

# Updates in Contract Admin *2018 and Forward*

**(Jan 2019)**



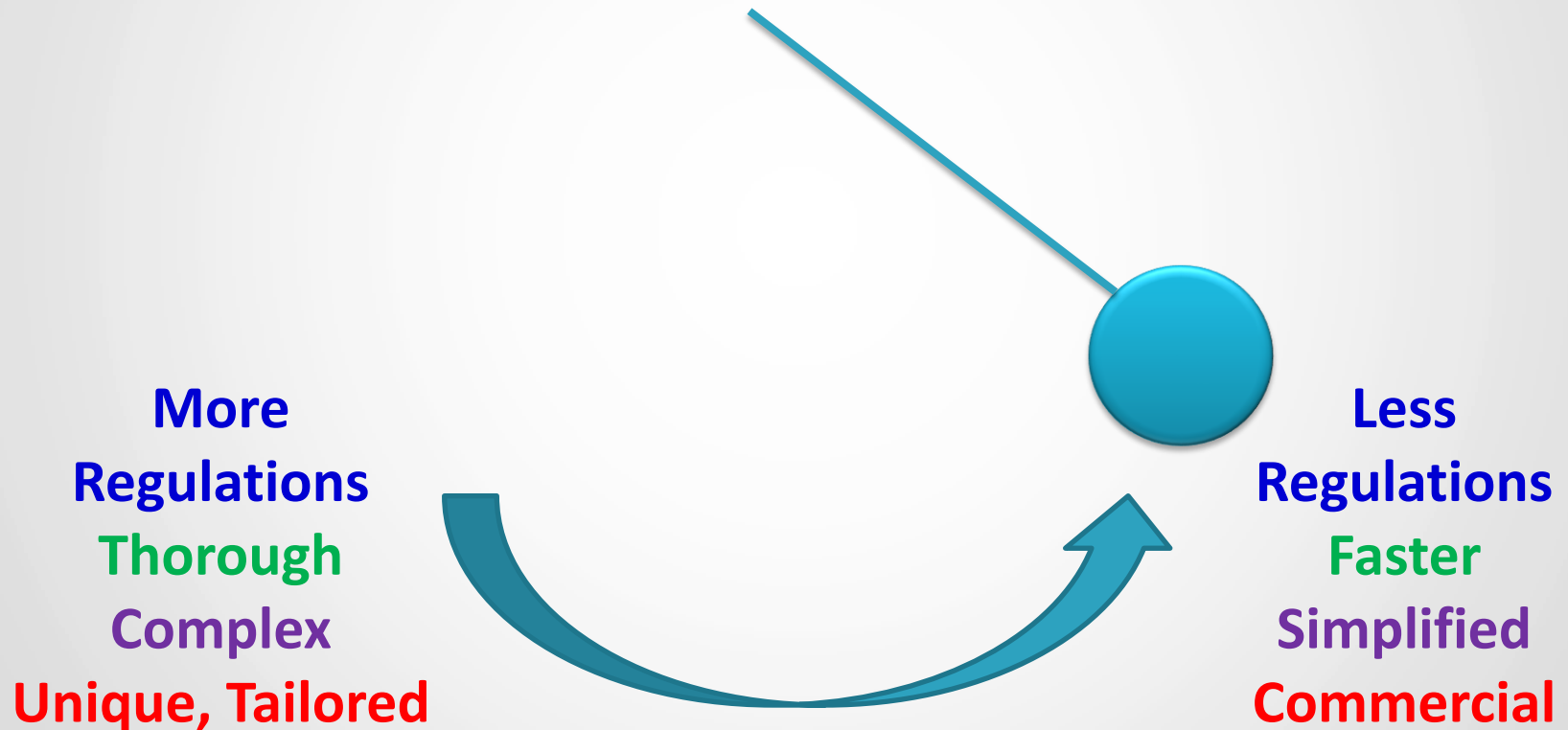
*By Jason Rath sack*  
*Federal Contractor Updated 1/24/19*

**DISCLAIMER:** The views expressed are not necessarily representative of DCMA. We are here to present on behalf of NCMA, Wisconsin Chapter. Although much of the information contained within is public knowledge, any opinions expressed are those of the presenter alone. If you have any questions, feel free to contact Jason Rath sack at [visn12jr@gmail.com](mailto:visn12jr@gmail.com)

