

May 5, 2025

To: John M. Tenaglia
Principal Director, Defense Pricing and Contracting, Office of the Secretary of Defense

Submitted via Email To: John.M.Tenaglia2.civ@mail.mil

Subject: Financial Executives International (FEI) Comments on Streamlining of Defense Acquisition Process

Who We Are:

Financial Executives International (FEI) is a professional association representing the interests of more than 10,000 Chief Financial Officers, Treasurers, Controllers, Tax Executives, and other senior financial executives from major companies throughout the United States. FEI represents both the providers and users of financial information. FEI's Committee on Government Business (CGB) is comprised of senior government contract compliance and policy leaders from over two dozen major companies supporting the defense industrial base and larger federal acquisition community. The CGB formulates policy opinions for FEI relative to existing or proposed federal legislation and regulation on government contracting issues and other financial-related rules to be followed by private business enterprises providing goods and services, directly or indirectly, to the federal government. These policy opinions represent the views of CGB and not necessarily the views of FEI or its members individually.

Comments:

The purpose of this letter is to provide recommendations to streamline the defense acquisition process and to modify certain burdensome regulations that add cost to defense procurements and act as a barrier to entry for commercial and nontraditional defense contractors into the defense market. FEI strongly believes that implementation of these recommendations will lead to increased competition and lower costs for defense procurements.

1. Simplify and Streamline Cost Accounting Standards (CAS)

CAS was designed fifty years ago to provide oversight for cost-based contracts, but CAS originally applied only to negotiated contracts exceeding \$100,000, with a limited set of exceptions. Except for minor monetary threshold increases, CAS has remained largely unchanged for many years, yet DoD acquisition policies, procedures, and practices have evolved, and improvements in technology, business practices, and pricing policies have lessened the government's contract cost accounting risks. CAS program requirements are not only incompatible with how business is conducted in today's marketplace, they are incompatible with the way the government conducts its own business. Independent studies have consistently shown that CAS is a barrier to the government's access to important technologies, as the standards impose additional performance and financial risk through burdensome accounting requirements and certifications not present in commercial business sectors.

Fortunately, the solution does not require extreme measures such as the complete elimination of CAS requirements for all companies in the defense acquisition system, which would inevitably result in added administrative complexity and confusion in the foreseeable future. Instead, FEI recommends that the government adopt an approach that simplifies and streamlines CAS and CAS administration, the initial groundwork for which is outlined in Section 4 of the June 2018 Report of the Advisory Panel on Streamlining and Codifying Acquisition Regulations (otherwise known as the 809 Panel Report Volume 2). The basics are straightforward and would immediately ease the burden of CAS compliance, while retaining appropriate oversight for cost accounting on large DoD contracts.

- Reinvigorate the CAS Board by extracting the Board from the Office of Federal Procurement Policy (OFPP), designating it as an independent organization within the executive branch, appointing a new chair, and providing other structural changes to ensure it is provided with the resources needed to address its responsibilities.
- Decouple the monetary threshold for a CAS-covered contract from the Truth in Negotiations Act (TINA) monetary threshold and set at a minimum of \$25 million, while eliminating the trigger contract exemption.
- Raise the full CAS-coverage threshold and the disclosure statement threshold to \$100 million.
- Add guidance for CAS applicability to hybrid contracts and indefinite delivery contract vehicles.
- Accelerate the activity directed in Section 820 of Public Law 114–328 requiring the CAS Board review CAS and conform them, to the extent practicable, to GAAP, and
- Revise Federal Acquisition Regulation (FAR) Subpart 30.6 and FAR 52.230-6 regarding the process for administering changes in cost accounting practices to exclude fixed price contracts and clarify that the calculation of increased costs in the aggregate includes the impact of multiple changes administered at the same time.

2. Remove the DFARS Business Systems Rules

In 2011, in response to identified Iraq and Afghanistan in-theater wartime contingency-contracting system deficiencies, rules were published in the Federal Register that gave the DoD authority to withhold a percentage of payments when a contractor's business system contains deficiencies. These withholds remain in effect until DoD determines the deficiency has been corrected. The rule further defines a business system as an accounting system, estimating system, purchasing system, earned value management system, material management accounting system and property management system.

Over the past 14 years, the Business System rules have significantly increased the cost of administration and oversight for both contractors and DoD while providing little to no benefit. Accounting and Estimating System Audits performed by the Pentagon auditors (Defense Contract Audit Agency) take a year or longer to complete. Astoundingly, the process to validate that a contractor's mandated corrective actions have been performed often takes longer to complete than the original audit itself, during which time the costs to contractors in the form of payment withholds and DoD in the form of administrative burdens continue to mount. Further, FEI is aware of instances when the Business System Rules have been used to retroactively apply punitive financial damage to a contractor based on immaterial system shortcomings that could not cause monetary harm or risk to the government. Importantly, in the absence of these rules, DoD retains an

abundance of existing enforcement mechanisms to protect the government's interests in those isolated instances where a material system weakness demonstrates potential to cause actual material harm to DoD.

