



Federal Register

Thursday,
July 3, 2003

Part IV

**Department of
Defense**

**General Services
Administration**

**National Aeronautics
and Space
Administration**

48 CFR Parts 30 and 52

**Federal Acquisition Regulation; Cost
Accounting Standards Administration;
Proposed Rule**

DEPARTMENT OF DEFENSE

GENERAL SERVICES
ADMINISTRATIONNATIONAL AERONAUTICS AND
SPACE ADMINISTRATION

48 CFR Parts 30 and 52

[FAR Case 1999-025]

RIN 9000-A170

Federal Acquisition Regulation; Cost
Accounting Standards Administration

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule with request for comments, and notice of a public meeting.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) to delineate the process for determining and resolving the cost impact on contracts and subcontracts when a contractor makes a compliant change to a cost accounting practice or follows a noncompliant practice.

DATES: *Comment date:* Interested parties should submit comments in writing on or before September 2, 2003 to be considered in the formulation of a final rule.

Public meeting: A public meeting will be held on August 5, 2003, at the address shown below from 9 a.m. to 5 p.m., local time.

ADDRESSES: *Comments:* Submit written comments to—General Services Administration, FAR Secretariat (MVA), 1800 F Street, NW, Room 4035, ATTN: Laurie Duarte, Washington, DC 20405.

Submit electronic comments via the Internet to—farcase.1999-025@gsa.gov.

Please submit comments only and cite FAR case 1999-025 in all correspondence related to this case.

Public meeting: The public meeting will be held at—Crystal Mall 3, 1931 Jefferson Davis Highway, Room C-43, Arlington, VA, 22202.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, at (202) 501-4755 for information pertaining to status or publication schedules. For clarification of content, contact Mr. Edward Loeb at (202) 501-0650. Please cite FAR case 1999-025.

SUPPLEMENTARY INFORMATION:

A. Background

The proposed rule delineates the process for determining and resolving the cost impact on contracts and subcontracts when a contractor makes a compliant change to a cost accounting practice or uses a noncompliant practice. In conjunction with the proposed rule being published today, a public meeting will be held on August 5, 2003. The public meeting is intended to provide the purpose and rationale for each paragraph of the proposed rule. The public meeting will also offer participants an opportunity to ask questions regarding the content of the proposed rule. The specific date, time, and location of the meeting will also be posted at <http://www.acq.osd.mil/dp/cpf> within three days of the date of this publication.

FAR Part 30, Cost Accounting Standards Administration, describes policies and procedures for applying the Cost Accounting Standards Board (CASB) rules and regulations to negotiated contracts and subcontracts. The CASB's rules, regulations, and Cost Accounting Standards (CAS) are codified at 48 CFR Chapter 99 (FAR Appendix). Negotiated contracts not exempt in accordance with 48 CFR 9903.201-1(b) are subject to CAS.

A proposed FAR rule was published in the **Federal Register** at 65 FR 20854, April 18, 2000. The rule delineated the entire cost-impact process the Government and the contractor shall follow when a contractor makes a compliant change to a cost accounting practice or follows a noncompliant practice. Nine responders submitted public comments. Additional comments were provided by the public at a series of public meetings that were held on August 2, 2000, September 26, 2000, and October 17, 2000.

The Councils considered the written comments received in response to the proposed rule and the comments provided during the public meetings. As a result, the Councils are currently proposing a rule that differs significantly from the proposed rule that was published on April 18, 2000. The main differences between the two proposed FAR rules are listed below.

1. *CASB final rule.* This second proposed rule incorporates changes based on a CASB final rule, Changes in Cost Accounting Practices, which was published in the **Federal Register** at 65 FR 37469, June 14, 2000. These FAR changes include the addition of—

- a. Definitions for required, unilateral, and desirable changes; and
- b. CASB language excluding cost accounting practice changes related to

external restructuring from contract price and cost adjustments;

2. *Offsets.* This second proposed rule eliminates the term "offset" to avoid potential confusion regarding the term, but includes the effect of offsets in the cost impact calculation process by separating the calculation of the cost impact from the resolution of the cost impact;

3. *Materiality.* This second proposed rule clarifies that the cognizant Federal agency official (CFAO) may make a materiality determination at any point in the cost impact process, including before requesting a general dollar magnitude (GDM) proposal.

4. *Desirable change.* This second proposed rule provides additional guidance regarding what constitutes a desirable change.

5. *Form and content of the GDM and detailed cost impact (DCI) proposals.* This second proposed rule revises the requirements regarding the form and content of both the GDM and DCI proposals to provide greater flexibility to apply practical solutions to the cost impact process and to reduce the administrative effort. This includes revising the requirements of the—

a. GDM proposal so that broad based data may be used as the basis for the GDM proposal; and

b. DCI proposal to provide flexibility for the CFAO to not require individual data on all contracts, but to project the cost impact on larger contracts to the remaining contract universe.

6. *Contract price adjustments.* The proposed rule provides for the CFAO to resolve a cost impact attributed to a change in cost accounting practice or a noncompliance by adjusting a single contract, several but not all contracts, all contracts, or any other suitable method. In an ideal world, the CFAO would adjust all contracts so that each and every dollar of the cost impact is perfectly re-allocated to each and every affected contract. However, the Councils recognize that, in many instances, adjusting all contracts is not practical or feasible. The proposed rule, therefore, provides the CFAO the flexibility to resolve the cost impact using methods other than adjusting every contract, provided the Government will not pay more, in the aggregate, than would be paid if the CFAO had adjusted all the contracts.

7. *Responsibilities and roles of the CFAO.* This second proposed rule requires the CFAO to execute contract modifications in lieu of the contracting officers at the agencies that awarded the contracts; and

8. *New solicitation provision.* This second proposed rule adds a provision

that requires a contractor to indicate if the contract award will result in a cost accounting practice change and, if so, to prepare a pricing proposal using the changed practice.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Councils do not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because contracts and subcontracts with small businesses are exempt from all CAS requirements in accordance with 48 CFR 9903.201-1(b)(3). An Initial Regulatory Flexibility Analysis has, therefore, not been performed. We invite comments from small businesses and other interested parties. The Councils will consider comments from small entities concerning the affected FAR Parts 30 and 52 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite FAR case 1999-025 in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 30 and 52

Government procurement.

Dated: June 26, 2003.

Laura G. Smith,

Director, Acquisition Policy Division.

Therefore, DoD, GSA, and NASA propose amending 48 CFR parts 30 and 52 as set forth below:

1. The authority citation for 48 CFR parts 30 and 52 is revised to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 30—COST ACCOUNTING STANDARDS ADMINISTRATION

2. Add section 30.001 to read as follows:

30.001 Definitions.

As used in this part—

Affected CAS-covered contract or subcontract means a contract or subcontract subject to Cost Accounting Standards (CAS) rules and regulations for which a contractor or subcontractor—

(1) Used one cost accounting practice to estimate costs and a changed cost accounting practice to accumulate and report costs under the contract or subcontract; or

(2) Used a noncompliant practice for purposes of estimating or accumulating and reporting costs under the contract or subcontract.

Cognizant Federal agency official (CFAO) means the contracting officer assigned by the cognizant Federal agency to administer CAS.

Desirable change means a unilateral change to a contractor's established or disclosed cost accounting practices that the CFAO finds is desirable and not detrimental to the Government and is, therefore, not subject to the no increased cost prohibition provisions of CAS-covered contracts and subcontracts affected by the change.

Fixed-price contracts and subcontracts means—

(1) Fixed-price contracts and subcontracts described at 16.202, 16.203, and 16.207;

(2) Fixed-price incentive contracts and subcontracts where the price is not adjusted based on actual costs incurred (subpart 16.4);

(3) Orders issued under indefinite-delivery contracts and subcontracts where final payment is not based on actual costs incurred (subpart 16.5); and

(4) The fixed-hourly rate portion of time-and-materials and labor-hours contracts and subcontracts (subpart 16.6).