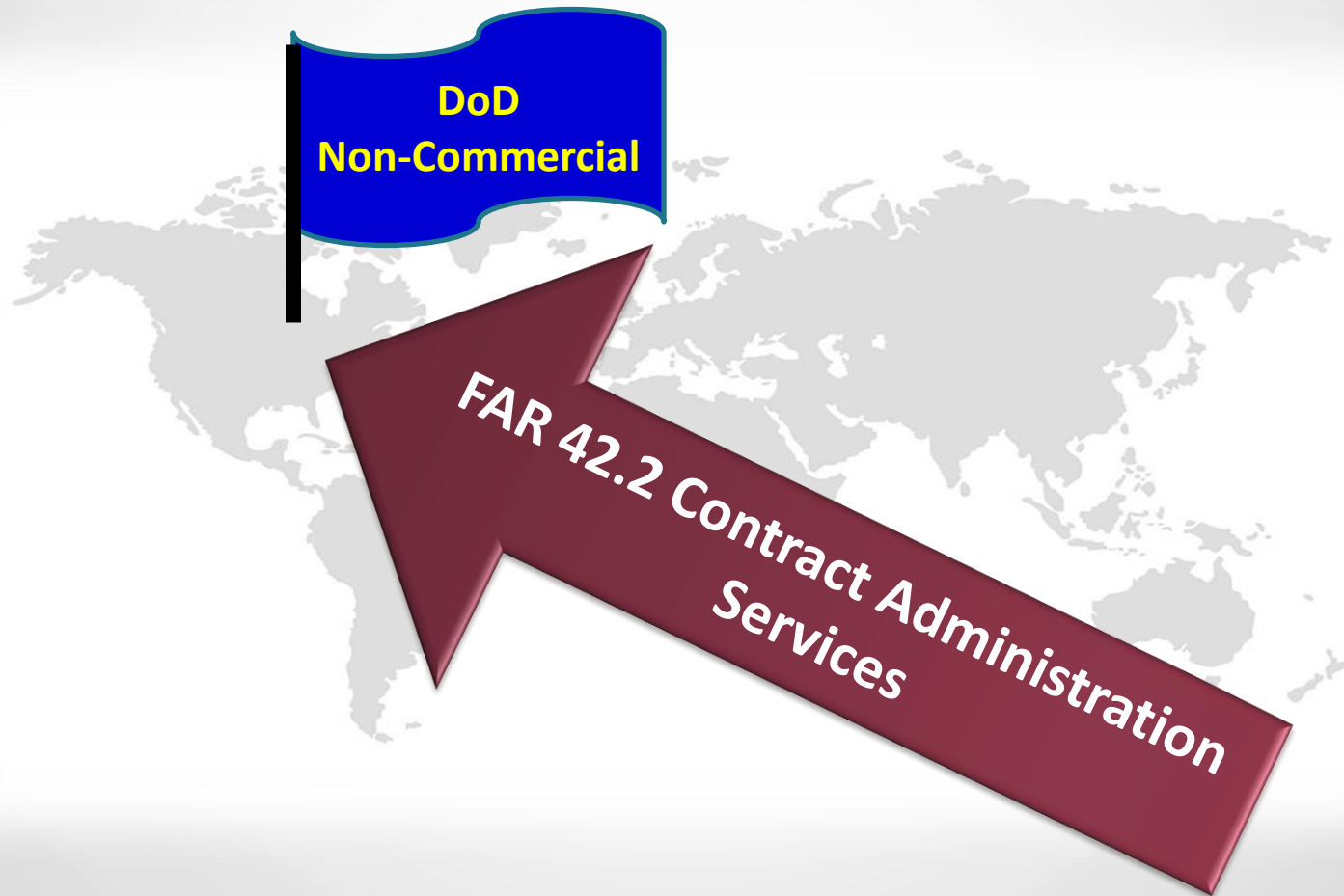
Agenda

- A. DCMA/DCAA Focus**
- B. Closeouts**
- C. Incurred Costs**
- D. Commercial Items**
- E. Pricing Updates**
- F. Updates on Contractor Business Systems**
- G. OTAs**

# Overall Regulatory Pendulum



# The FAR-side of the Planet



# DCMA Focus

Administration, Surveillance

Low Value Low  
Risk

DLA Contract  
Admin

Cost Contract  
Admin Support

“Kicking  
Boxes”

Process Reviews  
Business System Reviews  
Corrective Actions

Major  
Program  
Support  
Business  
System  
Surveillance  
On Time  
Delivery  
Negotiation  
Intelligence



## ~~Low Value High Risk (LVHR)~~

- **Low Value Low Risk Contracts**
  - Contracts < \$300K
  - Exceptions: FAT, Higher Level Quality, Critical Safety, Safety of Flight, FMS
- **Non-core Mission Service Contracts**
  - No DCMA Quality Assurance requirement
  - Exceptions: Contracts with financing, flexibly priced

