National Defense Industrial Association

PROMOTING NATIONAL SECURITY SINCE 1919

2111 WILSON BOULEVARD, SUITE 400
ARLINGTON, VA 22201-3061
(703) 522-1820 • (703) 522-1885 FAX
WWW.NDIA.ORG

April 11, 2016

Office of Acquisition Policy
Attn: Ms. Kathlyn Hopkins
General Services Administration
1800 F Street NW
Washington, DC 20405

Subject: Information Collection 9000-0129, "Cost Accounting Standards Administration"

Dear Ms. Hopkins:

On behalf of the more than 1,600 member companies and the nearly 90,000 individual members that comprise the National Defense Industrial Association (NDIA), I offer the following comments on the subject information collection. We appreciate this opportunity to respond to Information Collection 9000-0129, Cost Accounting Standards Administration. Most industry participants will agree that, from both the contractor's and the Government's perspective, administering cost accounting practice changes is one of the most challenging and time consuming aspects of Cost Accounting Standards (CAS) Administration. Nevertheless, most will also agree that information required from contractors pursuant to Federal Acquisition Regulation (FAR) Subpart 30.6 and FAR 52.230-6 is generally necessary for the Government to identify, understand, evaluate, and negotiate the impact of cost accounting practice changes. However, we believe there is opportunity to reduce the burden on contractors and the Government by modifying when, how, and how often this information is collected from contractors and dispositioned by the Government.

Although FAR Subpart 30.6 and FAR 52.230-6 apply equally to all CAS-covered contracts, compliance and administration of these rules vary widely due to the uniqueness of each contract, contractor, and cognizant agency official. Despite the inherent imprecision of any annual reporting burden estimate, our members' experiences strongly suggest that the Government's initial estimate is too low. Throughout the remainder of this letter, we share our members' insights into each of the factors bearing upon the annual reporting burden, including a revised estimate that we believe is more plausible. We also offer several recommendations to enhance the quality, utility, and clarity of when, how, and how often information is collected, including the expected reductions in both contractor and Government annual burdens.

Annual Reporting Burden Estimate

Our revised annual reporting burden estimate considers each of the three factors used by the Government to derive its initial estimate. We define each of these factors and describe our recommended adjustments below:

Number of Respondents. "Respondents" for CAS Administration purposes are either "Business Units" (as defined in CAS 410), "Segments," or "Home Offices" (as defined in CAS 403). Contractors are required to define, describe, and disclose their cost accounting practices consistent with this prescribed organizational construct. Therefore, some contractors may be a single Respondent (a Business Unit), while other contractors may contain many Respondents (multiple Segments and Home Offices).

The Government's estimate is based on unique Data Universal Numbering System (DUNS) numbers, which represent physical contractor locations that have received a CAS-covered contract. DUNS numbers are not necessarily determinative of a contractor Business Unit or Segment (i.e., a Respondent pursuant to FAR 52.230-6). For instance, a contractor Business Unit may contain only one DUNS number, or it may contain many DUNS numbers. Conversely, because contractor Home Offices do not receive CAS-covered contract awards, DUNS numbers representing these Respondents were excluded entirely from the Government's estimate.

Our analysis indicates that the Government's estimate of 740 Respondents for the Department of Defense (DoD) is likely overstated. We believe 740 unique DUNS numbers equates to fewer Respondents – likely closer to 500 contractor Business Units and Segments. Additionally, contractor Home Offices will represent approximately 150 Respondents. These adjustments bring our DOD Respondent estimate to 650.

With respect to our estimate of DoD Respondents, we note that DoD (Defense Contract Audit Agency) receives approximately 6,000 Final Indirect Cost Rate Proposals annually from contractor Business Units, Segments, and Home Offices that allocate indirect costs to cost reimbursable contracts containing FAR 52.216-7, Allowable Cost and Payment. Since cost reimbursable contracts are commonly covered by CAS (if not otherwise exempt), it is reasonable – perhaps conservative – to estimate only 650 (10%) of these annual proposals contain CAS-covered cost reimbursable contracts.

