

DoD Public Meeting - Contract Closeout Process Listing of Issues for Discussion

A summary listing of the topic areas discussed at the September 21, 2005 public meeting are shown below. The following pages include a synopsis of all of the recommendations that have been submitted by the public for each topic area. The recommendations that had been received from the public in response to the Federal Register Notice are in black. Each of these issues was discussed at the public meeting. Recommendations received from one or more attendees at the public meeting are shown in **RED**.

Summary of Topic Areas

1. Final Vouchers
2. Final Invoices - Fixed Price Contracts
3. Final Indirect Rates
4. Lack of Government Resources and/or Timely Action
5. Submission of Contract Closeout Data
6. Missing Documentation
7. Quick Closeout
8. Subcontracts
9. Reconciliations
10. Contract vs. Delivery Order Basis
11. T&M Contracts
12. Classified Contracts
13. Classified Documents
14. Government Property
15. Patents
16. Planning
17. MOCAS
18. Electronic Submission
19. Cost Allowability of Contract Closeout
20. Statute of Limitations
21. Transportation Clause
- 22. Settlement of Contract Debts**

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Synopsis of Specific Recommendations for Each Topic Area

1. Final Vouchers

- Waive audit for contracts less than a specified amount (e.g., \$10 million) when justified based on risk-assessment.
 - Risk assessment for T&M contracts needs extra focus on employee qualifications i.e., they conform to the contract.
 - Specify the audit waiver level i.e., \$10M, \$5M, \$1M at the contract or Delivery Order level.
 - Give ACO audit waiver authority.
 - Communicate to ACO when correction of a system inadequacy is in process so that this information can be used in evaluating audit waiver.
 - Consider the size of the company and the number of contracts.
 - Consider no dollar amount – decision based on risk assessment of factors other than dollar value.
 - Address cost allowability for subcontracts and other invoices received after period of performance as well as contract modifications that require effort performed beyond the contract period of performance.
 - Incorporate Contract Audit Close-Out Guide into the Procedures, Guidance, and Instructions (PGI), which is the supplement to the DFARS. This would establish a single reference source for contracting and contractor personnel. Support with training.
 - Clarify ACO vs PCO authority.
 - Provide specific guidance to ACO for use in evaluating risk assessment.
 - Establish criteria for using bi-lateral modification instead of Final Voucher
 - i. No money owed the government
 - ii. Allow for an agreement to waive final voucher when money owed is below a stipulated amount (e.g., less than \$1,000)
- Audit final vouchers for cost type contracts on an exception basis for contractors that have billing standards that meet specified standards.
 - Identify criteria for audit (e.g., unacceptable systems, dollar threshold, recent frequency of audits, audit results).
- If monies are owed the Government, require the contracting officer to issue a demand letter if a final voucher is not submitted within the required timeframes. The demand letter would include notification that interest will be assessed as of the date specified in that letter.
 - Need to identify why payment is delayed and reasons contractor has not submitted final voucher (e.g., extension of period of performance)
 - Demand letter may further delay the process.

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- How does the Government know it is owed money?
- MOCAS is problematic – Contractor access to MOCAS may be an issue.
- Demand letter will trigger Treasury Dept offset.

2. Final Invoices - Fixed Price Contracts

- Require submittal of a final invoice within 60 days of Government acceptance.
 - Clarify regulations on need for submission of final invoice when a DD250 is submitted.
 - Exception for OCONUS contracts.
 - What are the rights of recovery of Government/Contractor? Contract clause has to address rights of parties.
- Closeout the contract without a final invoice if the amount due is less than \$1,000 and less than 10% of the contract value.
 - Make sure electronic systems conform to regulations so that when closeout occurs, records reflect the closeout.
- Establish a one year time limit for contractors to submit the final invoice. If an invoice was not submitted within the one year time limit, the Contracting Officer would unilaterally deobligate any unliquidated balances remaining on the contract.
- Do not require a final invoice when a DD250 (Material Inspection and Receiving Report) has been submitted.