# HVHR

- **Impact**

- Thousands of contracts returned for admin – vast majority are DLA
  - **Watch for changes in DLA requirements**
- Shifting of personnel from “Geographical” to Major Program Support – **Wisconsin Impact?**
- More process reviews, contractor business system, post-award accounting system, post payment reviews, contract financing surveillance

## **DCAA - NDAA**

### **Incurring Cost Teams are done**

- DCAA has caught up

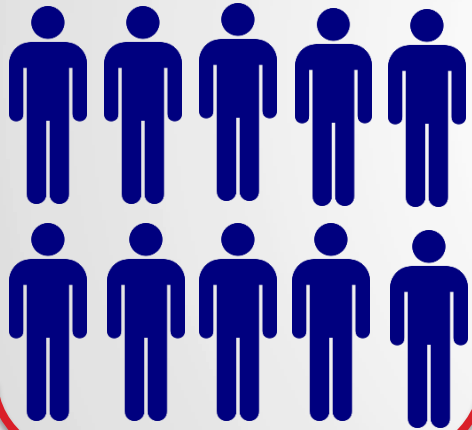
### **NDAA Impact on Incurred Costs**

- Adequacy Determination - **60 days**
  - If not, submission is automatically adequate
- All audits must be complete within **1 YEAR** of submission date
  - For any proposal received after December 2017

# DCAA – ORG Changes

## 2017

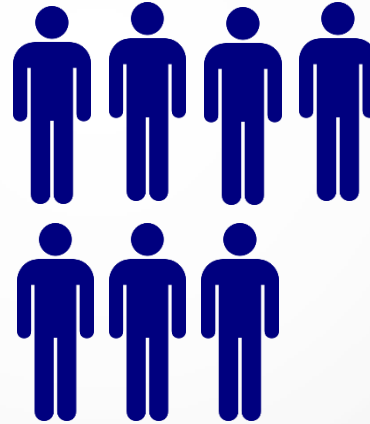
### 1 Team



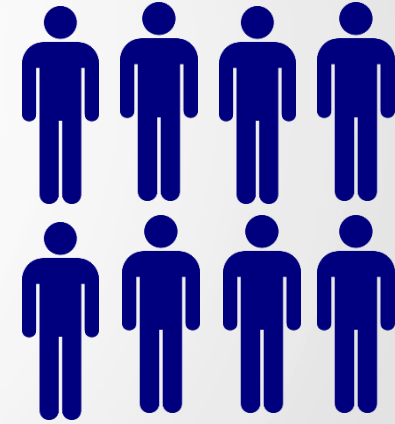
Incurring Cost Audits

## 2019

### WI



### OSK/UP MI



Systems, Vouchers, Financing  
Proposals

## Shift in Focus

2017

DLA Contract  
Admin

Incurred Cost  
Negotiations

Closeouts

Stay Afloat

2019

On Time  
Delivery

Major Programs

Business  
Systems

Process Reviews

**Risk Based Management**

## NCMA Wisconsin Chapter

# DCMA Updates

- **DCMA/DCAA Wisconsin Personnel** – Lots of changes on both teams



The image shows a screenshot of the Defense Contract Management Agency (DCMA) website. The header features the DCMA logo and the text "DEFENSE CONTRACT MANAGEMENT AGENCY". Below the header is a navigation bar with the following menu items: NEWS, ABOUT US, CUSTOMERS, EMPLOYEES, E-BUSINESS, ETOOLS, and SMALL BUSINESS. The "CUSTOMERS" menu is expanded, showing a list of options: Customer Liaisons, Industry Concerns, Contract Management Team (CMT), Customer Satisfaction Survey, DMS Addresses: NIPRNet, Federal Contracts Report, Preaward Survey Manager, Reports: NSN Look-up | Part Number, and Request Customer Site Access. A large orange arrow points to the "Contract Management Team (CMT)" option. The main content area is partially visible, showing "DCMAHQ Headqua" and "Headquarters Directo".