Flexibly priced contracts and subcontracts means—

(1) Fixed-price contracts and subcontracts described at 16.204, 16.205, and 16.206;

(2) Cost-reimbursement contracts and subcontracts (subpart 16.3);

(3) Incentive contracts and subcontracts where the price may be adjusted based on actual costs incurred (subpart 16.4);

(4) Orders issued under indefinite-delivery contracts and subcontracts where final payment is based on actual costs incurred (subpart 16.5); and

(5) The materials portion of time-and-materials contracts and subcontracts (subpart 16.6).

Noncompliance means a failure in estimating, accumulating, or reporting costs to—

(1) Comply with applicable CAS; or

(2) Consistently follow disclosed or established cost accounting practices.

Required change means—

(1) A change in cost accounting practice that a contractor is required to make in order to comply with a CAS, or a modification or interpretation thereof, that subsequently becomes applicable to an existing CAS-covered contract due to the receipt of another CAS-covered contract or subcontract; or

(2) A prospective change to a disclosed or established cost accounting practice when the CFAO determines that the former practice was in compliance with applicable CAS and the change is necessary for the contractor to remain in compliance.

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

3. Amend section 30.201-3 by adding paragraph (c) to read as follows:

30.201-3 Solicitation provisions.

* * * * *

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

4. Amend section 30.202-6 by revising paragraph (b); removing from paragraph (c) the word “cognizant”; and by revising paragraph (d) to read as follows:

30.202-6 Responsibilities.

* * * * *

(b) The contracting officer shall not award a CAS-covered contract until the cognizant Federal agency official (CFAO) has made a written determination that a required Disclosure Statement is adequate unless, in order to protect the Government's interest, the agency head, on a nondelegable basis, authorizes award without obtaining submission of the required Disclosure Statement (see 48 CFR 9903.202-2). In this event, the CFAO shall make a determination of adequacy as soon as possible after the award.

* * * * *

(d) The CFAO is responsible for issuing determinations of adequacy and compliance of the Disclosure Statement.

5. Revise section 30.202-7 to read as follows:

30.202-7 Determinations.

(a) *Adequacy determination.* (1) As prescribed by 48 CFR 9903.202-6 (FAR Appendix), the cognizant auditor shall—

(i) Conduct a review of the Disclosure Statement to ascertain whether it is current, accurate, and complete; and

(ii) Report the results to the CFAO.

(2) The CFAO shall determine if the Disclosure Statement adequately describes the contractor's cost accounting practices. Also, the CFAO shall—

(i) If the Disclosure Statement is adequate, notify the contractor in writing, and provide a copy to the auditor with a copy to the contracting officer if the proposal triggers submission of a Disclosure Statement. The notice of adequacy shall state that—

(A) The disclosed practices are adequately described and the CFAO currently is not aware of any additional practices that should be disclosed;

(B) The notice is not a determination that all cost accounting practices were disclosed; and

(C) The contractor shall not consider a disclosed practice, by virtue of such disclosure, an approved practice for estimating proposals or accumulating and reporting contract and subcontract cost data; or

(ii) If the Disclosure Statement is inadequate, notify the contractor of the inadequacies and request a revised Disclosure Statement.

(3) Generally, the CFAO should furnish the contractor notification of adequacy or inadequacy within 30 days after the CFAO receives the Disclosure Statement.

(b) *Compliance determination.* (1) After the notification of adequacy, the auditor shall—

(i) Conduct a detailed compliance review to ascertain whether or not the disclosed practices comply with CAS and part 31, as applicable; and

(ii) Advise the CFAO of the results.

(2) The CFAO shall make a determination of compliance or take action regarding a report of alleged noncompliance in accordance with 30.605(b).

6. Revise Subpart 30.6 to read as follows:

Subpart 30.6—CAS Administration

Sec.

30.601 Responsibility.

30.602 Materiality.

30.603 Changes to disclosed or established cost accounting practices.

30.603-1 Required changes.

30.603-2 Unilateral and desirable changes.

30.604 Processing changes to disclosed or established cost accounting practices.

30.605 Processing noncompliances.

30.606 Resolving cost impacts.

30.607 Subcontract administration.

30.601 Responsibility.

(a) The CFAO shall perform CAS administration for all contracts and subcontracts in a business unit, even when the contracting officer retains other administration functions. The CFAO shall make all CAS-related determinations and findings (see subpart 1.7) for all CAS-covered contracts and subcontracts, including—

(1) Whether a change in cost accounting practice or noncompliance has occurred; and

(2) If a change in cost accounting practice or noncompliance has occurred, how any resulting cost impacts are resolved.

(b) Within 30 days after the award of any new contract subject to CAS, the contracting officer making the award shall request the CFAO to perform administration for CAS matters (see subpart 42.2). For subcontract awards, the contractor awarding the subcontract shall follow the procedures at 52.230-6(l).

30.602 Materiality.

(a) In determining materiality, the CFAO shall use the criteria in 48 CFR 9903.305 (FAR Appendix).

(b) A CFAO determination of materiality—

(1) May be made before or after a general dollar magnitude proposal has been submitted, depending on the particular facts and circumstances; and

(2) Shall be based on adequate documentation.

(c) When the amount involved is immaterial, the CFAO shall—

(1) Make no contract adjustments and conclude the cost impact process; and

(2) In the case of noncompliance issues, inform the contractor that—

(i) The noncompliance should be corrected; and

(ii) If the noncompliance is not corrected, the Government reserves the right to make appropriate contract adjustments should the cost impact become material in the future.

(d) For required, unilateral, and desirable changes, and CAS noncompliances, when the amount involved is material, the CFAO shall adjust the contract or use another suitable method (see 30.606).

30.603 Changes to disclosed or established cost accounting practices.

Adjustments to contracts and withholding amounts payable for CAS noncompliance, new standards, or voluntary changes are required only if the amounts involved are material. In determining materiality, the ACO shall use the criteria in 48 CFR 9903.305 (FAR Appendix). The ACO may forego

action to require that a cost impact proposal be submitted or to adjust contracts, if the ACO determines the amount involved is immaterial. However, in the case of noncompliance issues, the ACO shall inform the contractor that—

(a) The Government reserves the right to make appropriate contract adjustments if, in the future, the ACO determines that the cost impact has become material; and

(b) The contractor is not excused from the obligation to comply with the applicable Standard or rules and regulations involved.

30.603-1 Required changes.

(a) *General.* Offerors shall state whether or not the award of a contract would require a change to an established cost accounting practice affecting existing contracts and subcontracts (see 52.230-1). The contracting officer shall notify the CFAO if the offeror states that a change in cost accounting practice would be required.

(b) *CFAO responsibilities.* Prior to making an equitable adjustment under the applicable paragraph(s) that address a required change at 52.230-2, Cost Accounting Standards; 52.230-3, Disclosure and Consistency of Cost Accounting Practices; or 52.230-5, Cost Accounting Standards—Educational Institution, the CFAO shall determine that—

(1) The cost accounting practice change is required to comply with a CAS, or a modification or interpretation thereof, that subsequently became applicable to one or more contracts or subcontracts; or

(2) The former cost accounting practice was in compliance with applicable CAS and the change is necessary to remain in compliance.

(c) *Notice and proposal preparation.*

(1) When the award of a contract would require a change to an established cost accounting practice, the provision at 52.230-7, Proposal Disclosure—Cost Accounting Practice Changes, requires the offeror to—

(i) Prepare the contract pricing proposal in response to the solicitation using the changed cost accounting practice for the period of performance for which the practice will be used; and

(ii) Submit a description of the changed cost accounting practice to the contracting officer and the CFAO as pricing support for the proposal.

