

“(Date)”; and removing from the last sentence of paragraph (d) of the clause “\$500,000” and adding “\$550,000” in its place.

#### 52.230-3 [Amended]

84. Amend section 52.230-3 by revising the date of the clause to read “(Date)”; and removing from paragraph (d)(2) “\$500,000” and adding “\$550,000” in its place.

#### 52.230-5 [Amended]

85. Amend section 52.230-5 by revising the date of the clause to read “(Date)”; and removing from paragraph (d)(2) of the clause “\$500,000” and adding “\$550,000” in its place.

86. Amend section 52.236-1 by revising the introductory paragraph to read as follows:

#### 52.236-1 Performance of Work by the Contractor.

As prescribed in 36.501(b), insert the following clause. Complete the clause by inserting the appropriate percentage consistent with the complexity and magnitude of the work and customary or necessary specialty subcontracting (see 36.501(a)):

\* \* \* \* \*

87. Amend section 52.243-7 by revising the introductory paragraph to read as follows:

#### 52.243-7 Notification of Changes.

As prescribed in 43.107, insert the following clause:

\* \* \* \* \*

#### 52.244-6 [Amended]

88. Amend section 52.244-6 by revising the date of the clause to read “(Date)”; removing from paragraph (c)(1)(i) of the clause “\$500,000” and adding “\$550,000” in its place, and removing from paragraph (c)(1)(iii) of the clause “(Dec 2001)” and adding “(Date)” in its place.

#### 52.248-3 [Amended]

89. Amend section 52.248-3 by revising the date of the clause to read “(Date)”; and removing from the first sentence of paragraph (h) of the clause “\$50,000” and adding “\$55,000” in its place.

90. Amend section 52.249-1 by revising the introductory paragraph to read as follows:

#### 52.249-1 Termination for Convenience of the Government (Fixed-Price) (Short Form).

As prescribed in 49.502(a)(1), insert the following clause:

\* \* \* \* \*

## PART 53—FORMS

### 53.219 [Amended]

91. Amend section 53.219 by removing from paragraphs (a) and (b) “(Rev. 10/01)” and adding “(Date)” in its place.

### 53.301-294 [Amended]

92. Amend section 53.301-294 at the bottom of page 1 of the form by revising the date of the form to read “(Date)”; and on page 2 of the form, by removing from the first sentence of paragraph 3, under General Instructions, “\$500,000” and adding “\$550,000” in its place.

### 53.301-295 [Amended]

93. Amend section 53.301-295 at the bottom of page 1 of the form by revising the date of the form to read “(Date)”; and on page 2 of the form, by removing from the first sentences of paragraphs 2 and 5, under General Instructions, “\$500,000” and adding “\$550,000” in their place.

[FR Doc. 05-16971 Filed 12-9-05; 8:45 am]

BILLING CODE 6820-EP-S

## OFFICE OF MANAGEMENT AND BUDGET

### Office of Federal Procurement Policy

#### 48 CFR Parts 9901 and 9903

#### Cost Accounting Standards Board (CAS) Changes to Acquisition Thresholds

**AGENCY:** Cost Accounting Standards Board, Office of Federal Procurement Policy, OMB.

**ACTION:** Proposed rule with request for comment.

**SUMMARY:** The Cost Accounting Standards (CAS) Board is proposing to adjust the CAS application and full coverage thresholds for inflation in accordance with section 807 of the Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005 (Pub. L. 108-375).

**DATES:** Comments upon this proposed rule must be in writing and must be received by February 10, 2006.

**ADDRESSES:** Due to delays in OMB's receipt and processing of mail, respondents are strongly encouraged to submit comments electronically to ensure timely receipt. Electronic comments may be submitted to [casb2@omb.eop.gov](mailto:casb2@omb.eop.gov). Please put the full body of your comments in the text of the electronic message and also as an attachment readable in either MS Word or Corel WordPerfect. Please include your name, title, organization, postal

address, telephone number, and e-mail address in the text of the message. Comments may also be submitted via facsimile to (202) 395-5105.