# Contract Closeout

## Where does DCMA get their authority to do Quick Closeout (QC)?

- **FAR 52.216-7(f) Quick-closeout procedures** - applicable when conditions of FAR 42.708 allow
- **FAR 42.708 (Quick-Closeout Procedure)** – The contracting officer responsible for contract closeout **shall** 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 rates set forth in [42.705](#), if

# Contract Closeout

## FAR 42.708 (Quick-Closeout Procedure)

- 1) Contract is physically complete
- 2) Unsettled direct or indirect costs do not exceed \$1,000,000 or 10% of total contract value
- 3) The ACO performs a risk assessment taking into consideration;
  - I. the contractor's accounting, estimating, and purchasing systems
  - II. DCAA Input
  - III. History of rates (volatility, proposed versus actual, structure)
- 4) Agreement can be reached

# Contract Closeout

**DCMA Quick-Closeout Class Deviation, dated September 18, 2013;**  
extended to 30 Sept 2020 by DCMA letter 17-142,

- 1) Contract is physically complete
- ~~2) Unsettled direct or indirect costs do not exceed \$1,000,000 or 10% of total contract value~~
- 3) The ACO performs a risk assessment taking into consideration;
  - I. the contractor's accounting, estimating, and purchasing systems
  - II. DCAA Input
  - III. History of rates (volatility, proposed versus actual, structure)
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# Contract Closeout

**DCMA Low Risk Quick-Closeout (LRQCO) Initiative** - April 13, 2018

- Applicable to flexibly priced contracts with total obligated amount of \$750K or less
- All unsettled costs are considered relatively insignificant
- Use contractor proposed final indirect cost rates as quick closeout rates
- Review final voucher with minimal cost reconciliation

# Contract Closeout

## DCMA Low Risk Quick-Closeout (LRQCO) Initiative

ACO uses the LRQCO checklist to verify the contractor has:

- An approved accounting system during all unsettled years
- No CARS on accounting, purchasing, or estimating systems
- No unsettled CAS non-compliances during the unsettled years
- No DCAA or DACO Concerns
- No significant changes in rate structure, mergers/acquisitions, volatility of rates, special contract provisions
- Make sure the contract is not in litigation – not on checklist

**Houston Closeout Team**

## NCMA Wisconsin Chapter

# Contract Closeout

## DCMA Low Risk Open (LRQCO) Initiative

# Risk

ACO uses the LRQCO checklist to verify the contractor has:

- An **approved accounting system** during all unsettled years
- No **CARS on accounting, purchasing, or estimating systems**
- No unsettled **CAS non-compliances** during the unsettled years
- No DCAA or DACO **concerns**
- No significant **changes in rate structure**, mergers/acquisitions, volatility of rates, special contract provisions
- Make sure the contract is not **in litigation** – not on checklist

# Incurring Costs Trends – 2018

- **Low Risk Memorandums** – anticipate more low risk memorandums/rate agreements - sampling
  - Vast majority of our area is <\$5M
  - 1% Sampled
- **Rate Agreements** – do you read the rate agreement?
  - Adjustments will be made 60 days after agreement (interim vouchers)
  - Submit Final Voucher within 120 days after agreement

# NCMA Wisconsin Chapter

Billing Rates

Proposed Rates

Agreed Upon Rates

**Risk**

Contract No.	Subcontract No.	Order No.	Penalty Clause	Subject To Note (2)	Prior Years Settled Total Costs Note (3)	Unsettled/Claimed Direct And Indirect Costs Using		Total Cumulative Settled or Claimed Note (4)	Less Contract Limitations/Rebates/Cred Note (5)	Net Cumulative Settled or Claimed Note (6)	PV
						Prior Year Costs FYE Note (4)	Current Year Costs FYE Note (4)				
<b>SCHED H</b>											
Cost Type & Flexibly Priced: (note 1)											
N00039-90-C-0873		1201	Yes		126,821	511,427	638,248			638,248	
N00040-90-C-0874		1203	Yes		382,595	2,867,500	51,140	3,301,235		3,301,235	
	Subcontract-Clark Inc.	1204			359,626	555,311	37,188	952,125		952,125	
N000060-90-C-0913		1205	Yes		591,362	443,916	623,473	1,658,751		1,658,751	
Subtotal-Cost & Flexibly Priced Contracts								6,550,359		6,550,359	
<b>SCHED K</b>											
Time & Material											
N00022-96-D-0111		001				10,601	10,601			10,601	
N00022-96-D-0111		002				5,950	5,950			5,950	
F66777-97-D-0112		001				6,000	6,000			6,000	
Subtotal-Time & Material Contracts								22,551		22,551	
Total- Cost/Flexibly Priced and Time & Material Contracts								6,572,910		6,572,910	



Contractor Name  
Cumulative Allowable Costs/Amounts  
Through December 31, 2018  
For Flexibly Priced Contracts