(2) When a change is required to remain in compliance (for reasons other than a contract award) or to comply with a new or modified standard, the clause at 52.230-6, Administration of

Cost Accounting Standards, requires the contractor to—

(i) Submit a description of the change to the CFAO not less than 60 days (or other mutually agreeable date) before implementation of the change; and

(ii) Submit rationale to support any contractor assertion that the cost impact of the change is immaterial.

(d) *Equitable adjustments for new or modified standards.* (1) Required changes made to comply with new or modified standards may require equitable adjustments, but only to those contracts awarded before the effective date of the new or modified standard (see 52.230-2, 52.230-3, or 52.230-5).

(2) When a contractor elects to implement a required change to comply with a new or modified standard prior to the applicability date of the standard, the CFAO shall administer the change as a unilateral change (see 30.603-2). Contractors shall not receive an equitable adjustment that will result in increased costs in the aggregate paid by the Government prior to the applicability date unless the CFAO determines that the unilateral change is a desirable change.

30.603-2 Unilateral and desirable changes.

(a) *Unilateral changes.* (1) The contractor may unilaterally change its disclosed or established cost accounting practices, but the Government shall not pay any increased cost, in the aggregate, as a result of the unilateral change.

(2) Prior to making any contract price or cost adjustments under the applicable paragraph(s) of the clause addressing a unilateral change at 52.230-2, 52.230-3, or 52.230-5, the CFAO shall determine that—

(i) The contemplated contract price or cost adjustments will protect the Government from the payment of the estimated increased costs, in the aggregate; and

(ii) The net effect of the contemplated adjustments will not result in the recovery of more than the increased costs paid by the Government, in the aggregate.

(b) *Desirable changes.* (1) Prior to taking action under the applicable paragraph(s) addressing a desirable change at 52.230-2, 52.230-3, or 52.230-5, the CFAO shall determine the change is a desirable change and not detrimental to the interests of the Government.

(2) Until the CFAO has determined a change to a cost accounting practice is a desirable change, the change is a unilateral change.

(3) Some factors to consider in determining if a change is a desirable

change include, but are not limited to, whether—

(i) The contractor must change the cost accounting practices it uses for Government contract and subcontract costing purposes to remain in compliance with the provisions of part 31;

(ii) The contractor is initiating management actions directly associated with the change that will result in cost savings for segments with CAS-covered contracts and subcontracts over a period for which forward pricing rates are developed or five years, whichever is shorter, and the cost savings are reflected in the forward pricing rates; and

(iii) Funds are available if the determination would necessitate an upward adjustment of contract cost or price.

(c) *Notice and proposal preparation.*

(1) When a contractor makes a unilateral change, the clause at 52.230-6, Administration of Cost Accounting Standards, requires the contractor to—

(i) Submit a description of the change to the CFAO not less than 60 days (or other mutually agreeable date) before implementation of the change; and

(ii) Submit rationale to support any contractor assertion that the cost impact of the change is immaterial.

(2) If a contractor implements the change in cost accounting practice without submitting the notice as required in paragraph (c)(1) of this subsection, the CFAO may determine the change a failure to follow a cost accounting practice consistently and process it as a noncompliance in accordance with 30.605.

(d) *Retroactive changes.* (1) If a contractor requests that a unilateral change be retroactive, the contractor shall submit supporting rationale.

(2) The CFAO shall promptly evaluate the contractor's request and shall, as soon as practical, notify the contractor in writing whether the request is or is not approved.

(3) The CFAO shall not approve a date for the retroactive change that is before the beginning of the contractor's fiscal year in which the request is made.

(e) *Contractor accounting changes due to external restructuring activities.* The requirements for contract price and cost adjustments do not apply to compliant cost accounting practice changes that are directly associated with external restructuring activities that are subject to and meet the requirements of 10 U.S.C. 2325. However, the disclosure requirements in 30.603-2 shall be followed.

30.604 Processing changes to disclosed or established cost accounting practices.

(a) *Scope.* This section applies to required, unilateral, and desirable changes in cost accounting practices.

(b) *Procedures.* Upon receipt of the contractor's notification and description of the change in cost accounting practice, the CFAO, with the assistance of the auditor, should review the proposed change concurrently for adequacy and compliance. The CFAO shall—

(1) If the description of the change is both adequate and compliant, notify the contractor in writing and—

(i) For required or unilateral changes (except those requested to be determined desirable changes), request the contractor submit a general dollar magnitude (GDM) proposal by a specified date, unless the CFAO determines the cost impact is immaterial; or

(ii) For unilateral changes that the contractor requests to be determined desirable changes, inform the contractor that the request shall include supporting rationale and—

(A) For any request based on the criteria in 30.603-2(b)(3)(ii), the data necessary to demonstrate the required cost savings; or

(B) For any request other than those based on the criteria in 30.603-2(b)(3)(ii), a GDM proposal and any other data necessary for the CFAO to determine if the change is a desirable change;

(2) If the description of the change is inadequate, request a revised description of the new cost accounting practice; and

(3) If the disclosed practice is noncompliant, notify the contractor in writing that, if implemented, the CFAO will determine the cost accounting practice to be noncompliant and process it accordingly.

(c) *Evaluating requests for desirable changes.* (1) When a contractor requests a unilateral change be determined a desirable change, the CFAO shall promptly evaluate the contractor's request and, as soon as practical, notify the contractor in writing whether the change is a desirable change or the request is denied.

(2) If the CFAO determines the change is a desirable change, the CFAO shall negotiate any cost or price adjustments that may be needed to resolve the cost impact (see 30.606).

(3) If the request is denied, the change is a unilateral change and shall be processed accordingly.

(d) *General dollar magnitude proposal.* The GDM proposal—

(1) Provides information to the CFAO on the estimated overall impact of a change in cost accounting practice on affected CAS-covered contracts and subcontracts that were awarded based on the previous cost accounting practice; and

(2) Assists the CFAO in determining whether individual contract price or cost adjustments are required.

(e) *General dollar magnitude proposal content.* The GDM proposal—

(1) Shall calculate the cost impact in accordance with paragraph (h) of this section;

(2) May use one or more of the following methods to determine the increase or decrease in cost accumulations:

(i) A representative sample of affected CAS-covered contracts and subcontracts.

(ii) The change in indirect rates multiplied by the total estimated base computed for each of the following groups:

(A) Fixed-price contracts and subcontracts.

(B) Flexibly priced contracts and subcontracts.

(iii) Any other method that provides a reasonable approximation of the total increase or decrease in cost accumulations for all affected fixed-price and flexibly priced contracts and subcontracts.

(3) May be in any format acceptable to the CFAO but, as a minimum, shall include the following data:

(i) The total increase or decrease in cost accumulations by executive agency, including any impact the change may have on contract and subcontract incentives, fees, and profits, for each of the following groups:

(A) Fixed-price contracts and subcontracts.

(B) Flexibly priced contracts and subcontracts.

(ii) For unilateral changes, the increased or decreased costs paid by the Government for each of the following groups:

(A) Fixed-price contracts and subcontracts.

(B) Flexibly priced contracts and subcontracts; and

(4) When requested by the CFAO, shall identify all affected CAS-covered contracts and subcontracts.

(f) *General dollar magnitude proposal evaluation.* The CFAO, with the assistance of the auditor, shall promptly evaluate the GDM proposal. If the cost impact is immaterial, the CFAO shall notify the contractor in writing and conclude the cost impact process with no contract adjustments. Otherwise, the CFAO shall—

(1) Negotiate and resolve the cost impact (see 30.606). If necessary, the CFAO may request that the contractor submit a revised GDM proposal by a specified date with specific additional data needed to resolve the cost impact (e.g., an expanded sample of affected CAS-covered contracts and subcontracts or a revised method of computing the increase or decrease in cost accumulations); or

(2) Request that the contractor submit a detailed cost-impact (DCI) proposal by a specified date if the CFAO determines that the GDM proposal is not sufficient to resolve the cost impact.

