

## Quick Close-out Gets Quicker for DoD

Written by Nick Sanders

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Recently we [wrote](#) about DoD's issuance of FAR and DFARS Class Deviations, which give DoD contracting officers permission to deviate from strict regulatory requirements. We noted that DoD probably wouldn't have to issue so many Class Deviations if the DAR Council would show some urgency when performing its rule-making duties.

One of the examples we chose to illustrate the DAR Council's lack of urgency was DFARS Case No. 2017-D042, which would, when issued, "permit closeout of contracts without reconciliation of low dollar residual amounts." As we opined, that would seem to be a very good thing, given the enormous mountain of contract closeouts facing the DoD. Despite the seeming importance of issuing that rule, DAR Council granted the Contract Administration Committee another 90 days (over the original commitment date) to issue a "report" (whatever that is) to the Council. We suppose they just needed more time to do whatever it is they do when considering regulatory streamlining.

FAR 42.708 ("Quick-closeout Procedure") establishes conditions when a contracting officer may negotiate settlement of direct costs and indirect rates for an individual contract, task order, or delivery order prior to determination of final costs and final billing rates for the contractor as a whole. In fact, when the specified conditions are present, the cognizant contracting officer "shall" utilize those procedures.

The problem is that the conditions are very stringent, and so the procedures aren't used very much. For example, one of the specified conditions is that "The amount of unsettled direct costs and indirect costs to be allocated to the contract, task order, or delivery order [must be] relatively insignificant. Cost amounts will be considered relatively insignificant when the total unsettled direct costs and indirect costs to be allocated to any one contract, task order, or delivery order does not exceed the lesser of (i) \$1,000,000; or (ii) 10 percent of the total contract, task order, or delivery order amount." In this context, "unsettled" means not audited and negotiated and finalized in accordance with FAR 42.705. Accordingly, it is apparent that the permissiveness of the "quick-closeout" procedures is illusory, and that they would apply only to the smallest of government contractors.

The Defense Contract Management Agency (DCMA) has issued [a series](#) of its own Class Deviations, modifying DCMA Instruction 135 ("Contract Closeout"), to help its contracting officers navigate the complexities of contract closeout. From our reading the Class Deviations (also called Immediate Policy Changes or ICPs) don't do much to streamline the process; instead, they seem to add steps.

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However, Vice Admiral Lewis, DCMA Director, very recently issued a Class Deviation (dated August 15, 2017) that is intended to “streamline[] the prior quick-closeout process for DCMA’s Administrative Contracting Officers (ACOs) by removing requirements to obtain an audit report or Low-Risk AdequacyMemorandum from the Defense Contract Audit Agency (DCAA) prior to settling quick-closeout rates.” The Class Deviation “authorizes ACOs to settle final overhead rates and close any and all physically complete contracts *regardless of dollar value or the percent of unsettled direct and indirect costs allocable to the contracts* . It applies to Cost-Reimbursement. Fixed-Price Incentive. Fixed-Price Redeterminable and Time-and-Materials Contracts.” (Emphasis added.)

Well done DMCA!

(The DCMA Class Deviation has been added to the Knowledge Resources section of the website.)

We very much hope that readers will take maximum advantage of this DCMA policy change, and will work to close-out contracts, delivery orders, and task orders upon physical completion, without waiting for a DCAA audit report.

Why did DCMA feel the need to issue this Class Deviation?

Well, perhaps because they were tired of waiting for the DAR Council to fulfill its role in the rule-making process.