Contract Number	Subject to Penalty Clause	Prior Settled Rates FYE	Direct & Indirect Costs Using Settled Rates FYE 12/31/2018	Subtotal	Less: Contract Limitations	Total Direct & Indirect Costs Using Settled Rates	Ready to Close	Fee	Note
	(1)	(2)	(2)		(3)	(4)			
FA0000-16-C-0000	YES	\$ 750,000	\$ 100,000	\$ 850,000	\$ 50,000	\$ 800,000	Yes	\$120,000	
FA1111-17-C-1111	YES	\$ 200,000	\$ 300,000	\$ 500,000	\$ -	\$ 500,000	No	\$120,000	

**CACWS/Schedule I compared to Total Paid**

# Commercial Items

- Section 831 of FY 13 NDAA: required the Department to provide “a cadre of experts” to assist DoD contracting officers in making difficult CIDs.
  - DCMA Commercial Item Group (CIG) centers are established staffed with engineers & pricers
  - The CIG’s **role is advisory**; the contracting officer remains responsible and accountable
- USD 12/20/2018 Memo: Effective immediately, DCMA CIG Contracting Officers will serve as determining officials for all commercial item review requests submitted to DCMA
  - Determination made by DCMA will be kept in the commercial item database available to all DoD contracting officers

# Pricing Updates

## Truth In Negotiations Act (TINA) Thresholds Increased

- Previously the threshold requiring offerors to certify their data was current, accurate, and complete, was \$750,000.
- Currently, TINA was increased to \$2 Million (M) for all contracts entered into on or after July 1, 2018.
- Contracting Officer may still request cost and pricing data to support proposals under TINA, but the data would not have to be certified.
- For contracts entered into on or before June 30, 2018 prime contractors may request that the \$2M threshold be applied; no considerations will be given.
- FAR does not reflect this change as of yet

# Pricing Updates

## Certified Cost & Pricing Data

Certified data includes more than just historical accounting data, other certified data can include such items as:

- Vendor quotes, LTAs, Purchase Orders
- Estimates, especially if they can be verifiable with mathematical calculations, rather than a judgement
- Forecasts of future business
- Forward Pricing Rate Proposals and/or Agreements

# Pricing Updates

## Other Than Certified Cost & Pricing Data

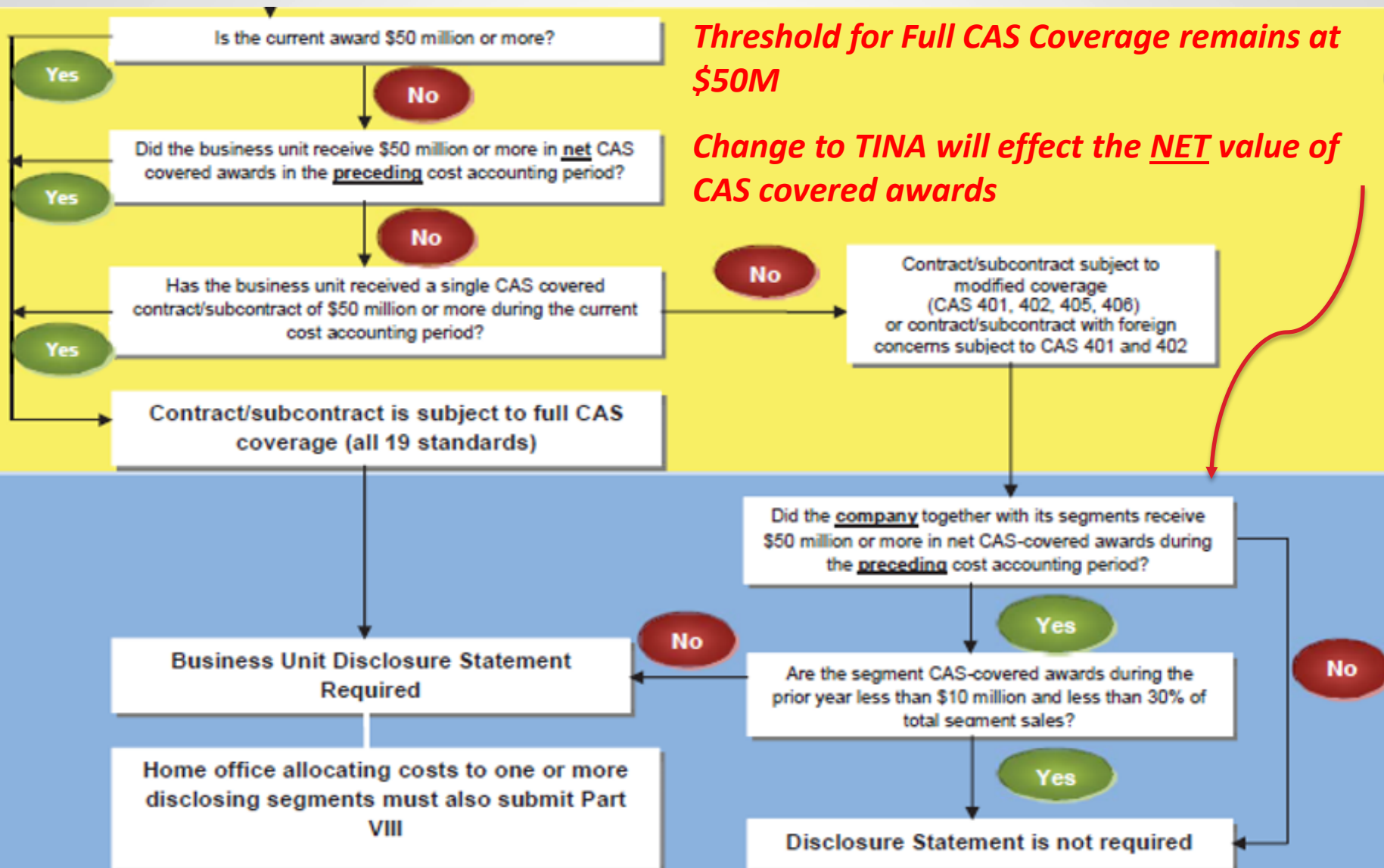
- Other than CCPD may be the identical types of data as CCPD, but without the certification of current, accurate and complete
- Historical sales data to either Government or Non-Government entities
- Catalog or Market prices
- Information reasonably required to explain the estimating process

