAS covered in 1972. This approach, though perhaps expedient, is not reasonable for today’s acquisition environment; it is poor contract construction for imposing a clause of such importance.

Another contributing factor is how the CAS notices and CAS clauses work under the FAR, which was created in 1984 during the period when CASB did not exist. In 1984, the Armed Services Procurement Regulation and Federal Procurement Regulation were combined into the FAR. In addition to

⁵⁷ Contract Clauses, 48 CFR 9903.201-4.

combining and reshaping procurement policies and practices, the FAR changed how the solicitation and contract award process functioned. The Uniform Contract Format for negotiated contracts at FAR 15.201-4 prescribes the structure for preparing solicitations and contracts. The structure of FAR Table 15-1 is shown in Table 4-9.

Table 4-9. FAR Table 15-1 Uniform Contract Format

Section	Title
Part I – The Schedule	
A	Solicitation/contract form
B	Supplies or services and prices/costs
C	Description/specifications/statements of work
D	Packaging and marking
E	Inspection and acceptance
F	Deliveries or performance
G	Contract administration data
H	Special contract requirements
Part II – Contract Clauses	
I	Contract Clauses
Part III – List of Documents, Exhibits, and Other Attachments	
J	List of Attachments
Part IV – Representations and Instructions	
K	Representations, certifications, and other statements of offerors or respondents
L	Instructions, conditions, and notices to offerors or respondents
M	Evaluation factors for award

The solicitation contains Parts I, II, III, and IV, which means the solicitation would normally contain the CAS clause, especially if the resulting contract were likely to be CAS-covered. The CAS clause itself, however, is incorporated by reference to the corresponding FAR provision, rather than being inserted in Section I by its full text. In preparing the resulting contract, contracting officers are instructed not to physically include Part IV but retain it in the contract file. A major part of the solicitation that determines CAS coverage, such as the instruction on submitting cost or pricing data or describing the extent of price competition, does not become part of the resulting contract. Stated another way, an important piece of information for activating the CAS clause’s self-deleting provision is unavailable to the contracting parties.

FAR 30.201-4(a) instructs contracting officers to insert the CAS clause in negotiated contracts *unless* the contract is exempted or the contract is subject to modified coverage. Logically, the CAS clause would be placed in any solicitation, as it is reasonable to put potential offerors on notice that the resulting contract might be CAS covered. More importantly, there is no instruction in the FAR advising contracting officers to remove the CAS clause from the Uniform Contract Format if it is not CAS

covered.⁵⁸ In practice, as FPDS clearly shows, contracting officers tend to leave the CAS clause in the resulting contract.

As a practical matter, there are three problems with including the CAS clause, by reference, in contracts that are not CAS covered:

- Contracting officers (i.e., procuring contracting officer) leave the determination of CAS coverage up to other parties, which typically involves a different contracting officer (i.e., administrative contracting officer). The CARs prepared by contracting officers will be of little help because they only record if the CAS clause is in the contract. In cases for which discerning CAS coverage becomes necessary, such as having to perform a cost impact analysis due to a change in cost accounting practice, this effort often occurs well after contract award, resulting in a complicated and laborious process. Because Part IV (Sections L and M) has been removed from the awarded contract, key information for establishing CAS coverage may not be readily available or available at all. The CAR, FPDS, and MOCAS will be of no help.
- Some companies, as previously stated, will not pursue a government business opportunity if the resulting contract might impose CAS. That the CAS clause is self-deleting provides these companies little assurance. Their risk is too great. An abundance of caution causes such companies to pass on solicitations that may result in the CAS clause being included in the resulting contract. The lack of CASB guidance on hybrid contracts and IDVs only exacerbates the problem. As the GAO panel observed, a company's decision to not be a part of the government supplier base is not in the government's best interests.
- As long as contracting officers continue to include the CAS clause in contracts that are otherwise exempt, the FPDS database (and MOCAS) will be of little use on CAS matters. The reality is that DoD (or perhaps any federal agency) cannot say what the population of CAS-covered contracts actually is.

It is simply good contracting practice to place in contracts only those terms and conditions that are actually imposed on a contractor. Conversely, it is poor practice to place clauses in contracts that may or may not be activated, unless the situation calls for that type of clause, like a clause contingent on possible future events (e.g., disputes clause). The CAS clause imposes substantive systemic, financial, and administrative obligations on the part of the contractor, especially for full CAS coverage. Such obligations need to be more clearly understood between the contracting parties rather than communicated through a clause that is incorporated by reference to the FAR provision that may or may not be activated. Contracting officers should make an affirmative written determination at the time of award that a contract will be CAS-covered and provide contractors means to confirm or question contracting officers' determinations.

⁵⁸ Interestingly, Administration of Cost Accounting Standards, FAR 52.230-6(l)(1), instructs contractors to not use self-deleting CAS clauses in subcontracts.

Conclusions

Nothing should be taken from the discussion of issues about CAS program requirements as meaning that CAS does not provide a worthwhile means of oversight for cost accounting on DoD contracts. Any negotiated contract that *establishes its price* based on an accumulated cost build-up methodology, projected or actual, should be subjected to CAS program requirements, unless otherwise exempted.