The Government estimated that the civilian agencies are responsible for 100 additional Respondents. We believe this number is significantly understated. Based on informal data gathering, we estimate that the Department of Homeland Security, U.S. Agency for International Development, and the Department of Energy each are the Cognizant Federal Agency for at least 100 Respondents (i.e., 300 Business Units, Segments, and Home Offices). We estimate that the remaining civilian agencies represent a combined 100 Respondents. Therefore, we recommend an estimate of approximately 1,050 Total Respondents (650+300+100=1,050).

Responses per Respondent. We define a "Response" to mean a contractor's formal written submission to the Government pursuant to the terms of FAR 52.230-6. This clause requires the following significant types of Responses:

- Advance notifications or requests for retroactive application of cost accounting practice changes (FAR 52.230-6(b)).
- Revised Cost Accounting Standards Board (CASB) Disclosure Statements (FAR 52.230-6(b)), including –
    - Transmittal letter;
    - Revision summary;

    - Adequacy review/walkthrough and support.
- General Dollar Magnitude (GDM) proposals (FAR 52.230-6(c)(1)), including –
    - Periodic updates as may be requested by the Government;
    - Audit walkthroughs, data requests, and other audit support;
    - Responses to audit reports;
    - Negotiations.
- Detailed Cost Impacts (DCI) proposals (FAR 52.230-6(c)(2)), including –
    - Periodic updates as may be requested by the Government;
    - Audit walkthroughs, data requests, and other audit support;
    - Responses to audit reports;
    - Negotiations.
- Requests for Desirable Changes (FAR 52.230-6(c)(3)&(4)), including –
    - Requests for additional data;
    - Requests for additional analysis;

Discussions among representatives of our membership indicate that they commonly provide the first three items above annually. Many of these members noted that DoD often also requests Detailed Cost Impact Proposals, which may bring annual Responses to four. Some member Respondents noted that they have experienced as many as six to eight Responses annually, but this was not common. Therefore, our assessment suggests the Government's initial estimate of 2.27 Responses per Respondent per year is too low. An estimate of 3.5 Reponses per year reasonably aligns with our members' experience.

Average Burden Hours per Response. Of the three factors bearing upon the Government's Annual Reporting Burden estimate, this factor is the most difficult to reckon. Of the types of Responses listed above, some are more time intensive than others. Notifications and Disclosure Statement revisions, although cumbersome, require much less time than General Dollar Magnitude, Detailed Cost Impact, and Desirable Change proposals. Some circumstances that significantly influence burden per response include:

- The type of cost accounting practice change (i.e., required, unilateral, correction of noncompliance);
- The nature of the cost accounting practice change (e.g., change in direct vs. indirect, changes in the composition of cost pools, change in the nature or composition of allocation bases, changes in how costs are measured, etc.);
- The number of cost accounting practice changes that become effective simultaneously;
- Whether the cost accounting practice change occurs within a Business Unit/Segment or at the Home office (which impacts all associated Segments);
- The number of proposal updates/revisions requested by the Government after initial submission;
- The passage of time between initial submission and audit;
- The timing, duration, depth, and quality of audit.

Many of our members believe 175 hours grossly understates the effort necessary to prepare certain types of responses (e.g., GDMs, DCIs), but acknowledge that notifications and Disclosure Statement revisions generally do not require a month to prepare and support.

Although our qualitative analysis suggests the Government's estimate of hours per Response is too low, we do not have a sufficient quantitative basis to recommend an alternative estimate. The table below summarizes our estimates as compared to the Government's initial estimates. Our membership believes the recommended estimate is more representative (but likely still low) of the annual burden CAS administration places on the contractor community.

Annual Reporting Burden	**RFI Estimate**	**NDIA Estimate**	**Difference**
Number of Respondents:	840	1,050	↑ 210
Responses per Respondent:	2.27	3.50	↑ 1.23
Total Responses:	**1,907**	**3,675**	↑ **1,768**
Average Burden Hours per Response:	175	175	-
Total Burden Hours:	**333,690**	**643,125**	↑ **309,435**

We offer several recommendations below that will reduce the number of Responses and the average hours per response. We believe the Government will also enjoy a similar reduction in annual burden from our recommendations without any increase in financial risk.

Comments on "Practical Utility"

The Information Collection solicits comments on whether the "information collected is necessary for the proper performance of functions of the Federal Acquisition Regulation (FAR)" and "whether it will have practical utility." Above, we generally affirm the *necessity* of this information. Here, we comment on *practical utility*; however, our comments (and recommendations further below) focus on *when, how*, and *how often* this information is collected rather than *what* is collected.

