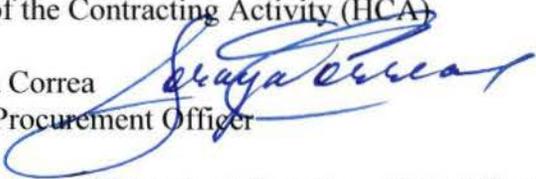


JUN 22 2015



Homeland
Security

MEMORANDUM FOR: Ashley J. Lewis
Head of the Contracting Activity (HCA)

FROM: Soraya Correa 
Chief Procurement Officer

SUBJECT: Department of Homeland Security – United States Coast Guard
Class Deviation (Number 15-05) 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 the United States Coast Guard (USCG) to deviate from the requirements at FAR 42.708(a)(2)(i) and (ii). This class deviation will allow the USCG to use quick closeout procedures regardless of dollar value or the percent of unsettled direct and indirect costs allocable to specific delivery/task orders under the Deepwater contract DTCG23-02-C-2DW001.

Background: On June 4, 2015, the USCG submitted a request to deviate from the limits established in the FAR when using quick closeout procedures for contract actions with total unsettled direct and indirect costs that are no more than \$1M or 10 percent of the contract, task order, or delivery order value. Because of the scope and complexity of the Deepwater contract, the USCG anticipates that the unsettled direct and indirect costs will either exceed \$1M or 10 percent of the task or delivery order values. The deviation is requested for orders with Integrated Coast Guard Systems (ICGS) and its subcontractors, primarily Lockheed Martin (LM) and Huntington Ingalls Incorporated (HII).

This deviation will provide the USCG with the ability to negotiate settlement of numerous task or delivery orders that have reached, or are approaching, the statute of limitations regarding the submissions of claims or with funds subject to cancellation. The USCG anticipates that \$10.7M in obligated funds will be cancelled by the end of fiscal year 2017. There are no known incurred cost audit reports from the Defense Contract Audit Agency (DCAA) for calendar years 2002 - 2012 for HII and the latest incurred cost audit for LM is calendar year 2007. Consequently, if standard closeout procedures are followed, the USCG would be unable to successfully closeout many open task or delivery orders under the Deepwater contract before the statute of limitations expires and funding authority is cancelled.

In an effort to protect the Government's interest and preserve its right to redress issues that may arise with respect to ICGS's certified cost proposal, the USCG is developing a list of task/delivery orders approaching the statute of limitations. This list will enable the USCG to prioritize the settlement of task and delivery orders that have reached, or are approaching, their statute of limitations or with funds at risk of being cancelled.

To mitigate additional risk to the Government the deviation will be subject to the following restrictions:

- The contractor has submitted certified indirect cost rate proposals for the order under consideration.
- In selected instances, the contracting officer (CO) may waive the DCAA audit requirement when compelling reasons exist, such as:
 - Delivery/task orders with cost claimed (per the contractor's incurred cost submissions) approaching the statute of limitations; or
 - Delivery/task orders with funds at risk of cancelling before the estimated audit report date.
- CO must use either DCAA recommended rates or rates mutually agreed to by the CO and the contractor in determining the final indirect expenses.
- CO must ensure task or delivery orders closed out under this deviation do not impact the Government's negotiation flexibility on the remaining unsettled costs under this contract or other contracts. 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.
- CO must not use this deviation if there are significant open cost issues such as Cost Accounting Standards noncompliance or issues in litigation.
- CO must conduct and document a risk assessment that considers the contractor's accounting, estimating, and purchasing system, and any DCAA concerns and any other pertinent information per FAR 42.708(a)(3)(iii), before using this deviation to exceed the \$1,000,000 or 10 percent restriction in FAR 42.708(a)(2).
- The decision to waive the audit must be made by the cognizant CO in consultation with legal and DCAA.
- The deviation applies to Cost-Reimbursement, Fixed-Price Incentive, Fixed-Price Re-determinable and Time-and-Materials delivery/task orders.

Deviation: This deviation authorizes the USCG to use the quick closeout procedures at FAR 42.708 without regard to the limits stipulated at FAR 42.708(a)(2)(i) and (ii) subject to the limits stipulated in the above paragraph for delivery and task orders under the Deepwater contract DTTCG23-02-C-2DW001.

Action: Effective immediately, the CO shall provide to the Office of the Chief Procurement Officer a list of all task/delivery orders that have reached, or are approaching, their statute of limitations or with funds at risk of being cancelled.

Expiration Date: This class deviation is effective immediately and will remain in effect until September 30, 2016, subject to the renewal for the closeout process of the Deepwater contract DTTCG23-02-C-2DW001.

Attachments: DHS-FAR class deviation 15-05, Quick closeout procedure for USCG.

Additional Information: Questions or comments about this class deviation may be directed to Camara Francis at (202) 447-5904, or by email at Camara.Francis@hq.dhs.gov.

**Class deviation from the Federal Acquisition Regulation 42.708,
Quick closeout procedures for the United States Coast Guard**

Findings

The request submitted by the United States Coast Guard on June 4, 2015 to use quick closeout procedures without regard to the limits stipulated at Federal Acquisition Regulation (FAR) 42.708(a)(2)(i) and (ii) is sufficiently supported. The USCG is requesting to use quick closeout procedures for orders under contract DTTCG23-02-C-2DW001 that are approaching their statute of limitations or that have funds that are at risk of being cancelled. For all other orders, the contracting officer must coordinate with the Defense Contract Audit Agency (DCAA) to obtain audit reports. Before using the deviation, the USCG must conduct a risk assessment following FAR 42.708(a)(3). The USCG must also consult with DCAA and legal when deciding to waive audit requirements. Further, this deviation will expire September 30, 2016. Applying an expiration date will allow the Office of the Chief Procurement Officer to assess how effectively the USCG is using the quick closeout procedures. By implementing these mechanisms, the USCG is mitigating its risk to the Government. The USCG currently has \$10.7 million in obligated funds that will be cancelled by the end of fiscal year 2017. If funds are cancelled, the USCG will need to use current year funds to pay for its obligations. Approval of the deviation will ensure that the USCG will be positioned to fully fund its current mission needs.

Determination

In accordance with FAR 1.404, I hereby grant a waiver to the requirements at FAR 42.708(a)(2)(i) and (ii) for the USCG to utilize quick closeout procedures prior to the establishment of final direct and indirect costs rates regardless of dollar value or the percent of unsettled direct and indirect costs allocable to the contract or orders. This waiver is only for orders that have reached, or are approaching, the statute of limitations or with funds that are at risk of being canceled before the estimated audit report date. 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 September 30, 2016.


Soraya Correa
Chief Procurement Officer
Department of Homeland Security

6/22/2015
Date