

# COUNCIL OF DEFENSE AND SPACE INDUSTRY ASSOCIATIONS

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November 25, 2002

CODSIA Case 8-02

General Services Administration  
FAR Secretariat (MVA)  
1800 F Street, NW.  
Room 4035  
ATTN: Ms. Laurie Duarte  
Washington, D.C. 20405

Re: ANPR Contract Closeout  
Federal Register: September 24, 2002 (67 FR 59799)

Dear Ms. Duarte:

The undersigned members of the Council of Defense and Space Industry Associations (CODSIA) appreciate the opportunity to comment on the Advance Notice of Proposed Rule-Making (ANPR) on contract closeout that was published in the September 24, 2002 *Federal Register*.

Formed in 1964 by industry associations with common interests in defense and space fields, CODSIA is currently composed of six associations representing over 4,000 member companies across the nation. Participation in CODSIA projects is strictly voluntary; a decision by any member association to abstain from participating in a particular activity is not necessarily an indication of dissent.

We agree with the ANPR that there are a number of process-related reasons that contribute to the inability to closeout contracts in a timely manner. We have identified several areas that we believe contribute to the delays. To address some of these process-related impediments, we have made the following recommendations:

1. Government contracting officers appear to lack flexibility to use sound business judgment to closeout contracts. For example, closeout of Fixed Price Incentive contract types is routinely delayed until final indirect cost rates have been negotiated. In such instances, we recommend use of provisional indirect rates along with negotiation of costs. In general, we recommend allowing streamlined contract closeout where warranted, based on contract type and dollar value. For instance, contracting officers should be permitted to closeout a Time and Material contracts valued at less than \$1 million that contains minimal non-labor costs in an expeditious fashion, since the variable portion of the contract price is likely immaterial in amount. If more process oversight is needed, we recommend establishing a high-level working group within each agency, empowered under the FAR with authority to closeout contracts with

no further reconciliation efforts where it is in the Government's interest to do so, and the contractor agrees.

2. Currently, the FAR does not clearly spell out contracting officer responsibilities with respect to reconciliation of contract costs. Although internal agency policies may address this issue, we recommend that language be added (perhaps to FAR Part 42) to clarify that contracting officers periodically must reconcile contracts financially to ensure that all numbers in the contract are correct, consistent, and complete, including all modifications. Further, in FAR Part 4, language should be added to clearly require the contracting office to keep hard copies of all documents that may be needed by DFAS for contract reconciliation for final payment (e.g., DD250s, invoices, payment vouchers, etc.) until the contract is closed.

3. Government administrative agencies such as DCMA seem to lack necessary funding and resources to address the problem. Government audit agencies do not seem focused on closeout of prime contracts. In our view, contract closeout activities (including closeout audits) are often not given the same priority as other, more current needs. One way to address this problem might be to have agencies add in a budget line item for contract closeout activities.

4. The current guidance on use of "quick close-outs" found in FAR 42.7 is overly restrictive. Although the language provides for a contracting officer waiver of the limits "based on a risk assessment," in our experience contracting officers are reluctant to exercise such discretion. To address this concern, we recommend that the indirect dollar limitation be increased to \$10 million, the percentage limitation be increased to 50 percent, and administrative agencies develop policies and procedures to guide contracting officers through the waiver risk assessment process. If a \$10 million limitation is perceived as being too expansive to protect the government's interests, then we would recommend a limitation tied to the percentage of a contractor's flexibly priced business or another meaningful metric. Further, consideration should be given to incorporating the quick closeout class deviation to FAR 42.703-1(b), FAR 42.703-1(c) (2), and 42.708(a) (2) as a final rule. Finally, we recommend that a policy statement be added to FAR 42.708 requiring the use of quick closeout for subcontracts to the maximum extent possible.

5. Current FAR language does not address how a contracting officer should handle a contractor's failure to submit its final indirect cost rate submission. We recommend that language be added that is similar to the current CAS administration clause (FAR 52.230-6). That clause permits a 10 percent payment withhold against current contractor payment requests, up to the general dollar magnitude of the Government's financial exposure, when a contractor does not submit its required CAS cost impact proposal. A 10 percent payment withhold is more equitable than the current DCAA/DCMA imposition of a 20 percent decrement to a contractor's total costs for the year in which it does not submit its final indirect cost rate proposal.

6. We recommend developing incentive plans to reward contractors that fulfill their contract closeout commitments. Such incentives might include additional fee, specific award fee/incentive fee objectives, or other similar means. Contractor closeout activities might also be a separately priced Contract Line Item Number. In fixed price contracts, incorporate a priced data item for required contract closeout documentation. If contract closeout is a priority objective for the Government, then contracts should be negotiated with that objective in mind.

7. Often, closeout delays are caused by poorly understood document disposition instructions. We recommend creation of a solicitation/contract clause that would include easily understood instructions for the disposition of classified documents. This would likely be done at the agency FAR-supplement level, but would aid the process immensely. There also is a need for disposition instructions for government property in the contract. This is especially important when hazardous materials are, or are expected to be, involved. Additionally, we recommend creation of a new provision to FAR 7.105 to require a contract closeout plan as part of the acquisition plan.