3. Final Indirect Rates

- Encourage timely submission of indirect rate proposals by increasing the amount of the fee that can be withheld in reserve by the contracting officer (a specified percentage and/or specified amount, e.g., 15% or \$100,000).
 - Incentivise submission of indirect rate proposals rather than penalize.
 - Have a provision that allows the contracting officer to extend the proposal submission date.
 - Have a ceiling (15% or cumulative amount \$100K) on the maximum amount of the withhold.
 - Increased reserves will result in more problems with obtaining additional monies due to cancelled funds.
 - Analyze major vs. non-major contractors to determine where problems are before enacting such a withhold.

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- When final indirect rates are not established on a timely basis, allow contract closeout using indirect rates in the forward pricing rate agreement, provisional rates, or certified year-end rates rather than final indirect rates.
 - Should be by mutual agreement
 - Should consider past experience of questioned costs and final rates vs. the rates in the FPRA, the provisional rates, and the certified year-end rates to determine which rates are most representative of the final rates.
- When a contractor fails to submit a final indirect rate submission within the established timeframes, provide for a withhold similar to that in FAR Part 52.230-6(j)(1) (e.g., withhold amounts up to the estimated general dollar magnitude of the cost impact.).
- Review the content requirements for indirect rate submissions to determine if/where they could be streamlined. Provide flexibility so that the submission is not rejected when it is not exactly the same as the content requirements.
 - Do not require submission of cumulative allowable cost worksheets at time of indirect rate submission. Permit these worksheets to be submitted at a later date.
 - Do not reject submissions due to format issues/problems.
 - Establish different content requirements based on dollar thresholds.
 - Allow documents to be submitted in increments so that audit can begin and process can move forward.
- Provide for separate submissions of direct and indirect costs when the ACO believes such submission will facilitate the contract closeout process.
- Provide the contracting officer with the authority to closeout contracts without final indirect rates where past history shows little costs questioned.
 - Should be by mutual agreement
- Provide guidance and/or regulations that discuss the objectives and minimum data needed to negotiate final indirect rates.
 - Provide lump sum settlement guidance to contracting officer
 - Provide for guidance in the PGI.
 - Provide training to Government contracting and contractor personnel..

4. Lack of Government Resources and/or Timely Action

- Outsource the contract closeout function.
 - Contractors outsourcing close-out functions have been successful. Started with Incentive Contracts now use T&M contracts.
 - Some Government agencies have also been successful in outsourcing the close-out function.

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- Some contractors don't want the Government to outsource close-outs., Want the contracting officer to retain authority – concern is that contractors doing close-outs won't have authority or flexibility
- If Government /Contractors outsource close-out function it must be done by professionals – otherwise it will add to bureaucracy and take more time from contractors.
- Assign an individual/team at each agency to be responsible for reducing/eliminating the backlog of open contracts. The individual should be trained in how to effectively reduce the backlog.
- Establish a contract closeout function/office with permanent expert staff and promotion potential.
 - Have Tiger Team Approach to Close-outs vs. Center of Excellence
 - Mobility of Tiger Team can be problematic due to frequency of moves
 - Training/Experience of team is critical
 - Closeouts are an integral part of contract administration and should not be separated out from the contract administration function.
 - Need for dedicated personnel with expertise in closeouts.
- Establish a separate budget line item dedicated to contract closeout activities.
 - How, and by whom, does the budget line item get managed?
- Establish timelines for Government actions. When timelines are not met, provide alternative actions to be taken by the Contracting Officer (e.g., if a DCAA audit of a subcontractor is not done within an established timeframe, the contracting officer may authorize a third party to conduct the audit).
 - Requires analysis of timely submission of subcontractor audits
 - Communication to/from Prime on Subcontractor audit status
 - If contracting officer authorizes 3rd party audit, costs are reimbursable to the contractor or Government pays auditor directly.
- Establish Government Centers of Excellence for contract reconciliations, establishment of final indirect rates, and expiring funds to assist in resolving issues.
- Increase training to closeout personnel, including the use of risk assessments.
 - Integrate close-out training for Industry/Government personnel
 - Train contracting officers on their authority regarding close-outs
 - When contracting officer makes a Final Determination with the contractor, require DFAS to accept that determination
 - Establish a section in the DAU Community Practices Lessons Learned for contract close-out. Reference this section in the PGI.