The individual issues discussed, taken as a whole, expose CAS program requirements that are out of touch with today's business practices in the public and private sectors. CAS program requirements should be reshaped for the future as noted below:

- Decouple the CAS-covered contract monetary threshold from the TINA monetary threshold and set the monetary threshold at \$25 million. The monetary threshold should be stated at the outset of 48 CFR Chapter 99 and, thereby, eliminate the need for the monetary exemption at 9903.201-1(b)(2), which is used for inflation adjustments.
- Eliminate the trigger contract exemption at 41 U.S.C. §1502(b)(1)(C)(iv) and 48 CFR 9903.201-1(b)(7), as it would no longer be necessary if the CAS-covered contract monetary threshold were raised to \$25 million.
- Raise the full CAS-coverage monetary threshold to \$100 million.
- Raise the disclosure statement monetary threshold to \$100 million. The condition for not requiring a disclosure statement from a segment that has CAS-covered contracts totaling less than \$10 million and representing less than 30 percent of segment sales should be eliminated, as it would be no longer necessary.
- Revise commercial item exemption at 48 CFR 9903.201-1(b)(6) as proposed by CASB in 2012.
- Expand the CAS exemption at 48 CFR 9903.201-1(b)(15) to include any *fixed-price type contract* whose price is based on *price analysis* without the submission of *certified* cost or pricing data.
- Add specific guidance for hybrid contracts to CAS program requirements at 48 CFR 9903.201-1 that would exclude exempted portions of contracts from CAS-coverage, including the application of monetary thresholds. Add a definition of *hybrid contract* to the CAS definitions at 48 CFR 9903.301.
- Require contracting officers, to the maximum extent practicable, to identify the portions of the contract that are not CAS-covered when a hybrid contract is contemplated.
- Add specific guidance for indefinite delivery vehicles to CAS program requirements at 48 CFR 9903.201-1 that would determine CAS applicability at the time of order placement. Evaluate each order for CAS applicability on its own. Add a definition of *indefinite delivery vehicle*, using the existing definition at FAR 4.601.
- Place the CAS clause by full text in contracts that at the time of award are CAS-covered pursuant to CFR Part 9903. Require contracting officers to make an affirmative written

determination at the time of award that a given contract, in whole or part, will be CAS covered. Provide contractors means to confirm or question contracting officers' determinations.

- Revise the CAS clause to (a) remove the self-deleting provision for CAS coverage, (b) accommodate provisions for hybrid contracts and indefinite delivery vehicles, and (c) state that, if subsequent to award of the CAS-covered contract, it is established that the contract, or portions thereof, should not have been determined to be CAS covered, the CAS clause will be deemed inapplicable to the contract, or portions thereof.

Implementation

Legislative Branch

- Modify 41 U.S.C. § 1502 to accomplish the following:
 - Decouple monetary threshold for a CAS-covered contract from the TINA monetary threshold and set at \$25 million.
 - Eliminate the trigger contract exemption.
 - Remove the CAS exemption for firm, fixed-price contracts or subcontracts awarded on the basis of adequate price competition without submission of certified cost or pricing data as a legislative exemption (it duplicates what is already stated at 48 CFR 9903.201-1(b)(15)).

Executive Branch

- CASB should revise 48 CFR Chapter 99 to accomplish the following:
 - Raise CAS-covered contract threshold to \$25 million;
 - Eliminate trigger contract exemption;
 - Raise full CAS-coverage threshold to \$100 million;
 - Raise disclosure statement threshold to \$100 million and eliminate segment exemption;
 - Revise commercial item exemption;
 - Revise certified cost or pricing data exemption;
 - Provide guidance for hybrid contracts;
 - Provide guidance for indefinite delivery vehicles;
 - Prohibit placing CAS clause in contracts that are not CAS-covered; and
 - Remove self-deleting provision of the CAS clause.
- The FAR Council should harmonize all relevant sections of the FAR affected by CASB revisions to 48 CFR Chapter 99.

Implications for Other Agencies

- CAS applies to all federal agencies, and they would be affected by all of the recommended revisions to 41 U.S.C. § 1502 and 48 CFR Chapter 99.

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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COST ACCOUNTING STANDARDS

[(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.—

COST ACCOUNTING STANDARDS

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

COST ACCOUNTING STANDARDS

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.

COST ACCOUNTING STANDARDS

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:

COST ACCOUNTING STANDARDS

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.—

COST ACCOUNTING STANDARDS

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

COST ACCOUNTING STANDARDS

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—

COST ACCOUNTING STANDARDS

- 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.—

COST ACCOUNTING STANDARDS

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.—

COST ACCOUNTING STANDARDS

(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.

COST ACCOUNTING STANDARDS

(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.~~

COST ACCOUNTING STANDARDS

(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.—

COST ACCOUNTING STANDARDS

(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

COST ACCOUNTING STANDARDS

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

COST ACCOUNTING STANDARDS

(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—

COST ACCOUNTING STANDARDS

(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**.

COST ACCOUNTING STANDARDS

(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 in direct costs and the basis used for allocating in direct 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** 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

- 9903.301 Definitions.
- 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.
- 9903.302-2 Change to a cost accounting practice.
- 9903.302-3 Illustrations of changes which meet the definition of “change to a cost accounting practice.”
- 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.
- 9903.304 Concurrent full and modified coverage.
- 9903.305 Materiality.
- 9903.306 Interpretations.
- 9903.307 Cost Accounting Standards Preambles.

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