The 60-day advance notice of cost accounting practice changes (FAR 52.230-6(b). Cost accounting practice changes are not subject to the Government's prospective review and approval (see FAR 30.603-2(a)(1)). The Government reviews the adequacy of new cost accounting practices disclosures and evaluates them for compliance with the Standards. Because there is no approval process, the FAR 52.230-6(b) advance notification (60 days) requirement lacks practical utility.

To the extent the Government needs to know about a contractor's cost accounting practices for contract price negotiations, the Truth in Negotiations Act (TINA) requires contractors to maintain a current, accurate, and complete Disclosure Statement because it is "cost or pricing data." TINA provides remedies for defective data if the Government relies on a non-current cost accounting disclosure to its detriment.

Additionally, if TINA does not apply to a negotiated award (as is the case with competitively awarded cost-type contracts) but the Government nevertheless relies to its detriment on a contractor's non-current cost accounting disclosures, then FAR 30.603-2(c)(2) allows the Government to assert a CAS 401 non-compliance. FAR 52.230-6(g) prescribes the process for resolving non-compliances.

Retroactive cost accounting practice changes (FAR 52.230-6(b)(3)). Retroactive cost accounting practice changes (only within a contractor's current fiscal year) are subject to Government review and approval (see FAR 30.603-2(d)). This requirement has no practical utility because the process to measure the cost impact of cost accounting practice changes includes all "affected" CAS-covered contracts regardless of whether a change is prospective, retroactive, or both. Additionally, we do not understand why retroactive unilateral cost accounting changes require Government approval but prospective changes and corrections of non-compliances do not.

Moreover, if a contractor priced and negotiated a CAS-covered contract using a cost accounting practice that it contemplated changing (and ultimately did change) retroactively during the fiscal year, then the remedies provided by CAS and TINA are the same – a price/cost reduction. Thus, the existence of a Government approval process has no bearing on these statutory remedies.

Estimates of future cost impacts in GDM and DCI proposals (FAR 52.230-6(f)). Estimating the cost impact of cost accounting practice changes on affected CAS-covered contracts for future periods aligns with the CAS prohibition against the Government paying "increased costs in the aggregate" relative to certain types of changes. However, these estimates are difficult and time consuming for contractors to prepare. Our membership notes that this seemingly logical requirement has little or no practical utility because the Government rarely resolves cost impact proposals until most (or all) actual costs have been incurred.

We speculate that this situation occurs for two primary reasons: (1) estimates are notoriously difficult for the Government to evaluate and negotiate, and (2) the Government lacks the resources (and a regulatory mandate) to resolve cost impact proposals timely. Making the utility of these forward-looking estimates even less practical, our members report that the Government routinely requests periodic updates to previously-submitted GDMs and DCIs until nearly all estimates have become actuals due to the passage of time.

Recommendations to Improve Quality, Utility, and Clarity of Information Collected

In addition to soliciting comments on the necessity and practical utility of information collected pursuant to FAR Subpart 30.6 and FAR 52.230-6, the Information Collection also requests comments on improving the quality, utility, and clarity of the information collection, including the use of information technology to ease the collection burden. In this regard, we offer the following recommendations:

Streamline the notification protocol. We commented above that the current protocol for notifying the Government of cost accounting practice changes lacks practical utility. We agree, however, that contractors *must* notify the Government about changes in cost accounting practices. Because contractors should be free to change accounting practices prospectively, retroactively within the current accounting period, and retroactively as needed to correct a non-compliance, advance notice is wholly unnecessary. The following notification protocol will reduce the annual burden on both contractors and the Government because it dovetails with other existing regulatory requirements.