**FOR FURTHER INFORMATION CONTACT:** David J. Capitano, Cost Accounting Standards Board (telephone: 703-847-7486).

#### SUPPLEMENTARY INFORMATION:

##### A. Background

##### *Analysis of Statutory Acquisition-Related Thresholds*

Section 807 provides for adjustment every 5 years of acquisition-related thresholds, except for thresholds set by the Davis-Bacon Act, Service Contract Act, and trade agreements. The statute requires that the adjustment be based on inflation, using the Consumer Price Index (CPI) for all-urban consumers. Acquisition-related thresholds in statutes that were in effect on October 1, 2000, are subject to 5 years of inflation. For purposes of this proposed rule, the calculation of escalation is based on the CPI from December 1999 to December 2004 (the most recent available data), which currently computes at 1.1307, as determined by the Federal Acquisition Regulatory (FAR) Council.

Once the escalation factor is applied to the acquisition-related threshold, the law requires rounding of the calculated threshold as follows:

< \$10,000 .....	Nearest \$500
\$10,000-<\$100,000 .....	Nearest \$5,000
\$100,000-<\$1,000,000 .....	Nearest \$50,000
\$1,000,000 or more .....	Nearest \$500,000

Applying the 1.1307 factor and the rounding criteria described above, the CAS thresholds have been revised as follows:

- (a) For contract applicability, from \$500,000 to \$550,000;
- (b) For applicability to a business unit, from \$7.5 million to \$8.5 million;
- (c) For waiver authority, from \$15 million to \$17 million;
- (d) For full coverage, from \$50 million to \$56.5 million;
- (e) For disclosure statement submissions by a company (other than educational institutions), from \$50 million to \$56.5 million;
- (f) For disclosure statement submissions by a segment of a company, from \$10 million to \$11.5 million; and
- (g) For disclosure statement submissions by an educational institutions, from \$25 million to \$28.3 million.

##### B. Paperwork Reduction Act

The Paperwork Reduction Act, Public Law 96-511, does not apply to this rulemaking, because this rule imposes

no paperwork burden on offerors, affected contractors and subcontractors, or members of the public which requires the approval of OMB under 44 U.S.C. 3501, et seq.

C. Executive Order 12866 and the Regulatory Flexibility Act

The economic impact of this rule on contractors and subcontractors is expected to be minor. As a result, the Board has determined that this rule is not significant under the provisions of Executive Order 12866, and that a regulatory impact analysis will not be required. Furthermore, this rule will not have a significant impact on a substantial number of small businesses because small businesses are exempt from the application of the Cost Accounting Standards. Therefore, this rule does not require a regulatory flexibility analysis under the Regulatory Flexibility Act of 1980.

D. Public Comments

Interested persons are invited to participate by submitting data, views or arguments with respect to this proposed rule. All comments must be in writing and submitted to the address indicated in the ADDRESSES section.

List of Subjects in 48 CFR Part 9903

Accounting, Government procurement.

Joshua B. Bolten, Director.

For the reasons set forth in this preamble, chapter 99 of title 48 of the Code of Federal Regulations is proposed to be amended as set forth below:

PART 9901—RULES AND PROCEDURES

1. The authority citation for part 9901 is revised to read as follows:

Authority: 41 U.S.C. 422(f).

2. Revise section 9901.306 to read as follows:

§ 9901.306 Standards applicability.

Cost Accounting Standards promulgated by the Board shall be mandatory for use by all executive agencies and by contractors and subcontractors in estimating, accumulating, and reporting costs in connection with pricing and administration of, and settlement of disputes concerning, all negotiated prime contract and subcontract procurements with the United States Government in excess of \$550,000, other than contracts or subcontracts that have been exempted by the Board's regulations.

PART 9903—CONTRACT COVERAGE

3. The authority citation for part 9903 continues to read as follows:

Authority: 41 U.S.C. 422(f).

