



**Homeland
Security**

JAN 27 2016

MEMORANDUM FOR: Heads of the Contracting Activities

FROM: Soraya Correa 
Chief Procurement Officer

SUBJECT: Class Deviation (Number 16-01) from
Federal Acquisition Regulation 42.708, Quick Closeout Procedures

Purpose: This class deviation is issued in accordance with Federal Acquisition Regulation (FAR) 1.404 to authorize contracting activities to deviate from the requirements at FAR 42.708(a)(2)(i) and (ii).

Background: FAR 42.708 allows the contracting officer (CO) to negotiate the settlement of direct and indirect costs for a specific contract, task order, or delivery order to be closed in advance of the determination of final direct costs and indirect cost rates. However, the FAR limits this negotiation to instances where the total unsettled direct costs and indirect costs to be allocated to any one contract, task order, or delivery order is no more than the lesser of \$1,000,000 or ten percent of the total contract, task order, or delivery order amount. This class deviation will allow COs to negotiate settlements and closeout of certain contracts using the procedures in FAR 42.708 regardless of dollar value or percent of unsettled direct and indirect costs allocable to the specific contract, delivery or task order. This class deviation is expected to:

1. Reduce the Department's backlog of completed contracts that remain open.

In general, the Government has six years to challenge costs claimed in a contractor's final indirect cost rate proposal. Due to various reasons, there are many DHS contracts, task orders, and delivery orders with unaudited final indirect cost rate proposals that are near the end of the six-year limit. In such instances, this deviation will allow closeout of completed contracts and orders prior to the final determination of direct and indirect costs, based on audits, for all years involved.

2. Protect the Department's ability to timely use funds.

- a. In those instances in which funds obligated under a contract, task order, or delivery order are still available for new obligations, timely closeout may free the funds for current, proper obligations.
- b. In those instances in which expired funds are available for antecedent liability obligations but are approaching the five years allowed for such obligations, a timely closeout will allow the Department to properly use the funds before the appropriations account is closed.

Deviation: This class deviation authorizes DHS COs to use quick closeout procedures regardless of dollar value or percent of unsettled direct and indirect costs allocable to a contract, task order, or delivery order. This deviation is subject to the following restrictions:

- The contractor has submitted a final indirect cost rate proposal(s) for the contract, task order, or delivery order considered for expedited closeout.
- COs must use either the Defense Contract Audit Agency (DCAA) recommended rates, if available, or rates mutually agreed to by the CO and the contractor, in determining the final indirect expenses.
- COs may waive the incurred cost audit requirement if compelling reasons exist. The decision to waive the audit must be made by the responsible CO in consultation with his or her legal advisor, the Office of the Chief Procurement Officer (OCPO)/Oversight and Pricing Branch (OPB), and DCAA. The basis for the decision must be documented in the contract file.
- COs must conduct a risk assessment that considers the contractor's accounting, estimating, and purchasing systems, open cost issues, and other pertinent information as required by FAR 42.708(a)(3)(iii). This assessment must be documented in the contract file.
- COs must ensure the contract, task order, and delivery order closed out under this deviation does not impact the Government's negotiation flexibility on any remaining unsettled contracts and orders. Indirect cost rates used under this deviation must not be considered as setting binding precedent when establishing the final indirect cost rates for other contracts, task orders, or delivery orders.

Action: Prior to applying this deviation, each DHS Component shall provide to OCPO/OPB, a list of contracts, task orders, and delivery orders that can be potentially closed using this deviation, including descriptions as to how each action meets the above listed restrictions. OCPO/OPB is available to provide assistance in compiling this listing. Components shall submit the listing to OPB via the procurement support in-box (procurementssupport@hq.dhs.gov).

Expiration Date: This class deviation is effective immediately and will remain in effect until January 31, 2017.

Questions or comments about this class deviation may be directed to Ellen Murray at (202) 447-5311 or Ellen.Murray@hq.dhs.gov or to Eileen Klase at (202) 447-5217 or Eileen.Klase@hq.dhs.gov.

**Class deviation from Federal Acquisition Regulation 42.708,
Quick closeout procedures for the Department of Homeland Security**

Findings

The Department of Homeland Security (DHS) has a large number of open, physically complete contracts, task orders, and delivery orders that are subject to the following circumstances:

1. Contractors have submitted final indirect cost rate proposal(s); however, for various reasons, those proposals are approaching the six-year limit available to the Government to challenge costs claimed in a contractor's final indirect cost rate proposal(s).
2. Use of funds.
 - a. Funds still available for new obligations and for which a timely contract closeout may release funds for current, proper obligations.
 - b. Expired funds available for antecedent liability obligations are approaching the five years allowed for such obligations. A timely contract closeout will allow the agency to properly use the funds before the appropriations account is closed.
3. Total unsettled direct and indirect costs are more than \$1 million or ten percent of the contract, task order, or delivery order value.

This class deviation will allow DHS contracting officers (COs) to use quick closeout procedures regardless of dollar value or the percent of unsettled direct and indirect costs allocable to specific contracts, task orders, and delivery orders. Use of this deviation is subject to the following restrictions:

- The contractor has submitted a final indirect cost rate proposal(s) for the contract, task order, or delivery order considered for expedited closeout.
- COs must use either the Defense Contract Audit Agency (DCAA) recommended rates, if available, or rates mutually agreed to by the CO and the contractor, in determining the final indirect expenses.
- COs may waive the incurred cost audit requirement if compelling reasons exist. The decision to waive the audit must be made by the responsible CO in consultation with his or her legal advisor, the Office of the Chief Procurement Officer (OCPO)/Oversight and Pricing Branch (OPB), and DCAA. The basis for the decision must be documented in the contract file.
- COs must conduct a risk assessment that considers the contractor's accounting, estimating, and purchasing systems, open cost issues, and other pertinent information as required by FAR 42.708(a)(3)(iii). This assessment must also be documented in the contract file.
- COs must ensure the contract, task order, and delivery order closed out under this deviation does not impact the Government's negotiation flexibility on any remaining unsettled contracts and orders. Indirect cost rates used under this deviation must not be considered as setting binding precedent when establishing the final indirect cost rates for other contracts, task orders, or delivery orders.

Further, this deviation will expire January 31, 2017. Applying an expiration date will allow OCPO to evaluate whether DHS COs are adhering to the restrictions for using the quick closeout procedures and determine whether implementing the deviation assisted with timely closeout of contracts, task orders, or delivery orders.

Determination

As authorized by FAR 1.404, I hereby issue a waiver to the requirements at FAR 42.708(a)(2)(i) and (ii) that allows DHS contracting activities to utilize quick closeout procedures before establishing final direct costs and indirect rates, regardless of dollar value or percent of unsettled direct and indirect costs allocable to the contract, task order, or delivery order meeting the restrictions provided herein. As required by FAR 1.404, OCPO has consulted with the Chair of the Civilian Agency Acquisition Council. This class deviation shall remain in effect until January 31, 2017.



Soraya Correa
Chief Procurement Officer
Department of Homeland Security



Date