1. Contractors must notify the Government of prospective cost accounting practice changes on or before the effective date of the change. For retroactive changes within the cost accounting period and corrections of non-compliances, contractors must provide notice on or before the date of implementing the change. We do not recommend modification to the current notification format or to the evaluation of cost impacts (including materiality).
2. Contractors will also summarize all changes effective or implemented within the cost accounting period in their annual Final Indirect Cost Rate Proposals. This is an existing requirement for most Respondents pursuant to FAR 52.216-7(d)(2)(iii)(M). For those respondents that do not perform contracts containing FAR 52.216-7, add a requirement in FAR 52.230-6 that contractors nevertheless must report all cost accounting practice changes annually, no later than 6 months after the end of the contractor's cost accounting period.
3. For cost accounting practice changes that occur during the cost accounting period, contractors must update their CASB Disclosure Statements at least once annually (within 90 days after the end of the cost accounting period), or no later than the first Certificate of Current Cost or Pricing Data after the changes become effective (which may often be in connection with Forward Pricing Rate Proposals). Non-disclosure of cost accounting practice changes at the time of a price negotiation based on Cost Analysis (see FAR 15.404-1(c)) may constitute a CAS 401 non-compliance at the CO's discretion.

Provide a regulatory option (or preference) for evaluating and negotiating cost impacts in arrears. The current regulatory protocol for measuring and resolving cost impacts implicitly prefers promptness after notification. But as we noted above, actual practice essentially negates the utility of this approach. Our members welcome the prompt resolution of cost accounting practice changes in return for the significant burden of preparing forward-looking cost impact estimates. However, if the Government is either unwilling or unable to resolve cost impacts promptly, the parties would both benefit from either a preference for, or an explicit election of, resolving cost impacts in arrears. For example:

1. Allow contractors to prepare cost impact proposals annually, to include all cost accounting practice changes summarized on Schedule M of each Respondent's Final Indirect Cost Rate Proposal. Cost impact proposals (either GDM or DCI, at the Government's request) would be due within nine months (or other mutually agreeable period) after the end of each cost accounting period (if changes occurred).
2. Modify the current cost impact protocol to establish an explicit period (e.g., 180 days) for the Government to evaluate and negotiate after the initial receipt of a contractor's GDM or DCI proposal. If the Government does not act during this period, the cost impact proposal automatically becomes subject to negotiation in arrears (i.e., once substantially all costs have been incurred on affected contracts). This requirement would significantly reduce the burden contractors bear to periodically update their proposals and the burden the Government bears to audit estimates that become stale as time passes.
3. Allow the Government and the contractor to elect to resolve cost impacts in arrears.
4. Contractors and the Government can use, without significant modification, the existing annual Final Indirect Cost Rate Proposal process (FAR 52.216-7(d)) to track both cost accounting practice changes and CAS-covered contracts affected by the change(s).

Respondents who do not submit annual Final Indirect Cost Rate Proposals will nevertheless be required to report changes annually (see recommendation above).

Streamline the cost impact resolution protocol at FAR 30.606(a)(3). Of all the 2005 changes to FAR Part 30, the prohibitions against "combining" the impacts of certain changes established in FAR 30.606(a)(3)(i)&(ii) not only add significant burden on contractors, but also create significant inequity. When contractors make multiple simultaneous cost accounting practice changes (very common), these cumbersome and onerous rules require contractors to measure each change separately. Therefore, a single GDM or DCI proposal becomes multiple proposals – one for each change. This is unnecessary given that the spirit of the statutory CAS cost impact process is merely to prevent the Government from paying increased costs in the aggregate. In this regard, for both unilateral changes and corrections of non-compliances, the CAS administration regulations at CFR 9903.201-1(b)&(d) provide that (1) 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 (2) 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. We believe the distinctions created in FAR 30.606(a)(3) are inconsistent with these CAS regulations, create significant unnecessary burden for both parties, and cause significant negotiation challenges as the Government often attempts to recover more than increased costs in the aggregate as contemplated by the CAS regulations. To relieve the unnecessary burden FAR 30.606(a)(3) places on preparing and evaluating GDM and DCI proposals, and to foster equitable resolutions, we recommend the following:

1. Allow required changes, unilateral changes, and desirable changes to be combined.
2. Allow prospective corrections of non-compliances to be combined with other types of changes if made simultaneously. We note that retroactive corrections of non-compliances that impact prior cost accounting periods cannot be combined with other types of changes because unilateral changes can only be made retroactively to the beginning of the current cost accounting period.

Please see the discussion on this topic in a recent Armed Services Board of Contract Appeals matter. In the Appeal of Raytheon (ASBCA Nos. 57801, 57803, 58068), the Board provides a history of how combinations were once permitted.

Eliminate the Government's ability to double-recover costs under FAR 30.604(h). The current construct of FAR 30.604(h) defines an "increased cost to the Government" as either:

- An increase in costs allocated to cost-reimbursable contracts, or
- A decrease in costs allocated to fixed price contracts.