Subpart 9903.2—CAS Program Requirements

4. Section 9903.201-1 is amended by revising paragraphs (b)(2) and (b)(7) to read as follows:

§ 9903.201-1 CAS applicability.

\* \* \* \* \*

(b) \* \* \*

(2) Negotiated contracts and subcontracts not in excess of \$550,000. For purposes of this paragraph (b)(2) an order issued by one segment to another segment shall be treated as a subcontract.

\* \* \* \* \*

(7) Contracts or subcontracts of less than \$8.5 million, provided that, at the time of award, the business unit of the contractor or subcontractor is not currently performing any CAS-covered contracts or subcontracts valued at \$8.5 million or greater.

\* \* \* \* \*

5. Section 9903-201-2 is amended by revising paragraphs (a)(1) and (2), (b)(1) and (2), and (c)(3) and (5) to read as follows:

§ 9903.201-2 Types of CAS coverage.

(a) \* \* \*

(1) Receive a single CAS-covered contract award of \$56.5 million or more;

(2) Receive \$56.5 million or more in net CAS-covered awards during its preceding accounting period.

(b) Modified coverage. (1) Modified CAS coverage requires only that the contractor comply with Standard 9904.401, Consistency in Estimating, Accumulating, and Reporting Costs, Standard 9904.402, Consistency in Allocating Costs Incurred for the Same Purpose, Standard 9904.405, Accounting for Unallowable Costs and Standard 9904.406, Cost Accounting Standard—Cost Accounting Period. Modified, rather than full, CAS coverage may be applied to a covered contract if less than \$56.5 million awarded to a business unit that received less than \$56.5 million in net CAS-covered awards in the immediately preceding cost accounting period.

(2) If any one contract is awarded with modified CAS coverage, all CAS-covered contracts awarded to that business unit during that cost accounting period must also have modified coverage with the following exceptions: if the business unit receives a single CAS-covered contract award of

\$56.5 million or more, the contract must be subject to full CAS coverage. Thereafter, any covered contract awarded in the same cost accounting period must also be subject to full CAS coverage.

\* \* \* \* \*

(c) \* \* \*

(3) Applicable Standards. Coverage for educational institutions requires that the business unit comply with all of the CAS specified in part 9905 that are in effect on the date of the contract award and with any CAS that become applicable because of later award of a CAS-covered contract. This coverage applies to business units that receive negotiated contracts in excess of \$550,000, except for CAS-covered contracts awarded to FFRDCs operated by an educational institution.

\* \* \* \* \*

(5) Contract Clauses. The contract clause at 9903.201-4(e) shall be incorporated in each negotiated contract and subcontract awarded to an educational institution when the negotiated contract or subcontract price exceeds \$550,000. For CAS-covered contracts awarded to an FFRDC operated by an educational institution, however, the full or modified CAS contract clause specified at 9903.201-4(a) or (c), as applicable, shall be incorporated.

\* \* \* \* \*

6. Section 9903-201-3 is amended by revising the clause heading; by revising paragraphs (a) and (c)(3) in Part I of the clause, by revising the CAUTION paragraph following paragraph (c)(4) in Part I of the clause; and by revising Part II of the clause, to read as follows:

§ 9903.201-3 Solicitation provisions.

\* \* \* \* \*

Cost Accounting Standards Notices and Certification (October 2005)

\* \* \* \* \*

I. Disclosure Statement—Cost Accounting Practices and Certification

(a) Any contract in excess of \$550,000 resulting from this solicitation, except for those contracts which are exempt as specified in 9903.201-1.

\* \* \* \* \*

(c) \* \* \*

(3) Certificate of Monetary Exemption. The offeror hereby certifies that the offeror, together with all divisions, subsidiaries, and affiliates under common control, did not receive net awards of negotiated prime contracts and subcontracts subject to CAS totaling \$56.5 million or more in the cost accounting period immediately preceding the period in which this proposal was submitted. The offeror further certifies that if such status changes before an award resulting from this

proposal, the offeror will advise the Contracting Officer immediately.