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- Use integrated contract closeout teams, consisting of members of DCMA, DFAS, DCAA, and the contractor, to resolve issues with problem contracts.
- Establish the ACO as the central control point for closeout of a contract. The PCO should transfer all contract closeout responsibilities to the ACO when the contract is physically completed. In addition, if the ACO has notified DFAS that a contract is administratively complete, the ACO may close that contract out if no response is received within 60 days of the notification.
 - This would be problematic because the ACO is not as knowledgeable as PCO
 - There is a need for clarity in definition of roles of PCO, ACO in Quick Close-out process.
 - The PCO is a critical player for older contracts and to help resolve funding issues i.e., cancelled funds.
- Create a Contract Closeout Contracting Officer similar to the Termination Contracting Officer. This individual would be a specialist in closing out contracts.
 - The key is to have dedicated people assigned to close-out function with appropriate training, resources, grade level, rather than creating a new position..
- Specifically delineate the responsibility and authority for all parties involved in contract closeout in the DFARS and PGI. There should be a single Government point of authority and accountability.

5. Submission of Contract Closeout Data

- Preclude award of future contracts to contractors that continually fail to submit needed contract closeout items.
 - Make this a part of past performance ratings and ensure that data collection is accomplished
 - Need to be able to distinguish between true contractor performance and government controlled action.
- Include specific contractual terms that provide positive and/or negative consequences for the fulfillment of contractor contract closeout commitments.
 - In establishing the positive or negative consequences, clearly delineate what is trying to be achieved.
 - Consider addressing the issue thru award fee or profit factors.
 - Measurement criteria are extremely important and need to be clearly defined.
- Include contract closeout activities as a separately priced contract line item.
 - Consider making it a performance based payment type of item.

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- Potential CAS issues regarding proper treatment of costs (direct vs. indirect) if made a separately priced line item.

6. Missing Documentation

- Authorize ACO to issue final determination that contract is administratively complete if all parties agree that no additional services/products will be received by the Government and there are no outstanding actions.
 - Define what is meant by “all parties”.
 - Clarify this issue – this may already be permitted by existing rules.
- Require contracting officers to retain an adequate contract file, including hard copies of all documents that may be needed for contract reconciliation (e.g., DD 250’s, invoices, payment vouchers). Specify in the regulations and/or PGI what constitutes an adequate contract file.
 - Current file should include all modifications
 - Do real-time tracking of all documents

7. Quick Closeout

- Broaden the use of the quick closeout procedures by raising the dollar amount and/or percentage limitations currently in the regulations. Consider mandating the use of such procedures for low dollar contracts.
 - Extend current DCMA deviation
 - Broaden current DCMA deviation
 - Make a thorough analysis of contract distribution to determine the numbers of contracts that would be affected
 - Make process one of mutual agreement between government and contractors
- Require the use of quick closeout procedures for subcontracts to the maximum extent possible.
 - Interdivisional transfers should also be addressed in this category
- Require all ACO’s to perform a risk assessment regarding establishment of quick closeout rates and either (a) establish quick close-out rates, or (b) document why the risk does not warrant the establishment of such rates.
 - Guidance on factors for risk assessment very important
 - Establish fair value of the cost of doing quick closeout—cost/benefit analysis
 - Determine when quick closeout rates are not being used if the criteria are met.

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8. Subcontracts

- Require a contract closeout plan as part of the subcontract plan.
- Permit closeout of prime contracts without subcontract closeout. Any changes in subcontractor costs subsequent to closeout would be handled as adjustments in the period they occur.
 - Close subcontracts and interdivisional agreements as they are completed
 - Policy addressing this issue should be developed
 - Evaluate the administrative cost of tracking future adjustments
 - Adjustments could be allowed only for amounts above a specified threshold.
 - Cancelled funds vs current funds could be an issue
 - Allow primes to unilaterally close out subcontracts and negotiate no future adjustments.
 - Subcontractors are concerned that unilateral closeout of subcontracts by the prime eliminates Government reimbursement of any additional subcontract costs, thereby inhibiting subcontractor negotiation position with prime (especially a concern for small business)
 - There would need to be adequate subcontractor notice
 - Include this method as part of subcontract agreement
 - Ensure subcontractor release of claims is received
- Establish a reasonable threshold for assist audits. Permit waiver of audits and/or performance of desk reviews for subcontracts that are below the established threshold.
 - Establish criteria for use by contractor
 - Need feedback to prime contractor from DCAA on status of assist audits
- Empower prime contractors to closeout subcontracts.
- Establish a process for prime contractors to request DCAA audit of subcontractors.
 - Will require enhanced communication between DCAA and contractors
- Use third party auditors for subcontract audits where the Government does not already have a presence, similar to the policy on other transactions.