"Increased cost in the aggregate" is determined by adding these two amounts. While this provision seems to make sense at first glance, practical experience often yields inequitable results. For example, if a contractor changes a cost accounting practice that shifts $10 away from a fixed price contract (i.e., costs decrease) and onto a cost-reimbursable contract (i.e., costs increase), the regulatory regime at FAR 30.604(h) concludes that "increased costs in the aggregate" is $20. Of course, this is simply not true; $10 has not magically become $20 and regulations that create this kind windfall to the Government should be modified to curtail it. In

the Appeal of Raytheon (ASBCA Nos. 57801, 57803, 58068), the Board agreed that this regulatory construct may create a windfall for the Government.

Addressing this inequity will reduce the burden on contractors and the Government by improving the speed at which cost impacts are negotiated. Our members report that many Contracting Officers recognize the inequity created by the FAR 30.604(h) cost impact calculation process, but they are bound by the rules nevertheless. As a consequence, many cost impacts languish unsettled because doing nothing seems more reasonable than proceeding under the rules.

To resolve this logjam, we recommend adding a simple provision to FAR 30.604(h), the essence of which is from CFR 9903.201-1(b), that states "The CFAO is responsible for (1) ensuring the cost impact calculation will protect the United States from payment of increased costs in the aggregate and (2) that the net effect of any contract price or cost adjustments does not result in the recovery of more than the estimated amount of such increased costs. Care must be taken to ensure costs are not double-recovered through both contract price adjustments and cost limitations."

Convert the current Disclosure Statement from paper to an online, secure database. Finally, we recommend that the Government provide a centralized, secure, on-line means of disclosing cost accounting practices. This could be done similarly to, or in conjunction with, the Government's centralized System of Award Management (SAM). Taking this important step would greatly improve the contractor disclosure process and reduce burden for both contractors and the Government in the following ways:

1. No more cumbersome Microsoft Word document that takes more time to format than fill out;
2. An electronic database would automatically track all changes made by contactors, which would make review easier for both contractors and the Government;
3. Because this system would include the contractor's cognizant contracting officer, it could automatically notify them of Disclosure Statement revisions;
4. The system could be used for contractor notifications (recommended above) so that even if Disclosure Statements have not been updated, the Government is aware of all new cost accounting practices;
5. Government auditors could easily verify the sufficiency of contractors' annual disclosure of cost accounting practice changes (see recommendation above);
6. On-line tracking of cost accounting practice changes would improve visibility into and status of cost impact proposals and resolutions;
7. Government-wide centralized access would allow PCOs to verify the status of Disclosure Statement submissions and adequacy determinations.

In summary, we believe the recommendations offered herein will improve the quality, utility and clarity of information collected pursuant to FAR Subpart 30.6. Our recommendations will also reduce the Annual Reporting Burden, as well as the Government's oversight burden. Estimated favorable impacts on Annual Reporting Burden are summarized below:

ANNUAL BURDEN ESTIMATE SUMMARY	**Number of Respondents**	**Responses per Respondent**	**Total Responses**	**Average Burden Hours per Response**	**Total Burden Hours**
RFI Initial Burden Estimate	840	2.27	**1,907**	175	**333,725**
NDIA Revisions	+ 210	+ 1.23	**+ 1,768**	-	**309,400**
NDIA Revised Burden Estimate Before Recommendations	**1050**	**3.50**	**3.675**	**175**	**643,125**
Streamline notifications	-	(.25)		(8)	
Negotiate Promptly or in Arrears	-	(.75)	-	(34)	
Allow Combining Cost Impacts	-	-	-	(15)	
Eliminate Double-Recovery	-	-	-	(20)	
Convert paper DS-1 to on-line database	-	-	-	(8)	
Burden Estimate After Recommendations	**1050**	**2.5**	**2,625**	**90**	**236,250**

Thank you for expressing an interest in the annual burden of these regulations and soliciting comments aimed at improving their utility and effectiveness. We welcome the opportunity to further discuss our recommendations with you or in a public forum where others have the opportunity to share their concerns. Feel free to contact me at jthomas@ndia.org or (703) 247-2598 if you have any questions.

Sincerely,

James Thomas
Director of Legislative Policy