(4) \* \* \*

Caution: Offerors currently required to disclose because they were awarded a CAS-covered prime contract or subcontract of \$56.5 million or more in the current cost accounting period may not claim this exemption (4). Further, the exemption applies only in connection with proposals submitted before expiration of the 90-day period following the cost accounting period in which the monetary exemption was exceeded.

**II. Cost Accounting Standards—Eligibility for Modified Contract Coverage**

If the offeror is eligible to use the modified provisions of 9903.201–2(b) and elects to do so, the offeror shall indicate by checking the box below. Checking the box below shall mean that the resultant contract is subject to the Disclosure and Consistency of Cost Accounting Practices clause in lieu of the Cost Accounting Standards clause.

The offeror hereby claims an exemption from the Cost Accounting Standards clause under the provisions of 9903.201–2(b) and certifies that the offeror is eligible for use of the Disclosure and Consistency of Cost Accounting Practices clause because during the cost accounting period immediately preceding the period in which this proposal was submitted, the offeror received less than \$56.5 million in awards of CAS-covered prime contracts and subcontracts. The offeror further certifies that if such status changes before an award resulting from this proposal, the offeror will advise the Contracting Officer immediately.

Caution: An offeror may not claim the above eligibility for modified contract coverage if this proposal is expected to result in the award of a CAS-covered contract of \$56.5 million or more or if, during its current cost accounting period, the offeror has been awarded a single CAS-covered prime contract or subcontract of \$56.5 million or more.

\* \* \* \* \*

7. Section 9903.201–4 is amended by revising:

- A. The clause heading in paragraph (a)(2);
- B. Paragraph (d) of the clause in paragraph (a);
- C. Paragraph (c)(1);
- D. The clause heading in paragraph (c)(2);
- E. Paragraph (d)(2) of the clause in paragraph (c);
- F. The clause heading in paragraph (e)(2); and
- G. Paragraph (d) introductory text and (d)(2) of the clause in paragraph (e).

The revisions read as follows:

**9903.201–4 Contract clauses.**

- (a) \* \* \*
- (2) \* \* \*

**Cost Accounting Standards (October 2005)**

\* \* \* \* \*

(d) The contractor shall include in all negotiated subcontracts which the Contractor

enters into, the substance of this clause, except paragraph (b), and shall require such inclusion in all other subcontracts, of any tier, including the obligation to comply with all CAS in effect on the subcontractor's award date or if the subcontractor has submitted cost or pricing data, on the date of final agreement on price as shown on the subcontractor's signed Certificate of Current Cost or Pricing Data. If the subcontract is awarded to a business unit which pursuant to 9903.201–2 is subject to other types of CAS coverage, the substance of the applicable clause set forth in 9903.201–4 shall be inserted. This requirement shall apply only to negotiated subcontracts in excess of \$550,000, except that the requirement shall not apply to negotiated subcontracts otherwise exempt from the requirement to include a CAS clause as specified in 9903.201–1.

(End of Clause)

\* \* \* \* \*

(c) *Disclosure and Consistency of Cost Accounting Practices.* (1) The contracting officer shall insert the clause set forth below, Disclosure and Consistency of Cost Accounting Practices, in negotiated contracts when the contract amount is over \$550,000 but less than \$56.5 million, and the offeror certifies it is eligible for and elects to use modified CAS coverage (see 9903.201–2, unless the clause prescribed in paragraph (d) of this subsection is used).

(2) \* \* \*

**Disclosure and Consistency of Cost Accounting Practices (October 2005)**

\* \* \* \* \*

(d) \* \* \*

(2) This requirement shall apply only to negotiated subcontracts in excess of \$550,000.