(g) *Detailed cost-impact proposal.* The DCI proposal—

(1) Shall calculate the cost impact in accordance with paragraph (h) of this section;

(2) Shall show the estimated increase or decrease in cost accumulations for each affected CAS-covered contract and subcontract unless the CFAO and contractor agree to—

(i) Include only those affected CAS-covered contracts and subcontracts exceeding a specified amount; and

(ii) Estimate the total increase or decrease in cost accumulations for all affected CAS-covered contracts and subcontracts, using the results in paragraph (g)(2)(i) of this section;

(3) May be in any format acceptable to the CFAO but, as a minimum, shall include the requirements at paragraphs (e)(3)(i) and (ii) of this section; and

(4) When requested by the CFAO, shall identify all affected CAS-covered contracts and subcontracts.

(h) *Calculating cost impacts.* The cost impact calculation shall—

(1) Include all affected CAS-covered contracts and subcontracts regardless of their status (i.e., open or closed) or the fiscal year(s) in which the costs were incurred (i.e., whether or not the final indirect cost rates have been established);

(2) Combine the cost impact for all affected CAS-covered contracts and subcontracts for all segments if the effect of a change results in costs flowing between those segments;

(3) Compute the increase or decrease in cost accumulations for affected CAS-covered contracts and subcontracts based on the difference between—

(i) The estimated cost to complete using the current practice; and

(ii) The estimated cost to complete using the changed practice;

(4) For unilateral changes—

(i) Determine the increased or decreased cost to the Government for fixed-price contracts and subcontracts as follows:

(A) When the amount in paragraph (h)(3)(i) exceeds the amount in

paragraph (h)(3)(ii) of this section, the difference is increased cost to the Government.

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

(ii) Determine the increased or decreased cost paid by the Government for flexibly priced contracts and subcontracts as follows:

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

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

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

(iv) Calculate the increased or decreased cost to the Government in the aggregate by adding—

(A) The increased or decreased costs to the Government for fixed-price contracts and subcontracts;

(B) The increased or decreased costs to the Government for flexibly priced contracts and subcontracts; and

(C) The total increase or decrease in contract and subcontract incentives, fees, and profits computed in paragraph (h)(4)(iii) of this section; and

(5) For equitable adjustments for required changes—

(i) Estimated increased cost accumulations are the basis for increasing contract prices, including target prices and cost ceilings; and

(ii) Estimated decreased cost accumulations are the basis for decreasing contract prices, including target prices and cost ceilings.

(i) *Remedies.* If the contractor does not submit the accounting change description or the proposals required in paragraph (d) or (g) of this section within the specified time, or any extension granted by the CFAO, the CFAO shall—

(1) With the assistance of the auditor, estimate the general dollar magnitude of the cost impact on affected CAS-covered contracts and subcontracts; and

(2) Take one or both of the following actions:

(i) Withhold an amount not to exceed 10 percent of each subsequent payment related to the contractor's affected CAS-covered contracts (up to the estimated general dollar magnitude of the cost impact), until the contractor furnishes the required information.

(ii) Issue a final decision in accordance with 33.211 and unilaterally adjust the contract(s) by the estimated amount of the cost impact.

30.605 Processing noncompliances.

(a) *General.* Prior to making any contract price or cost adjustments under the applicable paragraph(s) addressing noncompliance at 52.230-2, 52.230-3, or 52.230-5, the CFAO shall determine that—

(1) The contemplated contract price or cost adjustments will protect the Government from the payment of increased costs, in the aggregate; and

(2) The net effect of the contemplated contract price or cost adjustments will not result in the recovery of more than the increased costs to the Government, in the aggregate.

(3) The net effect of any invoice adjustments made to correct an estimating noncompliance will not result in the recovery of more than the increased cost paid by the Government, in the aggregate.

(4) The net effect of any interim and final voucher billing adjustments made to correct a cost accumulation noncompliance will not result in the recovery of more than the increased cost pay by the Government, in the aggregate.

(b) *Notice and determination.* (1) Within 15 days of receiving a report of alleged noncompliance from the auditor, the CFAO shall

(i) Notify the auditor that the CFAO disagrees with the alleged noncompliance; or

(ii) Issue a notice of potential noncompliance to the contractor and provide a copy to the auditor.

(2) The notice of potential noncompliance shall—

(i) Notify the contractor in writing of the exact nature of the noncompliance; and

(ii) Allow the contractor 60 days or other mutually agreeable date to—

(A) Agree or submit reasons why the contractor considers the existing practices to be in compliance; and

(B) Submit rationale to support any assertion that the cost impact of the noncompliance is immaterial.

(3) The CFAO shall—

(i) If applicable, review the reasons why the contractor considers the

existing practices to be compliant or the cost impact to be immaterial;

(ii) Make a determination of compliance or noncompliance consistent with 1.704; and

(iii) Notify the contractor and the auditor in writing of the determination of compliance or noncompliance and the basis for the determination.

(4) If the CFAO makes a determination of noncompliance, the CFAO shall follow the procedures in paragraphs (c) through (h) of this section, as appropriate, unless the CFAO also determines the cost impact is immaterial. If immaterial, the CFAO shall—

(i) Inform the contractor in writing that—

(A) The noncompliance should be corrected; and

(B) If the noncompliance is not corrected, the Government reserves the right to make appropriate contract adjustments should the noncompliance become material in the future; and

(ii) Conclude the cost impact process with no contract adjustments.

(c) *Correcting noncompliances.* (1) The clause at 52.230-6 requires the contractor to submit a description of any cost accounting practice change needed to correct a noncompliance within 60 days after the earlier of—

(i) Agreement with the CFAO that there is a noncompliance; or

(ii) Notification by the CFAO of a determination of noncompliance.

(2) The CFAO, with the assistance of the auditor, should review the proposed change to correct the noncompliance concurrently for adequacy and compliance (see 30.202-7). The CFAO shall—

(i) When the description of the change is both adequate and compliant—

(A) Notify the contractor in writing;

(B) Request that the contractor submit by a specified date a general dollar magnitude (GDM) proposal, unless the CFAO determines the cost impact is immaterial; and

(C) Follow the procedures at paragraph (b)(4) of this section if the CFAO determines the cost impact is immaterial.

(ii) If the description of the change is inadequate, request a revised description of the new cost accounting practice.

(iii) If the disclosed practice is noncompliant, notify the contractor in writing that, if implemented, the CFAO will determine the cost accounting practice to be noncompliant and process it accordingly.

(d) *General dollar magnitude proposal content.* The GDM proposal—

(1) Shall calculate the cost impact in accordance with paragraph (h) of this section;

(2) May use one or more of the following methods to determine the increase or decrease in contract and subcontract price or cost accumulations, as applicable:

(i) A representative sample of affected CAS-covered contracts and subcontracts affected by the noncompliance.

(ii) When the noncompliance involves cost accumulation:

(A) For purposes of computing increased cost in the aggregate, the change in indirect rates multiplied by the applicable base for flexibly priced contracts and subcontracts.

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

(iii) Any other method that provides a reasonable approximation of the total increase or decrease in contract and subcontract prices and cost accumulations;

(3) May be in any format acceptable to the CFAO but, as a minimum, shall include the following data:

(i) The total increase or decrease in contract and subcontract prices and cost accumulations, as applicable, by executive agency, including any impact the noncompliance may have on contract and subcontract incentives, fees, and profits, for each of the following groups:

(A) Fixed-price contracts and subcontracts.

(B) Flexibly priced contracts and subcontracts.

(ii) The increased or decreased costs to the Government for each of the following groups:

(A) Fixed-price contracts and subcontracts.