## NCMA *Wisconsin Chapter*

### **Effect on Cost Accounting Standards (CAS)**

- One exemption from CAS coverage is having negotiated government contract/subcontract under the TINA threshold. So going forward be sure to remember the threshold is \$2M.
- Also, the change in Threshold will have an effect on the determination of Full vs Modified CAS and whether a Disclosure Statement is required

# NCMA Wisconsin Chapter



# Proposal Deficiencies

## **5 Most Common Deficiencies, not in any particular order:**

- Basis of Estimate/Lack of supporting documentation for dollars proposed
- Disclosed basis of estimations do not reflect the mathematical methods used as part of the cost build up
- Not adhering to the solicitation requirements
- Missing forms
- Determination of Commerciality (Unsupported)

# Commercial Item Determination (CID)

- Need to specifically identify the type of commercial item claim, as defined in FAR 2.101 paragraphs 1-8; DCMA has a checklist that you can use to help determine what type of commerciality to claim
- Provide support to the claim of Commercial
- The prime contractor is responsible for determining whether or not the subcontracted items or services meet the FAR 2.101 commercial item definition.
- Prime Contractors cannot ask DCMA to perform the review of Subcontractor's claim of commerciality on their behalf.

# Commercial Item Determination (CID)

If a contractor has claimed an item to be commercial in a previous Government proposal, does there have to be another review of the item?

Obviously, it depends...