\* \* \* \* \*

(e) *Cost Accounting Standards—Educational Institutions.* \* \* \*

(2) \* \* \*

**Cost Accounting Standards—Educational Institution (October 2005)**

\* \* \* \* \*

(d) The Contractor shall include in all negotiated subcontracts which the Contractor enters into, the substance of this clause, except paragraph (b), and shall require such inclusion in all other subcontracts, of any tier, including the obligation to comply with all applicable CAS in effect on the subcontractor's award date or if the subcontractor has submitted cost or pricing data, on the date of final agreement on price as shown on the subcontractor's signed Certificate of Current Cost or Pricing Data, except that:

(1) \* \* \*

(2) This requirement shall apply only to negotiated subcontracts in excess of \$550,000.

\* \* \* \* \*

8. Section 9903.201–5 is amended by revising paragraph (a) to read as follows:

**9903.201–5 Waiver.**

(a) The head of an executive agency may waive the applicability of the Cost Accounting Standards for a contract or subcontract with a value of less than \$17 million, if that official determines, in writing, that the business unit of the contractor or subcontractor that will perform the work:

- (1) Is primarily engaged in the sale of commercial items; and
- (2) Would not otherwise be subject to the Cost Accounting Standards under this Chapter.

\* \* \* \* \*

**9903.202 Disclosure requirements.**

9. Section 9903–202–1 is amended by revising (b)(1) and (2); (c); and (f)(2)(i), (ii), and (iii) to read as follows:

**9903.202–1 General requirements.**

\* \* \* \* \*

(b) Completed Disclosure Statements are required in the following circumstances:

(1) Any business unit that is selected to receive a CAS-covered contract or subcontract of \$56.5 million or more shall submit a Disclosure Statement before award.

(2) Any company which, together with its segments, received net awards of negotiated prime contracts and subcontracts subject to CAS totaling \$56.5 million or more in its most recent cost accounting period, must submit a Disclosure Statement before award of its first CAS-covered contract in the immediately following cost accounting period. However, if the first CAS-covered contract is received within 90 days of the start of the cost accounting period, the contractor is not required to file until the end of 90 days.

(c) When a Disclosure Statement is required, a separate Disclosure Statement must be submitted for each segment whose costs included in the total price of any CAS-covered contract or subcontract exceed \$550,000, unless:

(1) The contract or subcontract is of the type or value exempted by 9903.201–1 or

(2) In the most recently completed cost accounting period the segment's CAS-covered awards are less than 30 percent of total segment sales for the period and less than \$11.5 million.

\* \* \* \* \*

(f) *Educational institutions-disclosure requirements.*

(1) \* \* \*

(2) \* \* \*

(i) Any business unit of an educational institution that is selected to receive a CAS-covered contract or subcontract in excess of \$550,000 and is part of a college or university location

listed in Exhibit A of Office of Management and Budget (OMB) Circular A-21 shall submit a Disclosure Statement before award. A Disclosure Statement is not required, however, if the listed entity can demonstrate that the net amount of Federal contract and financial assistance awards received during its immediately preceding cost accounting period was less than \$28.5 million.

(ii) Any business unit that is selected to receive a CAS-covered contract or subcontract of \$28.5 million or more shall submit a Disclosure Statement before award.

(iii) Any educational institution which, together with its segments, received net awards of negotiated prime contracts and subcontracts subject to CAS totaling \$28.5 million or more in its most recent cost accounting period, of which, at least one award exceeded \$1 million, must submit a Disclosure Statement before award of its first CAS-covered contract in the immediately following cost accounting period. However, if the first CAS-covered contract is received within 90 days of the start of the cost accounting period, the institution is not required to file until the end of 90 days.

\* \* \* \* \*

[FR Doc. 05-23647 Filed 12-9-05; 8:45 am]

BILLING CODE 3110-01-P

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

#### 50 CFR Part 216

[Docket No. 051110296-5296-01; I.D. 102405A]

RIN 0648-AU02

### Protecting Spinner Dolphins in the Main Hawaiian Islands From Human Activities that Cause "Take," as Defined in the Marine Mammal Protection Act and Its Implementing Regulations, or To Otherwise Adversely Affect the Dolphins

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Advance notice of proposed rulemaking.