8. The current Government property disposition process needs to be improved. The time lag between contractor submission of property schedules and receipt of disposition instructions contributes to the delay of closeout. We recommend priority be given to the release of the final rule on FAR Part 45.6, Reporting, Redistribution and Disposal of Contractor Inventory, so that its benefits can be implemented. We also recommend issuing a policy statement regarding the use of a single property management contract. If all government property were accountable to a single property management contract, the schedules for property transfers to a follow-on contract or disposition would have no effect on the performing contract. Additionally, we recommend providing the contracting parties with more flexibility to quickly disposition material where it makes sense to do so.

9. We believe time frames for government actions should be established. Currently, the FAR discusses time frames for the contractor to fulfill, such as submission of a final indirect cost rate proposal within 6 months after fiscal year-end, and submission of a final voucher within 120 days of settlement of indirect cost rates. The FAR is silent regarding timing of the Government's actions. For example, how long after receipt of a contractor's proposal does the cognizant audit agency have to initiate its audit? What is the time frame for providing audit reports of subcontractor costs? How long after receipt of the audit report does the administrative contracting officer (ACO) have to initiate negotiations? How long does the Government have to issue property disposition instructions?

10. Our member companies have experienced delays in obtaining required assist audit reports for subcontractors' portions of contract costs. It is virtually impossible to closeout a prime contract until the subcontracts under it are closed, and Government audit agencies must be responsive to the needs of prime contractors if the contract closeout deadline is to be achieved. Part of the solution may be to create a new provision to require a contract closeout plan in the subcontract Plan. Additionally, perhaps consideration should be given to deleting the requirement to closeout subcontracts as part of the prime contract closeout process. If subcontractor costs change subsequent to closure of the prime contract, then such cost reductions can be handled in a manner similar to the way other adjustments (such as income tax refunds or pension plan adjustments) are handled.

11. In many contracts, especially service contracts, Procurement Contracting Officers (PCOs) automatically include clauses for property/security/patents even when there is no probability that such issues will arise. This inclusion generates the need for closeout certifications for each of these areas, both at the prime level and at each subcontract tier. We

recommend consideration of some discretionary capability for PCOs to remove these requirements in contracts where they are not applicable.

12. We also recommend that consideration be given to adopting the objectives that one of our member companies and the cognizant DCMA office are considering including in a pilot program to expedite the closeout of the company's physically completed contracts. Those objectives, revised to apply to all member company contracts, are shown below:

- Firm Fixed Price (FFP) Contracts. On firm fixed price completed contracts, when all contract line items are complete and the contractor and the ACO have agreed on contract price and cumulative disbursements, the ACO should instruct DFAS to disburse any remaining unliquidated obligations (ULO) amounts up to contract price and close contracts. There should be no requirement for submission of a final invoice(s).
- Cost Plus Fixed Fee Contracts (CPFF). Bundle completed contracts for the same buying command. De-obligate remaining funds to be used for (a) payment of company invoices requiring replacements funds and (b) fund cost overruns on active contracts. For contractors whose billing systems meet high standards for compliance with the FAR and allowable cost reviews, audit final vouchers on CPFF contracts on an exception basis.
- Relax rules to enable DFAS and DCMA to realign disbursements by Accounting Classification Reference Number (ACRN) to eliminate negative ULOs.

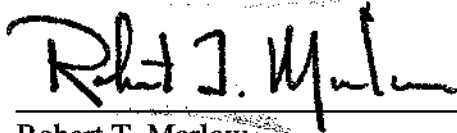
Finally, we recommend some process changes that the Council members may wish to report to their agencies. These changes include:

- a. Permit direct submittal of DD Form 250Z to document contract completion and to serve as the final invoice.
- b. Allow direct electronic submission of final vouchers
- c. Establish centers of excellence in contract reconciliations, establishment of final rates, expiring funds to assist in resolving issues.
- d. Provide training to the closeout personnel, including the use of risk assessments.
- e. Waive the requirement for final audits on contracts under \$500K.
- f. Grant a one-time waiver to USC 1553 to close contracts using negotiated settlements
- g. Move away from ACRN accounting.

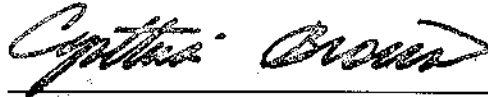
- h. Use Integrated Process Teams consisting of members from DCMA, DFAS and the contractor, to resolve issues with problem contracts.

We understand that contract closeouts are a significant problem for the Federal Government. We thank you for this opportunity to suggest improvements to the existing process, and look forward to seeing the proposed rule. If you have any questions or need additional information, please contact CODSIA Project Officer Ruth Franklin at (703) 247-2598 or at rfranklin@ndia.org.

Sincerely,



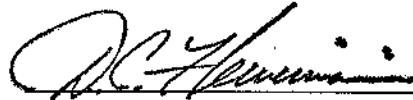
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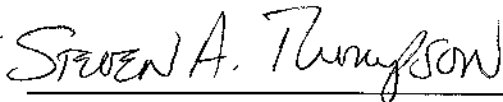
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