

DoD Implements New TINA Threshold—Again and Again

Written by Nick Sanders
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It's not like we want to keep talking about this, honestly. We've written and published article after article, discussing the increase to the threshold at which obtaining certified cost or pricing data is required (and below which obtaining CCOPD is prohibited) that was written into public law in the 2018 National Defense Authorization Act (NDAA) and now must be implemented by those agencies subject to that law. Interestingly, it's been the civilian agencies not subject to NDAA that have been the quickest to take advantage of the new TINA threshold; whereas the Department of Defense has chosen a slower and less obvious route.

For example, whereas the NDAA directed that the micropurchase threshold be increased to \$10,000, the DoD has chosen to issue a Class Deviation that increases it only to \$5,000 (in normal circumstances). Similarly, whereas the Department of Energy [has issued](#) a Class Deviation to increase the TINA threshold to \$2 Million, the DoD has issued multiple Class Deviations (that supersede each other) in attempts to do the same thing.

For example – and as we [told](#) readers – DoD issued Class Deviation 2018-O0012 (April 13, 2008) to implement the NDAA threshold. All was well with respect to new contracts awarded after 1 July 2018, but nothing was said about existing contracts. The DOE Class Deviation addressed existing contracts, and invited contractors to request contract modifications to implement the new thresholds “without consideration.”

Perhaps it was only a timing issue. Perhaps DOE simply had more time to think about it than DoD did.

But then DoD issued [Class Deviation 2018-O0015](#) (June 5, 2018) – which superseded 2018-O0012 – and rectified the oversight by providing additional clauses that can be used to modify an existing contract “without consideration” that would raise the TINA threshold with respect to subcontractor cost or pricing data. The Class Deviation stated—

In the case of a change or modification made to a prime contract that was entered into before July 1, 2018, the threshold for obtaining certified cost or pricing data remains \$750,000, with the following exception. Upon the request of a contractor that was required to submit certified cost or pricing data in connection with a prime contract entered into before July 1, 2018, the contracting officer shall use the clauses provided in Attachment 1 of this deviation ... to modify the contract to reflect a \$2 million threshold for obtaining certified cost or pricing data for

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subcontracts entered into after July 1, 2018.

So while it took a couple of tries for the folks at DPAP to get it right, at the end of the day we should be happy that the Class Deviation(s) were issued and that contractors have a clear path forward to get their contracts modified to align TINA requirements with the public law.

If you can't figure it out by this point, we suspect you'll need to hire somebody to assist you. It will be an investment well worth making.