9. Reconciliations

- Clearly delineate the contracting officer roles/responsibilities for reconciliations.
 - Contracting officer needs to make final determination of final value/closeout even with discrepancies of accounting records

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- Encourage or require that the Government and contractor reconcile payments on an annual basis, particularly on award fee and level-of-effort contracts, and long-term contracts (such contracts often have thousands of changes).
 - Make sure that there is a cumulative ACRN/CLIN schedule that is updated each time a modification is entered into.
 - Consider establishing dollar thresholds and contract terms
 - Cost charging (direct vs. indirect cost) and allowability of reconciliation efforts.
 - Notification to contractors by DFAS when there is an offset of a contractor payment.
 - Assure that replacement funds are obtained on a timely basis.
- Provide contractors with read-only access to their contract ACRN data.
- Simplify the ACRN/CLIN accounting.
- Consider alternatives to ACRN/CLIN accounting.
 - Enforce business rules
 - Allow better data access by contractors; visibility to all modifications
 - Add CLIN data to MOCAS/DFAS
 - Agency accounting systems shouldn't drive how contracts are structured, i.e. systems automatically adds SUBCLINS to CLIN

10. Contract vs. Delivery Order Basis

- Clear the Government property, final patent report, security release, and other pertinent documents one time against the contract instead of on an individual order by order basis.
- Closeout all task orders as they are completed instead of waiting until the end of the contract.
 - This would be a good Community of Practice (CoP) or Best Practice Issue to explore more fully
 - Clarify language on task order vs contract
 - Task order period of performance needs to be consistent with contract period of performance
 - Need to consider that MOCAS final invoice is for the actual base "D" contract

11. T&M Contracts

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- Streamline closeout procedures for T&M contracts that are less than a specified amount (e.g., \$1 million).

12. Classified Contracts

- Use quick close-out procedures or certified year-end rates for all classified contracts.
 - Turnover of personnel with appropriate clearances makes quick closeout an important tool.

13. Classified Documents

- Develop a contract clause that provides clear instructions for the disposition of classified documents.
 - The contracting officer (or designated authority) should have authority to transfer classified documents to other contracts.

14. Government Property

- Provide contracting personnel with disposition authority for special tooling, special test equipment, and other property with an acquisition value of \$5,000 or less. Exempt such equipment from the requirements of DD Form 1662 (DOD Property in the Custody of Contractors) and DFARS 245.505-14 (Reports of Government Property).
 - Be specific in identifying who has disposition authority (i.e., Government Property Administrator). Also, clarify who are the contracting personnel versus the contracting officer.
 - The Government Property Administrator should be delegated authority to transfer property to other contracts (e.g., to follow-on contracts; to reduce costs).
 - Consider using Fair Market Value instead of acquisition value. Fair Market Value may be scrap value or obtained from Government property experts.
 - Consider that the DD Form 1662 will be discontinued after FY 2005. In its place, a system solution will be developed to allow the capture of data related to DoD property in the possession of contractors. (Congress wants even greater accountability from managers of Federal Government property than provided in the DD Form 1662.)
- Establish a site property and/or plant-wide disposition contract for each business element location. As the contract is completed, all property is automatically transferred to the disposition contract. Each respective buying office could fund a line item on the disposition contract for disposal of their property, or the predominant agency could fund the entire contract.
 - The Air Force had favorable experience with a single disposition contract..

