The story continues.

It started with the 2018 National Defense Authorization Act (NDAA), a piece of legislation focused on the Department of Defense and NASA. The 2018 NDAA directed DoD (and NASA) to make a number of changes to the acquisition regulations. We told you about many of those changes. Notably, the 2018 NDAA changed the threshold at which contracting officers (and contractors) must obtain certified cost or pricing data—commonly known as "the TINA threshold" (referring to the Truth-in-Negotiations Act). The 2018 NDAA raised the TINA threshold from $750,000 to $2 million.

Again, the NDAA language was focused on DoD and NASA, but that focus created a problem. The problem is that the TINA language—*e.g.*, FAR 15.403-4(a)(1)—applies to all Federal agencies, not just to DoD and NASA. Essentially, then, Congress was telling the DAR Council (one of the two FAR Councils who writes the acquisition regulations) to make special language in the Defense Federal Acquisition Regulation Supplement (DFARS). That would be an enormous undertaking, since the DAR Council would not only have to create regulatory language that paralleled the existing FAR language, but would also have to create new solicitation provisions and contract clauses that paralleled existing FAR provisions and clauses. That would be hard and take a long time, a duration perhaps measured in years. In the meantime, DCMA contracting officers would be stuck, forced to choose between complying with statute and complying with the existing FAR regulatory language. We wrote about that challenge in **this article** .

We followed-up that article with **another one** , one that discussed how the Civilian Agency Acquisition Council (CAAC)—the sister entity to the DAR Council—had issued a Class Deviation that authorized civilian agencies to adopt some of the 2018 NDAA acquisition thresholds. This was a significant step because it was a strong indication that the 2018 NDAA changes were going to be adopted across the entire FAR, and not just adopted within the DFARS. However, we noted that the CAAC Class Deviation was silent with respect to the TINA threshold. We speculated that it might be the subject of a future CAAC communication.

In yet **another article** on the topic, we discussed in some detail the quandary faced by both DCMA contracting officers and contractors, because the existing FAR language and associated solicitation provisions and contract clauses all referenced a specific dollar value ($750,000) as the TINA threshold, rather than the value in the statute. Thus, if the statute changed but the regulatory language did not, then there was going to be a conflict between the two. Further, the CAS threshold (which is the contract value at which CAS is applied, unless an exemption is available) is tied to the TINA statute rather than to the regulation. That created *yet another* compliance quandary for people. We wrote—

By ‘slow-rolling’ the implementation of the 2018 NDAA threshold changes into the acquisition regulations, the FAR Councils have created a problem for contractors. If the contractors wait for the regulatory implementation, then they must disconnect CAS coverage from TINA coverage. They will end up requesting certified cost or pricing data from subcontractors that are, by statute, exempt from CAS. This helps nobody and may well lead to increased procurement costs.

In our view, the only rational approach is to apply the statutory threshold changes now. The FAR Councils should immediately issue a Class Deviation to FAR 15.403-4(a)(1) to implement the new TINA threshold, even if formal rule-making takes a bit longer. If you are a contractor, you should discuss this quandary with your cognizant contracting officer and try to get some relief.

Then, in two other (brief) articles, we noted that the DoD had issued Class Deviations to implement the 2018 NDAA acquisition threshold changes in advance of formal rulemaking. (See **here** .)

Just to recap, by this point the CAAC had issued a Class Deviation to permit civilian agencies to implement some of the 2018 NDAA threshold changes—in particular, those associated with the Simplified Acquisition Threshold (SAT) and the Micro-Purchase threshold—but they had not addressed changes to the TINA threshold. The Department of Energy (DOE) had jumped on that permission and had issued its own Class Deviation. But of course DOE could not address the TINA threshold, because the CAAC had not addressed it in its Class Deviation. The DoD had issued two Class Deviations addressing the SAT, the Micro-Purchase threshold, and the TINA threshold.

Now we are all up to date.

And you should not be surprised to learn that on May 3, 2018, the CAAC issued a Class Deviation via **CAAC Letter 18-003** , that addressed the TINA threshold. The CAAC Class Deviation authorizes civilian agencies to “raise[ ] the threshold for requiring Certified Cost or Pricing Data from $750,000 to $2,000,000.” So there you go.

Importantly, the CAAC Letter also addressed how the threshold increase is to be implemented on existing contracts. The CAAC Letter stated “contracts entered into on or before June 30, 2018 are excluded from this threshold increase.” That sounds like *another problem*, doesn’t it? Contractors are supposed to have one Purchasing System, with a single set of requirements and thresholds, and not two separate ones (one for old contracts and another for new contracts).

Fortunately, the CAAC Letter also offered a way out of the problem. It stated “contractors for those [old] contracts can request to modify such contracts, without consideration, to use the new threshold.” Note the key phrase – “without consideration.”

At this point, contractors should be moving briskly to revise their Purchasing/Subcontracting procedures to implement the new 2018 NDAA thresholds. They should also be preparing letters to their procuring contracting officers to have their existing contracts modified to adopt the new acquisition thresholds. Contractors with DoD and/or NASA contracts should have already sent those requests, and contractors with civilian agency contracts should be looking to do the same.