(B) Flexibly priced contracts and subcontracts.

(iii) The total overpayments and underpayments made by the Government during the period of noncompliance. The total overpayments and underpayments shall be broken down by quarter, unless each of the quarterly amounts billed during the period of noncompliance were approximately equal; and

(4) When requested by the CFAO, shall identify all affected CAS-covered contracts and subcontracts.

(e) *General dollar magnitude proposal evaluation.* The CFAO shall promptly evaluate the GDM proposal. If the cost impact is immaterial, the CFAO shall follow the requirements in paragraph (b)(4) of this section. Otherwise, the CFAO shall—

(1) Negotiate and resolve the cost impact (see 30.606). If necessary, the CFAO may request the contractor submit a revised GDM proposal by a specified date, with specific additional data needed to resolve the cost impact (e.g., an expanded sample of affected CAS-covered contracts and subcontracts or a revised method of computing the increase or decrease in contract and subcontract price and cost accumulations); or

(2) Request that the contractor submit a detailed cost-impact (DCI) proposal by a specified date if the CFAO determines that the GDM proposal is not sufficient to resolve the cost impact.

(f) *Detailed cost-impact proposal.* The DCI proposal—

(1) Shall calculate the cost impact in accordance with paragraph (h) of this section.

(2) Shall show the increase or decrease in price and cost accumulations, as applicable for each affected CAS-covered contract and subcontract unless the CFAO and contractor agree to—

(i) Include only those affected CAS-covered contracts and subcontracts having—

(A) Contract and subcontract values exceeding a specified amount when the noncompliance involves estimating costs; and

(B) Incurred costs exceeding a specified amount when the noncompliance involves accumulating costs; and

(ii) Estimate the total increase or decrease in price and cost accumulations for all affected CAS-covered contracts and subcontracts using the results in paragraph (f)(2)(i) of this section;

(3) May be in any format acceptable to the CFAO but, as a minimum, shall include the information in paragraph (d)(3) of this section; and

(4) When requested by the CFAO, shall identify all affected CAS-covered contracts and subcontracts.

(g) *Interest.* The CFAO shall—

(1) Separately identify interest on any increased cost paid, in the aggregate, as a result of the noncompliance;

(2) Compute simple interest from the date of overpayment to the time the adjustment is effected in accordance with 26 U.S.C. 6621(a)(2), as follows:

(i) If the quarterly amounts billed during the period of noncompliance were approximately the same, use the average interest rate and midpoint for the period of the noncompliance as the baseline for the computation of interest.

(ii) If the quarterly amounts billed during the period of noncompliance were not approximately the same, use

an alternate method that computes simple interest from the date of overpayment to the time the adjustment is effected.

(h) *Calculating cost impacts.* The cost impact calculation shall—

(1) Include all affected CAS-covered contracts and subcontracts regardless of their status (i.e., open or closed) or the fiscal year in which the costs were incurred (i.e., whether or not the final indirect cost rates have been established);

(2) Combine the cost impact for all affected CAS-covered contracts and subcontracts for all segments if the effect of a change results in costs flowing between those segments;

(3) For noncompliances that involve estimating costs, compute the impact on contract and subcontract price for flexibly priced and fixed-price contracts and subcontracts (the computation for the flexibly priced contracts is used only for purposes of determining any necessary adjustments to fee and incentives), based on the difference between—

(i) The negotiated contract or subcontract price; and

(ii) What the negotiated price would have been had the contractor used a compliant practice;

(4) For noncompliances that involve accumulating costs, compute the impact on cost accumulations for flexibly priced and fixed-price contracts and subcontracts (the computation for the fixed-priced contracts is used only for purposes of determining interest on costs paid), based on the difference between—

(i) The costs that were accumulated under the noncompliant practice; and

(ii) The costs that would have been accumulated using a compliant practice (from the time the noncompliant practice was first implemented until the date the noncompliant practice was replaced with a compliant practice);

(5) For purposes of determining increased costs in the aggregate, for noncompliances that involve estimating costs, determine the increased or decreased cost to the Government for fixed-price contracts and subcontracts as follows:

(i) When the amount in paragraph (h)(3)(i) exceeds the amount in paragraph (h)(3)(ii), the difference is increased cost to the Government.

(ii) When the amount in paragraph (h)(3)(i) is less than the amount in paragraph (h)(3)(ii), the difference is decreased cost to the Government;

(6) For purposes of determining increased costs in the aggregate, for noncompliances that involve cost accumulation, determine the increased

or decreased cost to the Government for flexibly priced contracts and subcontracts as follows:

(i) When the amount in paragraph (h)(4)(i) exceeds the amount in paragraph (h)(4)(ii), the difference is increased cost to the Government.

(ii) When the amount in paragraph (h)(4)(i) is less than the amount in paragraph (h)(4)(ii), the difference is decreased cost to the Government; and

(7) Calculate the total increase or decrease in contract and subcontract incentives, fees, and profits associated with the increased or decreased cost to the Government in accordance with 48 CFR 9903.306(c). The associated increase or decrease is based on the difference between the negotiated incentives, fees, and profits and the amounts that would have been negotiated had the contractor used a compliant practice;

(8) For noncompliances that involve estimating costs, calculate the increased or decreased cost to the Government, in the aggregate, by adding—

(i) The increased or decreased costs to the Government for fixed-price contracts and subcontracts; and

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

(9) For noncompliances that involve accumulating costs, calculate the increased or decreased cost to the Government, in the aggregate, by adding—

(i) The increased or decreased costs to the Government for flexibly priced contracts and subcontracts, and

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

(i) *Remedies.* If the contractor does not correct the noncompliance or submit the proposal required in paragraph (d) or (f) of this section within the specified time, or any extension granted by the CFAO, the CFAO shall follow the procedures at 30.604(i).

30.606 Resolving cost impacts.

(a) *General.* (1) The CFAO shall coordinate with the affected contracting officers before negotiating and resolving the cost impact when the estimated cost impact on any of their contracts is at least \$100,000. However, the CFAO has the sole authority for negotiating and resolving the cost impact.

(2) The CFAO may resolve a cost impact attributed to a change in cost accounting practice or a noncompliance by adjusting a single contract, several

but not all contracts, all contracts, or any other suitable method.

(3) In resolving the cost impact, the CFAO—

(i) May combine the cost impacts of several changes in cost accounting practices within a segment, intermediate office, or home office only if the changes are implemented in the same fiscal year;

(ii) May combine the cost impacts of two or more segments (*e.g.*, a change that affects the flow of costs between segments or the implementation of a common cost accounting practice for two or more segments);

(iii) Shall not combine the cost impact of a change in cost accounting practice with the cost impact of a noncompliant practice; and

(iv) Shall not combine the cost impact of one noncompliant practice with the cost impact of another noncompliant practice.

(v) Shall not combine the costs impacts attributable to different categories of compliant changes, *i.e.*, required, unilateral, or desirable changes.

(4) For desirable changes, the CFAO should consider the estimated cost impact of associated management actions on contract costs in resolving the cost impact.

(b) *Negotiations.* The CFAO shall—

(1) Negotiate and resolve the cost impact on behalf of all Government agencies; and

(2) At the conclusion of negotiations, prepare a negotiation memorandum and send copies to the auditor and affected contracting officers.

(c) *Contract adjustments.* (1) The CFAO may adjust some or all contracts with a material cost impact, subject to the provisions in paragraphs (c)(2) through (c)(6) of this section.

(2) In selecting the contract or contracts to be adjusted, the CFAO should assure, to the maximum extent practical and subject to the provisions in paragraphs (c)(3) through (c)(6) of this section, that the adjustments reflect a *pro rata* share of the cost impact based on the ratio of the cost impact of each executive agency to the total cost impact.

