



INSIGHTS FROM THE BDO GOVERNMENT CONTRACTING PRACTICE

CHANGES TO DCAA CONTRACT CLOSEOUT PROCEDURES FACILITATES OUTSTANDING PAYMENTS TO GOVERNMENT DEFENSE CONTRACTORS

By Matthew Hoover and Giacomo Apadula

Working with the federal government can be a double-edged sword. On the one hand, government engagements provide a consistent stream of work. On the other hand, receiving final payment for services rendered can be delayed for literal years due to an arduous contract closeout process. However, recent changes to contract closeout procedures (along with DCAA's "catch up" on incurred cost audits) should alleviate the administrative burden of closing out certain types of cost reimbursable contracts and help accelerate final settlement of direct and indirect costs for contractors. Here's what you need to know.

CLASS DEVIATION – QUICK CLOSEOUT PROCEDURES THRESHOLD

Date: May 3, 2019

A Department of Defense (DoD) memorandum published May 3, 2019 instructs Defense Contract Management Agency (DCMA) Administrative Contracting Officers (ACO), when it is appropriate, to deviate from current quick-closeout procedures outlined in the Federal Acquisition Regulation (FAR). [FAR 42.708 \["Quick-Closeout Procedure"\]](#) allows quick-closeout if, "the amount of unsettled direct costs and indirect costs to be allocated to the contract, task order, or delivery order is relatively insignificant." Specifically, per FAR 42.708, total unsettled costs for any contract, task order, or delivery order must be the lesser of \$1,000,000 or

ten percent of the contract, task order, or delivery order amount to qualify for quick closeout. Effective immediately, the May 3, 2019 memorandum removes these thresholds and replaces them with a single, increased threshold of \$2,000,000.

In addition to the threshold increase, the May 3, 2019 memorandum also allows ACOs to negotiate settlement of direct and indirect costs prior to the determination of final direct costs and indirect rates. Notably, ACOs are now authorized to negotiate this settlement regardless of dollar value.

Source: <https://www.acq.osd.mil/dpap/policy/policyvault/USA001078-19-DPC.pdf>

DOD FINAL RULE

Date: April 30, 2019

DoD issued a final rule on April 30, 2019 to implement sections of the FY17 and FY18 National Defense Authorization Acts (NDAA). These sections permit expedited closeout of contracts entered into at least 17 years prior to the current fiscal year. Additional criteria for expedited closeout include:

- ▶ No outstanding supplies or services due; and
- ▶ Contracts cannot be reconciled due because:
 - The contract or payment records have been lost; or
 - The time and/or effort required to determine the amount owed to the U.S. Government or to the contractor outweighs the final payment.

To close these contracts, ACOs may either: 1) seek a negotiated settlement for a contract or group of contracts; or 2) offset remaining contract balances with balances from the contract, regardless of the year or type of appropriation obligated to fund the contract.

Source: <https://www.federalregister.gov/documents/2019/04/30/2019-08482/defense-federal-acquisition-regulation-supplement-contract-closeout-authority-dfars-case-2018-d012>

WHY THESE CHANGES WERE NECESSARY

[A 2017 report from the Government Accountability Office](#) documented procedural and structural issues when conducting contract closeouts, perpetrated by a number of government agencies and culminating in a cost audit backlog. According to [government regulations](#), closeouts should be completed within six to 36 months of physical completion, depending on the contract type. Instead, with the historic incurred cost audit backlog, coupled with the 36-month closeout time window, a contract's closeout timeline could be pushed to nearly five years.

WHY CONTRACTORS SHOULD CARE

Prolonged contract closeouts increase risk (and cost) to government contractors for a variety of reasons. And, generally speaking, the longer the delay, the greater the risk.

First, there is an internal time and cost of dealing with the administrative obstacles a contractor may encounter when attempting to close old contracts. For example:

- ▶ It may be difficult to locate the contract file and appropriate contemporaneous documentation from the project record
- ▶ The personnel with inherent knowledge regarding the contract may no longer be employed by the contractor
- ▶ The ACO assigned to and familiar with the contract may no longer be employed with the administering agency, requiring more reliance on historical documentation
- ▶ Points of contact at the administering agency may be unresponsive and/or reluctant to assist
- ▶ It may be difficult to obtain the requisite financial data and information needed to calculate any amounts owed to the contractor or U.S. Government

These administrative obstacles redirect a contractor's resources and distract from its overall strategic goals. In addition to the administrative burden, there are financial and business risks tied to contract closeout timelines, such as:

- ▶ Contracting Officer pressure to de-obligate funding prior to settlement of final costs
- ▶ Prolonged records retention and file maintenance to support closeout/final payment
- ▶ Carrying legacy liability risk, as the government will not sign a release of claims until a contract is administratively closed
- ▶ Ability to collect debts timely

HOW BDO CAN HELP

BDO is currently assisting several government contractors in closing old contracts by:

- ▶ Identifying and selecting contracts for closeout
- ▶ Coordinating and communicating with various agencies to identify ACOs
- ▶ Applying and calculating final indirect rate adjustments
- ▶ Developing closeout desktop procedures that can be followed by the organization going forward
- ▶ Preparing final invoices
- ▶ Developing comprehensive closeout packages

In conclusion, the changes to closeout eligibility and procedures should allow contractors to close their contracts more expeditiously. Additionally, closeout under this new guidance will allow contractors to bypass some of the aforementioned hurdles by negotiating a settlement amount with the DoD, thus reducing the administrative effort (and cost) to close its contracts. We see these changes as a win for both contractors and government agencies and hope the intended impact is achieved through implementation.

For additional information on how BDO can assist your company, please contact Matthew Hoover via email at mhoover@bdo.com or Giacomo Apadula via email at gapadula@bdo.com.

MEET BDO'S NEW MANAGING DIRECTOR OF THE FEDERAL MARKET ACCESS PRACTICE

Larry Allen, President of Allen Federal Business Partners, recently joined BDO USA, LLP as the Managing Director of the Federal Market Access Practice—a newly created service offering designed to assist companies in growing their federal sales, provide strategic contract consulting services, and industry-leading compliance and accounting support.

In this new role, Allen will work with federal contractors to identify new business growth opportunities, help ensure compliance with government contract requirements and provide seasoned insight on GSA contracting matters. BDO's Government Contracting practice, which provides tax, assurance, transaction advisory and consulting services to over 400 clients ranging from emerging businesses to Fortune 100 companies, is excited to welcome Allen into the fold.

CONTACT

ED AMOROSSO

National Co-Leader, Government Contracting Industry Practice
757-640-7295 / eamorosso@bdo.com

AARON RADDOCK

National Co-Leader, Government Contracting Industry Practice
703-336-1693 / araddock@bdo.com

GIACOMO APADULA

Managing Director
609-617-4191 / gapadula@bdo.com

ERIC FAHR

Partner, Transaction Advisory Services
703-770-6328 / efahr@bdo.com

ERIC JIA-SOBOTA

National Leader, Industry Specialty Services
703-770-6395 / esobota@bdo.com

MEREDITH PILARO

Partner, Tax
703-770-6357 / mpilaro@bdo.com

STEPHEN RITCHEY

Audit Partner
703-770-6346 / sritchey@bdo.com

DEREK SHAW

Managing Director
703-336-1501 / dshaw@bdo.com

ANDREA WILSON

Partner, Risk Advisory Services
703-752-2784 / aewilson@bdo.com



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