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- For IDIQ contracts, have only one contract for property rather than managing property on each delivery order.
 - IDIQ contract offers administrative convenience. Naval Sea Systems Command has had favorable experience.
- Develop a contract clause that provides clear instructions for the disposition of Government property.
- Provide contracting officers with the authority to remove the property clauses from contracts where there is no probability of issues in these areas (e.g., service contracts with little or no property).
- Provide contracting officers with the authority to make the determination as to whether property should be reutilized or scrapped.
 - Define the role of the ACO versus the Government Property Administrator.
- Once property is submitted on an inventory schedule, transfer accountability for that property to the Government for purposes of contract closeout.
 - This is an efficient method because it gets property off the contract.
- Scrap military unique items that have been rejected for reutilization by the buying agency.
 - There is little value in retaining these items if they have been rejected by the buying agency..
- Permit the Government Property Administrator to grant accountability relief on the spot for recorded property that was not found at contract completion if (a) the contractor has an approved property system, (b) the lost item has an acquisition date of five years or later, and (c) the lost item has an acquisition cost of \$100,000 or less. The Government Property Administrator would retain the right to a full Lost Damaged Destroyed Report.
 - Consider using Fair Market Value versus acquisition cost.
- Set a timeframe (e.g., 90 days) at the end of the contract for disposition of lost property.
 - Consider using resolution versus disposition.
- Review the FAR Part 53 clause matrix regarding which clauses are mandatory versus discretionary to assure that clauses are not unnecessarily being included in the contract.
- The timeframe for overall closeout of Government property appears to be inconsistent with final contract closeout.

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15. Patents

- If a contractor has submitted a negative report on all interim and final patent right reports, allow the contracting officer to proceed with contract closeout within a specified timeframe (e.g., 30 days) unless the contracting officer receives notification that there are patent issues precluding such closeout.
 - Should follow existing procedures.
 - Clearly the rights of parties.
- Provide contracting officers with the authority to remove the patent clauses from contracts where there is no probability of issues in these areas (e.g., service contracts with no patent issues).
 - Clarify Policy Guidance and Instructions (PGI) as to when the clause is needed.
 - Reconsider how often to issue negative reports on patents. Currently a negative report is required every 12 months.
- Review the FAR Part 53 clause matrix regarding which clauses are mandatory versus discretionary to assure that clauses are not unnecessarily being included in the contract.

16. Planning

- Require a contract closeout plan as part of the acquisition plan.
 - This would require substantial up-front effort with little or no benefit.
 - Changes in circumstances negate many benefits (e.g., electronic submissions).
 - Consider a dollar threshold.
 - Consider a memorandum of agreement between contractor and Government that considers the costs and benefits of a closeout plan.

17. MOCAS

- When the contract period is extended, MOCAS should be automatically updated to reflect the current performance period.
 - Needs to reflect the right period of performance.
 - All contract MODS are required.

18. Electronic Submission

- The DD Form 1594 (Contract Completion Statement) and DD Form 1507 (Contract Closeout Checklist) duplicate the current electronic closeout processes being done in Procurement Defense Desktop (PD2).

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- WAWF needs to be studied for duplication.
- WAWF requires “work around” for DCAA approval.

19. Cost Allowability of Contract Closeout

- The regulations should specify what is meant by the period of performance and if/when costs incurred for contract closeout after the end of the performance period are allowable costs.
 - Need guidance on physical completion.
 - Subcontractor costs can be received and paid outside the period of performance.
 - Material transfers occur after period of performance.
 - Clarify incurred cost versus paid cost.

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20. Statute of Limitations

- Shorten the statute of limitations for submission of a claim (currently is six years) to mitigate issues concerning expired funds, lost documentation, software changes, and Government/contractor storage costs.
 - Precludes finding issues (need due process).
 - Reducing period would set precedence to reduce time requirements in other areas.

21. Transportation Clause

- Revise DFARS 252.247.7023, Transportation of Supplies by Sea, to reduce the needless inclusion of this clause in contracts.
 - Currently it is often included when obviously unnecessary. Consider issuing guidance specifying when it needs to be used.

22. Settlement of Contract Debts

- Permit the Contracting Officer to negotiate settlements of contract debts across a number of contracts. This avoids the need to find replacement funds, which often takes years and substantially delays the closeout process.