(3) For unilateral changes, the CFAO shall—

(i) To the maximum extent practical, not adjust the price upward for fixed-price contracts;

(ii) If contract adjustments are made, preclude payment of aggregate increased costs by taking one or both of the following actions—

(A) Reduce the contract price on fixed-price contracts.

(B) Disallow costs on flexibly priced contracts; and

(iii) The CFAO may, in consultation with the affected contracting officers, increase or decrease individual contract prices, including cost ceilings or target costs on flexibly priced contracts. In such cases, the CFAO shall limit any upward contract price adjustments on affected contracts to the amount of downward price adjustments to other affected contracts, *i.e.*, the aggregate value of all contracts affected by a unilateral change shall not be increased (9903.201–6(b)).

(4) For noncompliances that involve estimating costs, the CFAO—

(i) Shall, to the extent practical, not adjust the price upward for fixed-price contracts;

(ii) Shall, if contract adjustments are made, preclude payment of aggregate increased costs by reducing the contract price on fixed-price contracts.

(iii) The CFAO may, in consultation with the affected contracting officers, increase or decrease individual contract prices, including costs ceilings or target costs on flexibly priced contracts. In such cases, the CFAO shall limit any upward contract price adjustments to affected contracts to the amount of downward price adjustments to other affected contracts, *i.e.*, the aggregate value of all contracts affected by a noncompliance that involves estimating costs shall not be increased (9903.201–6(d)).

(iv) Shall require the contractor to correct the noncompliance, *i.e.*, ensure that compliant cost accounting practices will now be utilized to estimate proposed contract costs.

(v) Shall require the contractor to adjust any invoices that were paid based on noncompliant contract prices to reflect the adjusted contract prices, after any contract price adjustments are made to resolve the noncompliance.

(5) For noncompliances that involve cost accumulation, the CFAO—

(i) Shall require the contractor to—

(A) Correct noncompliant contract cost accumulations in the contractor's cost accounting records for affected contracts to reflect compliant contract cost accumulations; and

(B) Adjust interim payment requests (public vouchers and/or progress payments) and final vouchers to reflect the difference between the costs paid using the noncompliant practice and the costs that should have been paid using the compliant practice; or

(ii) Shall adjust contract prices. In adjusting contract prices, the CFAO shall preclude payment of aggregate increased costs by disallowing costs on flexibly priced contracts.

(A) The CFAO may, in consultation with the affected contracting officers,

increase or decrease individual contract prices, including costs ceilings or target costs on flexibly priced contracts. In such cases, the CFAO shall limit any upward contract price adjustments to affected contracts to the amount of downward price adjustments to other affected contracts, *i.e.*, the aggregate value of all contracts affected by a noncompliance that involves cost accumulation shall not be increased (9903.201–6(d)).

(B) Shall require the contractor to—

(1) Correct contract cost accumulations in the contractor's cost accounting records to reflect the contract price adjustments; and

(2) Adjust interim payment requests (public vouchers and/or progress payments) and final vouchers to reflect the contract price adjustments.

(6) When contract adjustments are made, the CFAO shall—

(i) Execute the bilateral modifications if the CFAO and contractor agree on the amount of the cost impact and the adjustments (see 42.302(a)(11)(iv)); or

(ii) When the CFAO and contractor do not agree on the amount of the cost impact or the contract adjustments, issue a final decision in accordance with 33.211 and unilaterally adjust the contract(s).

(d) *Alternate methods.* (1) The CFAO may use an alternate method instead of adjusting contracts to resolve the cost impact, provided the Government will not pay more, in the aggregate, than would be paid if the CFAO did not use the alternate method and the contracting parties agree on the use of that alternate method;

(2) The CFAO may not use an alternate method for contracts when application of the alternate method to contracts would result in—

(i) An underrecovery of monies by the Government (*e.g.*, due to cost overruns); or

(ii) Distortions of incentive provisions and relationships between target costs, ceiling costs, and actual costs for incentive type contracts.

(3) When using an alternate method that excludes the costs from an indirect cost pool, the CFAO shall—

(i) Apply such exclusion only to the determination of final indirect cost rates (see 42.705); and

(ii) Adjust the exclusion to reflect the Government participation rate for flexibly priced contracts and subcontracts. For example, if there are aggregate increased costs to the Government of \$100,000, and the indirect cost pool where the adjustment is to be effected has a Government participation rate of 50 percent for flexibly priced contracts and

subcontracts, the contractor shall exclude \$200,000 from the indirect cost pool (\$100,000/50% = \$200,000).

30.607 Subcontract administration.

When a negotiated CAS price adjustment or a determination of noncompliance is required at the subcontract level, the CFAO for the subcontractor shall furnish a copy of the negotiation memorandum or the determination to the CFAO for the contractor of the next higher-tier subcontractor. The CFAO of the contractor or the next higher-tier subcontractor shall not change the determination of the CFAO for the lower-tier subcontractor. If the subcontractor refuses to submit a GDM or DCI proposal, remedies are made at the prime contractor level.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

7. Revise section 52.230-6 to read as follows:

52.230-6 Administration of Cost Accounting Standards.

As prescribed in 30.201-4(d)(1), insert the following clause:

Administration of Cost Accounting Standards (Date)

For the purpose of administering the Cost Accounting Standards (CAS) requirements under this contract, the Contractor shall take the steps outlined in paragraphs (b) through (i) and (k) through (n) of this clause:

(a) *Definitions.* As used in this clause—

Affected CAS-covered contract or subcontract means a contract or subcontract subject to CAS rules and regulations for which a Contractor or subcontractor—

(1) Used one cost accounting practice to estimate costs and a changed cost accounting practice to accumulate and report costs under the contract or subcontract; or

(2) Used a noncompliant practice for purposes of estimating or accumulating and reporting costs under the contract or subcontract.

Cognizant Federal agency official (CFAO) means the Contracting Officer assigned by the cognizant Federal agency to administer the CAS.

Desirable change means a compliant change to a Contractor's established or disclosed cost accounting practices that the CFAO finds is desirable and not detrimental to the Government and is, therefore, not subject to the no increased cost prohibition provisions of CAS-covered contracts and subcontracts affected by the change.

Fixed-price contracts and subcontracts means—

(1) Fixed-price contracts and subcontracts described at FAR 16.202, 16.203, and 16.207;

(2) Fixed-price incentive contracts and subcontracts where the price is not adjusted based on actual costs incurred (FAR Subpart 16.4);

(3) Orders issued under indefinite-delivery contracts and subcontracts where final

payment is not based on actual costs incurred (FAR Subpart 16.5); and

(4) The fixed-hourly rate portion of time-and-materials and labor-hours contracts and subcontracts (FAR Subpart 16.6).

Flexibly priced contracts and subcontracts means—

(1) Fixed-price contracts and subcontracts described at FAR 16.204 and 16.206;

(2) Cost-reimbursement contracts and subcontracts (FAR Subpart 16.3);

(3) Incentive contracts and subcontracts where the price may be adjusted based on actual costs incurred (FAR Subpart 16.4);

(4) Orders issued under indefinite-delivery contracts and subcontracts where final payment is based on actual costs incurred (FAR Subpart 16.5); and

(5) The materials portion of time-and-materials contracts and subcontracts (FAR Subpart 16.6).

Noncompliance means a failure in estimating, accumulating, or reporting costs to—

(1) Comply with applicable CAS; or

(2) Consistently follow disclosed or established cost accounting practices.

Required change means—

(1) A change in cost accounting practice that a Contractor is required to make in order to comply with a CAS, or a modification or interpretation thereof, that subsequently becomes applicable to existing CAS-covered contracts or subcontracts due to the receipt of another CAS-covered contract or subcontract; or

(2) A prospective change to a disclosed or established cost accounting practice when the CFAO determines that the former practice was in compliance with applicable CAS and the change is necessary for the Contractor to remain in compliance.