FAR 1.102 provides that the FAR system will foster cooperative relationships between the government and its contractors. Using the regulatory process to mandate over-reaching, intrusive and non-value-added system audits based on nebulous criteria violates this overarching principle. The vision of the FAR is to deliver the "best value product or service to the customer." Deeming contractor business systems as disapproved, imposing mandatory payment withholds, and requiring implementation of costly corrective action plans for what are often subjective and immaterial findings continues to be both financially irresponsible and a direct contradiction to the vision of the FAR. Consequently, FEI recommends the elimination of the punitive and unnecessary Business System Rules.

3. Streamline the Process for Establishing Final Indirect Cost Rates

In 2011, the longstanding process for establishing a contractor's final indirect rates, as outlined in the Allowable Cost and Payment Clause (FAR 52.216-7(d)), was changed at the request of DCAA. Fundamentally, the Clause changed the required structure of a contractor's final indirect cost rate proposal (FICRP) and the administrative rate settlement process from a principle based cooperative approach to a restrictive checklist approach. Some of the added requirements and schedules for the FICRP are not needed by contractors in the normal course of business, cannot be readily generated directly from an accounting system and provide little, if any, value in finalizing indirect cost rates. With the FICRP structural changes, DCAA shifted their audit focus from supporting the establishment of final indirect cost rates to an evaluation of contract direct cost line items, including substantial validation testing through proof of payment to vendors and reconciliations to DCAA self-imposed checklist requirements. If the supporting documentation provided by a contractor was viewed as insufficient or any values between the various FICRP schedules did not reconcile in a fashion or format acceptable to the auditor, the direct costs would be reported as "unsupported" in the audit report, which caused additional complexities and delays in settling the final indirect rates.

The Clause changes coupled with the audit focus shift contributed to a huge DCAA audit backlog that required Congress to act by mandating a one-year time limit for FICRP audit completion and necessitated the hiring of independent public accounting firms to supplement the DCAA workforce. Ultimately, these changes lead to inefficiencies in the process of settling final indirect cost rates, added costs to the acquisition community, and caused delays in closing completed contracts, which is a critical step in ensuring allocated government funds are used before they expire.

FEI recommends that the 2011 Clause changes be eliminated allowing a return to a more efficient, less burdensome process for all parties involved. We understand the importance of auditing direct costs but recommend that the government auditors rely on other financial based audits such as real-time voucher/invoice audits and closeout audits to meet that need. Furthermore, it is important to note that contract direct costs are routinely evaluated by the individual contract Procurement Contracting Officer (PCO) teams who manage contract activity and ensure that costs billed to the government are adequately supported throughout contract execution. While a recent update to DFARS 242.302 gives PCOs the ability to delegate authority to settle direct costs to the Divisional Administrative Contracting Officers (DACOs) responsible for the settlement of final indirect cost rates, the DACOs lack the intimate contract knowledge to efficiently render final decisions on the allowability of direct costs, thus requiring them to reach back to the PCO teams for details, further slowing down the process of settling final indirect cost rates.

4. Increase the Threshold for Truthful Cost or Pricing Data Requirements

Truthful Cost or Pricing Data (10 U.S.C. Chapter 271 & 41 U.S.C. Chapter 35), formerly the Truth in Negotiations Act (TINA), is legislation that was designed with the intent to safeguard the U.S. government from being overcharged by contractors, with the ultimate goal of ensuring that the government pays a fair and reasonable price for goods and services procured. TINA mandates that contractors disclose and certify detailed cost and pricing data to the government for procurements in excess of \$2M unless they qualify for an exception (mainly procurements for commercial products / services or where adequate price competition was achieved).

Providing certified cost or pricing data is a time consuming, iterative process that can significantly increase acquisition lead time due to the preparation, submission, audit and negotiations associated with providing this voluminous data, often provided and refreshed at various points during the acquisition process.

To increase procurement efficiency, FEI recommends an increase to the TINA threshold from \$2M to \$50M or greater. Additionally, we recommend eliminating the requirement for certified cost or pricing data for (i) contract modifications and (ii) sole source follow on contracts, as the government should be able to determine price reasonableness by other means, including data already provided by the contractor, as well as historical pricing. Certified cost or pricing data should only be required for high value, sole source procurements where there is no other prior experience to determine price reasonableness, or where a “should-cost” analysis (FAR 15.407-4) cannot be generated as a basis for determining price reasonableness.

To eliminate wasteful spending, the government must be incentivized to use more commercial based buying techniques driven by a cost versus value tradeoff that inherently would not support the need for submission of certified cost or pricing data. Raising the TINA threshold and adding additional TINA exceptions will expedite the procurement process, getting necessary goods and services into the hands of the warfighter faster.

Conclusion:

If you wish to engage with the FEI-CGB on this matter or have any questions, please contact Ms. Christina Coulter, Manager, Technical Committee Operations, at the FEI office in Morristown, NJ at (973) 765-1047 or email at ccoulter@financialexecutives.org. You may also contact me directly at (703) 244-7747 or mcanavan@generaldynamics.com.

Sincerely,

Matthew J Canavan
Chairman,
Financial Executives International – Committee on Government Business

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FEI-CGB Members