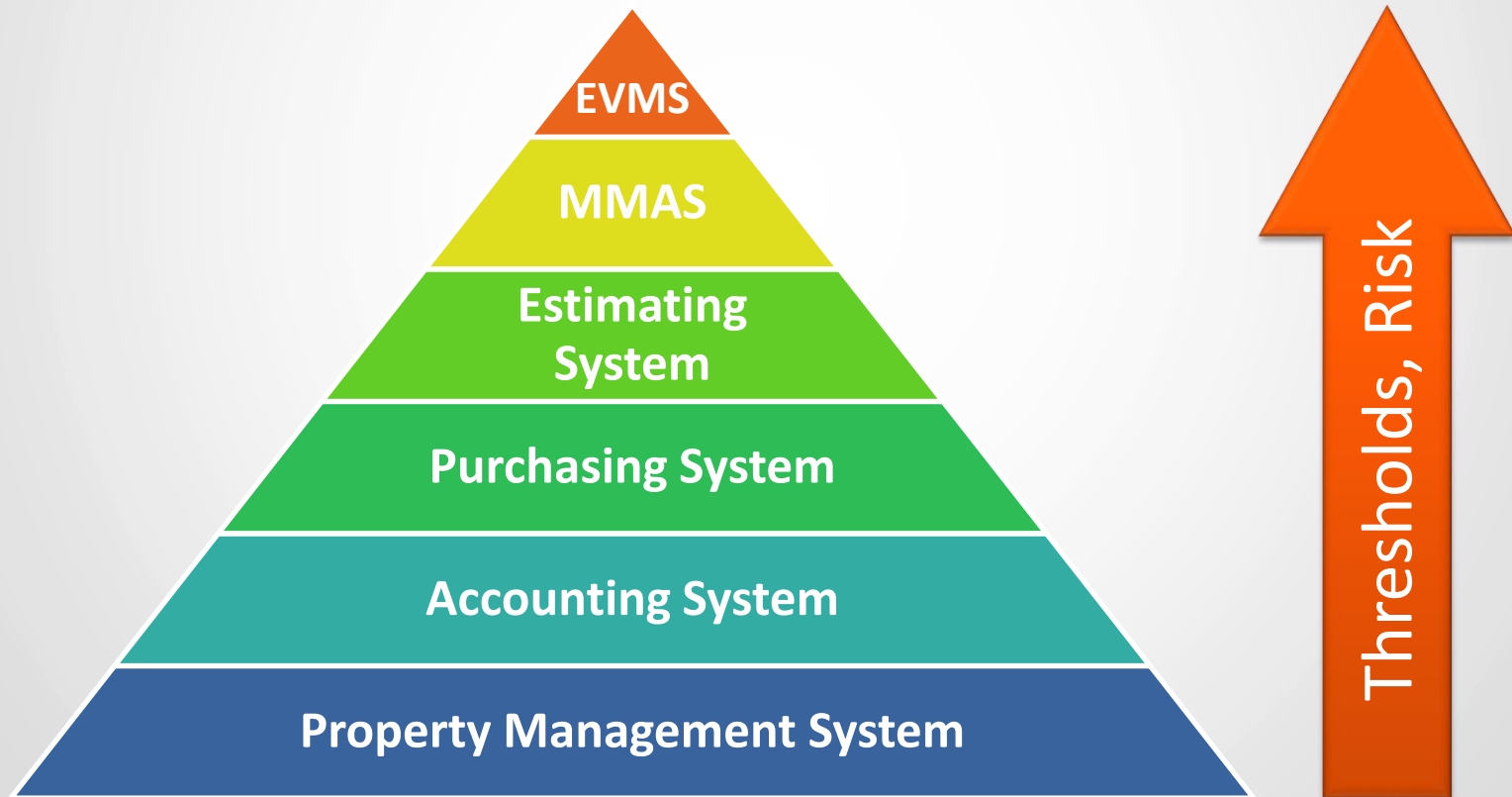
- Did the contracting officer agree with the previous claim of commercial? Contracting Officers do have the authority to overturn previous CIDs or agree with the determination but request amplified data
- Has the type of commercial claim changed? Commercial, Modified of a type, or Evolved from
- Has the configuration of the item changed since the last CID?
- Is the item still sold commercially or has is the item only being used in military application since the CID had been made?

# Practices to help Commerciality Determinations

- Publish the prices of your commercial items
- Publish a price catalog and have it available online.
- If using historical CIDs
  - Include the contract number the item was procured on and the contact information for the CO who signed the determination
  - Include the research utilized to make the original CID; update if necessary (out of date)

# Contractor Business System Updates

**DFARS 252.242-7005**



# Contractor Property Management System

“**Property Management System**” means the Contractor’s system or systems for managing and controlling Government property.

**Requirement:** Contracts with Govt Furnished Property and/or are flexibly priced

**System Criteria:** 52.245-1 -- Government Property

# Contractor Property Management System

## What's Hot?

- No recent updates to the FAR/DFARS
- What “Property” falls under the 52.245-1?
- Timelines Memorandum – ambiguity will no longer be accepted, Timelines must be specified
- Pending: DFARS Case No. 2015-D035; Use of the Government Property Clause – STILL OPEN as of 1/19/2019

# Contractor Property Management System

## 2018 Most Common Deficiencies?

- 1) **IUID Registry Requirements** – overall lack of understanding of the requirement
- 2) **Authorized Use and Transfers of Gov't Property**
- 3) **Excess Property and Contract Closeout.**
- 4) **Timelines specified in procedures**

# Accounting System

“**Accounting System**” means the Contractor’s system or systems for accounting methods, procedures, and controls established to gather, record, classify, analyze, summarize, interpret, and present accurate and timely financial data for reporting in compliance with applicable laws, regulations, and management decisions...