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

(b) Submit to the CFAO a description of any cost accounting practice change (including revisions to the Disclosure Statement, if applicable) and any assertion that the cost impact of the change is immaterial as outlined in paragraphs (b)(1) through (3) of this clause. If a change in cost accounting practice is implemented without submitting the notice required by this paragraph, the CFAO may determine the change to be a failure to follow paragraph (a)(2) of the clause at FAR 52.230-2, Cost Accounting Standards; paragraph (a)(4) of the clause at FAR 52.230-3, Disclosure and Consistency of Cost Accounting Practices; or paragraph (a)(2) of the clause at FAR 52.230-5, Cost Accounting Standards—Educational Institution.

(1) When a description has been submitted for a change in cost accounting practice that is dependent on a contract award and that contract is subsequently awarded, notify the CFAO within 15 days after such award.

(2) For any change in cost accounting practice not covered by (b)(1) of this clause that is required in accordance with

paragraphs (a)(3) and (a)(4)(i) of the clause at FAR 52.230-2; or paragraphs (a)(3), (a)(4)(i), or (a)(4)(iv) of the clause at FAR 52.230-5, submit a description of the change to the CFAO not less than 60 days (or such other date as may be mutually agreed to by the CFAO and the Contractor) before implementation of the change.

(3) For any change in cost accounting practices proposed in accordance with paragraphs (a)(4)(ii) or (iii) of the clauses at FAR 52.230-2 and FAR 52.230-5; or with paragraph (a)(3) of the clause at FAR 52.230-3, submit a description of the change not less than 60 days (or such other date as may be mutually agreed to by the CFAO and the Contractor) before implementation of the change. If the change includes a proposed retroactive date, submit supporting rationale.

(4) Submit a description of the change necessary to correct a failure to comply with an applicable CAS or to follow a disclosed practice (as contemplated by paragraph (a)(5) of the clause at FAR 52.230-2 and FAR 52.230-5; or by paragraph (a)(4) of the clause at FAR 52.230-3)—

(i) Within 60 days (or such other date as may be mutually agreed to by the CFAO and the Contractor) after the date of agreement with the CFAO that there is a noncompliance; or

(ii) In the event of Contractor disagreement, within 60 days after the CFAO notifies the Contractor of the determination of noncompliance.

(c) When requested by the CFAO, submit on or before a date specified by the CFAO—

(1) A general dollar magnitude (GDM) proposal in accordance with paragraph (d) or (g) of this clause;

(2) A detailed cost impact (DCI) proposal in accordance with paragraph (e) or (h) of this clause;

(3) For any request for a desirable change that is based on the criteria in FAR 30.603-2(b)(3)(ii), the data necessary to demonstrate the required cost savings; and

(4) For any request for a desirable change that is based on criteria other than that in FAR 30.603-2(b)(3)(ii), a GDM proposal and any other data necessary for the CFAO to determine if the change is a desirable change.

(d) For any change in cost accounting practice subject to paragraph (b)(1), (b)(2), or (b)(3) of this clause, the GDM proposal shall—

(1) Show the calculation of the cost impact in accordance with paragraph (f) of this clause;

(2) Use one or more of the following methods to determine the increase or decrease in cost accumulations:

(i) A representative sample of affected CAS-covered contracts and subcontracts.

(ii) The change in indirect rates multiplied by the total estimated base computed for each of the following groups:

(A) Fixed-price contracts and subcontracts.
(B) Flexibly priced contracts and subcontracts.

(iii) Any other method that provides a reasonable approximation of the total increase or decrease in cost accumulations for all affected fixed-price and flexibly priced contracts and subcontracts;

(3) Use a format acceptable to the CFAO but, as a minimum, include the following data:

(i) The estimated increase or decrease in cost accumulations by executive agency, including any impact the change may have on contract and subcontract incentives, fees, and profits, for each of the following groups:

(A) Fixed-price contracts and subcontracts.
(B) Flexibly priced contracts and subcontracts.

(ii) For unilateral changes, the increased or decreased costs to the Government for each of the following groups:

(A) Fixed-price contracts and subcontracts.
(B) Flexibly priced contracts and subcontracts; and

(4) When requested by the CFAO, identify all affected CAS-covered contracts and subcontracts.

(e) For any change in cost accounting practice subject to paragraph (b)(1), (b)(2), or (b)(3) of this clause, the DCI proposal shall—

(1) Show the calculation of the cost impact in accordance with paragraph (f) of this clause;

(2) Show the estimated increase or decrease in cost accumulations for each affected CAS-covered contract and subcontract, unless the CFAO and Contractor agree to include—

(i) Only those affected CAS-covered contracts and subcontracts having an estimate to complete exceeding a specified amount; and

(ii) An estimate of the total increase or decrease in cost accumulations for all affected CAS-covered contracts and subcontracts, using the results in paragraph (e)(2)(i) of this clause;

(3) Use a format acceptable to the CFAO but, as a minimum, include the information in paragraph (d)(3) of this clause; and

(4) When requested by the CFAO, identify all affected CAS-covered contracts and subcontracts.

(f) For GDM and DCI proposals that are subject to the requirements of paragraphs (d) or (e) of this clause, calculate the cost impact as follows:

(1) The cost impact calculation shall include all affected CAS-covered contracts and subcontracts regardless of their status (*i.e.*, open or closed) or the fiscal year in which the costs were incurred (*i.e.*, whether or not the final indirect cost rates have been established).

(2) Compute the increase or decrease in cost accumulations for affected CAS-covered contracts and subcontracts based on the difference between—

(i) The estimated cost to complete using the current practice; and

(ii) The estimated cost to complete using the changed practice.

(3) For unilateral changes—

(i) Determine the increased or decreased cost to the Government for fixed-price contracts and subcontracts as follows:

(A) When the amount in paragraph (f)(2)(i) exceeds the amount in paragraph (f)(2)(ii) of this clause, the difference is increased cost to the Government.

(B) When the amount in paragraph (f)(2)(i) is less than the amount in paragraph (f)(2)(ii) of this clause, the difference is decreased cost to the Government;

(ii) Determine the increased or decreased cost to the Government for flexibly priced contracts and subcontracts as follows:

(A) When the amount in paragraph (f)(2)(i) exceeds the amount in paragraph (f)(2)(ii) of this clause, the difference is decreased cost to the Government.

(B) When the amount in paragraph (f)(2)(i) is less than the amount in paragraph (f)(2)(ii) of this clause, the difference is increased cost to the Government;

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

(iv) Calculate the increased or decreased cost to the Government in the aggregate by adding—

(A) The increased or decreased cost to the Government for fixed-price contracts and subcontracts;

(B) The increased or decreased cost to the Government for flexibly priced contracts and subcontracts; and

(C) The total increase or decrease in contract and subcontract incentives, fees, and profits computed in (f)(3)(iii) of this clause.

(4) For equitable adjustments for required changes—

(i) Estimated increased cost accumulations are the basis for increasing contract prices, including target prices and cost ceilings; and

(ii) Estimated decreased cost accumulations are the basis for decreasing contract prices, including target prices and cost ceilings.

(g) For any noncompliant cost accounting practice subject to paragraph (b)(4) of this clause, prepare the GDM proposal as follows:

(1) Calculate the cost impact in accordance with paragraph (i) of this clause.

(2) Use one or more of the following methods to determine the increase or decrease in contract and subcontract prices or cost accumulations, as applicable:

(i) A representative sample of affected CAS-covered contracts and subcontracts.

(ii) When the noncompliance involves cost accumulation—

(A) For purposes of computing increased costs in the aggregate, the change in indirect rates multiplied by the applicable base for flexibly priced contracts and subcontracts; or

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

(iii) Any other method that provides a reasonable approximation of the total increase or decrease.

(3) Use a format acceptable to the CFAO but, as a minimum, include the following data:

(i) The total increase or decrease in contract and subcontract price and cost accumulations, as applicable, by executive agency, including any impact the noncompliance may have on contract and subcontract incentives, fees, and profits, for each of the following groups:

(A) Fixed-price contracts and subcontracts.
(B) Flexibly priced contracts and subcontracts.

(ii) The increased or decreased cost to the Government for each of the following groups:

(A) Fixed-price contracts and subcontracts.
(B) Flexibly priced contracts and subcontracts.

(iii) The total overpayments and underpayments made by the Government during the period of noncompliance. The total overpayments and underpayments shall be broken down by quarter, unless each of the quarterly amounts billed during the period of noncompliance were approximately equal.

(4) When requested by the CFAO, identify all affected CAS-covered contracts and subcontracts.

(h) For any noncompliant practice subject to paragraph (b)(4) of this clause, prepare the DCI proposal as follows:

(1) Calculate the cost impact in accordance with paragraph (i) of this clause.

(2) Show the increase or decrease in price and cost accumulations for each affected CAS-covered contract and subcontract unless the CFAO and Contractor agree to—

(i) Include only those affected CAS-covered contracts and subcontracts having—

(A) Contract and subcontract values exceeding a specified amount when the noncompliance involves estimating costs; and

(B) Incurred costs exceeding a specified amount when the noncompliance involves accumulating costs; and

(ii) Estimate the total increase or decrease in price and cost accumulations for all affected CAS-covered contracts and subcontracts using the results in paragraph (h)(2)(i) of this clause.

(3) Use a format acceptable to the CFAO that, as a minimum, includes the information in paragraph (g)(3) of this clause.

(4) When requested by the CFAO, identify all affected CAS-covered contracts and subcontracts.

(i) For GDM and DCI proposals that are subject to the requirements of paragraph (g) or (h) of this clause, calculate the cost impact as follows:

(1) The cost impact calculation shall include all affected CAS-covered contracts and subcontracts regardless of their status (*i.e.*, open or closed) or the fiscal year in which the costs were incurred (*i.e.*, whether or not the final indirect cost rates have been established).

(2) For noncompliances that involve estimating costs, compute the change in contract and subcontract price for flexibly priced and fixed-price contracts and subcontracts (the computation for the flexibly priced contracts is used in determining any necessary adjustments to fee and incentives), based on the difference between—

(i) The negotiated contract or subcontract price; and

(ii) What the negotiated price would have been had the Contractor used a compliant practice.

(3) For noncompliances that involve accumulating costs, compute the change in cost accumulations for flexibly priced and fixed-price contracts and subcontracts. The

computation for the fixed-price contracts is used only for purposes of determining interest on costs paid, based on the difference between—

(i) The costs that were accumulated under the noncompliant practice; and

(ii) The costs that would have been accumulated using a compliant practice (from the time the noncompliant practice was first implemented until the date the noncompliant practice was replaced with a compliant practice).

(4) For purposes of determining increased costs in the aggregate for noncompliances that involve estimating costs, determine the increased or decreased cost to the Government for fixed-price contracts and subcontracts as follows:

(i) When the amount in paragraph (i)(2)(i) exceeds the amount in paragraph (i)(2)(ii) of this clause, the difference is increased cost to the Government.

(ii) When the amount in paragraph (i)(2)(i) is less than the amount in paragraph (i)(2)(ii) of this clause, the difference is decreased cost to the Government.

(5) For purposes of determining increased costs in the aggregate for noncompliances that involve cost accumulation, determine the increased or decreased cost to the Government for flexibly priced contracts and subcontracts as follows:

(i) When the amount in paragraph (i)(3)(i) exceeds the amount in paragraph (i)(3)(ii) of this clause, the difference is increased cost to the Government.

(ii) When the amount in paragraph (i)(3)(i) is less than the amount in paragraph (i)(3)(ii) of this clause, the difference is decreased cost to the Government.

(6) Calculate the total increase or decrease in contract and subcontract incentives, fees, and profits associated with the increased or decreased cost to the Government in accordance with 48 CFR 9903.306(c). The associated increase or decrease is based on the difference between the negotiated incentives, fees, and profits and the amounts that would have been negotiated had the Contractor used a compliant practice.

(7) For noncompliances that involve estimating costs, calculate the increased or decreased cost to the Government in the aggregate by adding—

(i) The increased or decreased cost to the Government for fixed-price contracts and subcontracts;

(ii) The total increase or decrease in contract and subcontracts incentives, fees, and profits computed in (i)(6) of this clause.

(8) For noncompliances that involve accumulating costs, calculate the increased or decreased cost to the Government in the aggregate by adding—

(i) The increased or decreased cost to the Government for flexibly priced contracts and subcontracts; and

(ii) If the total increase or decrease in contract and subcontracts incentives, fees, and profits computed in paragraph (i)(6) of this clause.

(j) If the Contractor does not submit the information required by paragraph (b) or (c) of this clause within the specified time, or any extension granted by the CFAO, the CFAO may take one or both of the following actions:

(1) Withhold an amount not to exceed 10 percent of each subsequent payment to the Contractor's affected CAS-covered contracts (up to the estimated general dollar magnitude of the cost impact) until such time as the Contractor provides the required information to the CFAO.

(2) Issue a final decision in accordance with FAR 33.211 and unilaterally adjust the contract(s) by the estimated amount of the cost impact.

(k) Agree to—

(1) Contract modifications to reflect adjustments required in accordance with paragraph (a)(4) or (a)(5) of the clauses at FAR 52.230-2 and 52.230-5; or with paragraph (a)(3) or (a)(4) of the clause at FAR 52.230-3; and

(2) Repay the Government for any aggregate increased cost paid to the Contractor.

(l) For all subcontracts subject to the clauses at FAR 52.230-2, 52.230-3, or 52.230-5—

(1) So state in the body of the subcontract, in the letter of award, or in both (do not use self-deleting clauses);

(2) Include the substance of this clause in all negotiated subcontracts; and

(3) Within 30 days after award of the subcontract, submit the following information to the Contractor's CFAO:

(i) Subcontractor's name and subcontract number.

(ii) Dollar amount and date of award.

(iii) Name of Contractor making the award.

(m) Notify the CFAO in writing of any adjustments required to subcontracts under this contract and agree to an adjustment to this contract price or estimated cost and fee. The Contractor shall—

(1) Provide this notice within 30 days after the Contractor receives the proposed subcontract adjustments; and

(2) Include a proposal for adjusting the higher-tier subcontract or the contract appropriately.

(n) For subcontracts containing the clause or substance of the clause at FAR 52.230-2, FAR 52.230-3, or FAR 52.230-5, require the subcontractor to comply with all Standards in effect on the date of award or of final agreement on price, as shown on the subcontractor's signed Certificate of Current Cost or Pricing Data, whichever is earlier.

(End of clause)

8. Add section 52.230-7 to read as follows:

52.230-7 Proposal Disclosure—Cost Accounting Practice Changes.

As prescribed in 30.201-3(c), insert the following provision:

Proposal Disclosure—Cost Accounting Practice Changes (Date)

The offeror shall check "yes" below if the contract award will result in a required or unilateral change in cost accounting practice, including unilateral changes requested to be desirable changes.

[] Yes

[] No

If the offeror checks "Yes" above, the offeror shall—

(1) Prepare the pricing proposal in response to the solicitation using the changed practice for the period of performance for which the practice will be used; and

(2) Submit a description of the changed cost accounting practice to the Contracting Officer and the Cognizant Federal Agency Official as pricing support for the proposal.

(End of provision)

[FR Doc. 03-16868 Filed 7-2-03; 8:45 am]

BILLING CODE 6820-EP-P