**Requirement:** Flexibly priced contracts or financing

**System Criteria:** DFARS 252.242-7006, *Accounting System Administration*

# Accounting System

## What's Hot?

- No recent updates to the FAR/DFARS
- Incurred Costs – updating your billing rates
- DCMA Milwaukee is looking at contractors who's systems haven't been reviewed in > 3 years
- More attention on Post-award accounting system reviews

# Accounting System

## 2018 Most Common Deficiencies?

- 1) **Outside Period of Performance Costs**
- 1) **Failure to Segregate Direct and Indirect Costs – especially with small R&D Firms**
- 2) **FINANCING: Recording Subcontractor Costs as Incurred before taking Title**

# Contractor Purchasing System

“**Purchasing System**” means the Contractor’s system or systems for purchasing and subcontracting, including make-or-buy decisions, the selection of vendors, analysis of quoted prices, negotiation of prices with vendors, placing and administering of orders, and expediting delivery of materials.

**Requirement:** Updated – Next slide

**System Criteria:** DFARS 242.244-7001 – Contractor Purchasing System Administration (New Rules)

# Contractor Purchasing System

## What's Hot?

- The current \$25 Million FAR Threshold found at 44.302(a) has been in effect since 1996
- DCMA issued a Class Deviation Memo on October 7, 2016, raising the CPSR Threshold to \$50 Million
- \$50 Million threshold based on inflation and acceptable risk
- Goal is to be consistent with Better Buying Power (BBP) 3.0, should reduce burden on smaller contractors

# Contractor Purchasing System

## 2018 Most Common Deficiencies?

- 1) Protecting the Government's Interest when Subcontracting with Contractors Debarred, Suspended, or Proposed for Debarment (65/126)
- 2) Limitation on Use of Appropriated Funds to Influence Certain Federal Contracting and Financial Transactions (Anti-Lobbying) (48/126)
- 3) Price Analysis (43/126)
- 4) Defense Priorities and Allocation System (DPAS) Rating (34/126)

# Other Transaction Authority (OTA)

**What they are not:** FAR-based procurement contracts, Grants, Cooperative Agreements; or Cooperative Research and Development Agreements (CRADAs)

➤ **They are agreements. What is an agreement?**

## What is the purpose?

- Attract Non-traditional defense contractors (NDCs)
- Broaden industrial base
- Support dual use projects
- Flexible, cheaper, quicker
- Leverage commercial investment
- Encourage Collaboration

# Other Transaction Authority (OTA)

- NASA pioneered first use in 1958, DoD allows DARPA to use in 1989 – (7) more civilian agencies as well
- 2018 NDAA establishes preference for transaction type for science and technology with emphasis on prototypes – doubles funding authorized
- Non traditional and/or small businesses are eligible or traditional contractors via cost sharing
- **Not subject to FAR, DFARS, TINA, CDA**...however appeals may be heard at agency level and/or CFC
- May require an “approved accounting system”

# Other Transaction Authority (OTA)

NEW – Other Transactions Guide, NOV 2018

- Version 1.2.0, dated January 2017 is rescinded in its entirety and replaced by this guide.
- (2) different statutory authorities
  - 10 USC 2371: **Basic/Applied/Advanced**
    - no duplication
    - 50/50 share
  - 10 USC 2371B: **Prototype**
    - at least (1) NDC
    - all participant small business or 1/3 industry cost share, or SPE approval

# Other Transaction Authority (OTA)

NEW – Other Transactions Guide, NOV 2018

- Breaks down the acquisition process
  - Market Research – No FBO necessary
  - Defining the Problem – most important step
  - Guide on which authority to use
  - Publicizing, soliciting
  - Selection/Negotiation – price reasonableness “shall”
  - Intellectual Property – important term/condition
  - Follow on production MUST be specified
  - Everything is negotiable – payments (even advanced), disputes, terminations, remedies, access to records, audits,

# Looking Forward in 2019

- **Cyber Security WILL ramp up** – DCMA involvement?
- Ms. Ellen Lord: “I’m encouraging what I call **creative compliance**. I want everyone to be compliant, but I want people to be very thoughtful and only use what they need,” she said. “This is literally starting with a clean sheet of paper, looking at the law and the intent, and working to vastly simplify this.”
- Intellectual Property Reforms and Technical Data Rights
- **Quicker/Faster** based on **Risk** – greater incentive to stay off the radar!

## Available Resources

- DCAA CAM: <http://www.dcaa.mil/>
- DCMA Pricing Guide:
  - <http://www.dcma.mil/policy/>
- Contract Pricing and Reference Guides
  - <https://acc.dau.mil/cprg>
- Defense Procurement & Acquisition Policy
  - <http://www.acq.osd.mil/dpap/cpf/>
- WIFCON
  - <http://www.wifcon.com/>

Questions?

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