**SUMMARY:** NMFS is considering whether to propose regulations to protect wild spinner dolphins (*Stenella longirostris*) in the main Hawaiian Islands from "take," as defined in the Marine Mammal Protection Act (MMPA) and its

implementing regulations, or to otherwise adversely affect the dolphins. The scope of this advance notice of proposed rulemaking (ANPR) encompasses the activities of any person or conveyance that may result in the unauthorized taking of spinner dolphins and/or that may diminish the value to the dolphins of habitat routinely used by them for resting and/or that may cause detrimental individual-level and population-level impacts. The proposed regulation would apply only to the main Hawaiian Islands and only to spinner dolphins. NMFS requests comments on whether—and if so, what type of—conservation measures, regulations, and, if necessary, other measures would be appropriate to protect spinner dolphins in the main Hawaiian Islands from the effects of these activities.

**DATES:** Comments must be received at the appropriate address (see **ADDRESSES**) no later than January 11, 2006.

**ADDRESSES:** You may submit comments by any of the following methods:

- E-mail: 0648-

AU02.NOAA@noaa.gov. Include in the subject line the following document identifier: 0648-AU02-NOA.

- Federal e-rulemaking Portal: <http://www.regulations.gov>.

- Mail: Marine Mammal Branch Chief, Protected Resources Division, Pacific Islands Regional Office, National Marine Fisheries Service, 1601 Kapiolani Boulevard, Suite 1110, Honolulu, HI 96814.

#### FOR FURTHER INFORMATION CONTACT:

Chris Yates or Jennifer Sepez, Pacific Islands Regional Office, 808-944-2105; or Trevor Spradlin, Office of Protected Resources, 301-713-2322.

#### SUPPLEMENTARY INFORMATION:

##### Background

Viewing wild marine mammals in Hawaii is a popular recreational activity for both tourists and residents alike. In the past, most recreational viewing focused on humpback whales (*Megaptera novaeangliae*) during the winter months when the whales migrate from their feeding grounds off the coast of Alaska to Hawaii's warm and protected waters to breed and calve. However, in recent years, recreational activities have increasingly focused on viewing small cetaceans, with a particular emphasis on spinner dolphins (*Stenella longirostris*), which are routinely found close to shore in shallow coves and bays and other areas throughout the main Hawaiian Islands. NMFS is concerned that some of these activities cause unauthorized taking of dolphins, diminish the value to the dolphins of habitat routinely used by

them for resting, and cause detrimental individual-level and population-level impacts.

The biology and behavior of Hawaiian spinner dolphins has been well documented in the scientific literature. Hawaiian spinner dolphins are identified as a race of Pacific spinner dolphins found in and around the Hawaiian Islands, including both the main Islands of Hawaii and the Northwestern Hawaiian Islands (Norris *et al.* 1994, page 17). Hawaiian spinner dolphins routinely utilize shallow coves and bays and other areas close to shore during the day to rest, care for their young and avoid predators before traveling to deeper water at night to hunt for food (Würsig *et al.* 1994, Norris 1994). As the dolphins begin or end their resting period, they engage in aerial spinning and leaping behaviors that are noticeable from shore (Würsig *et al.* 1994). However, when they are in a period of deep rest, their behavior consists of synchronous dives and extended periods swimming in quiet formation along the shallow bottom (see: Norris and Dohl 1980, Norris *et al.* 1985, Wells and Norris 1994, Würsig *et al.* 1994).

Scientific research studies have documented human disturbance of Hawaiian spinner dolphins during their resting periods along the west coast of the Big Island of Hawaii, most notably in and around Kealahou Bay. Norris and Dohl (1980) noted that "cruise boats" would seek out and run through groups of spinner dolphins during an initial study of the dolphins in 1970, and in follow up research, Norris *et al.* (1985) found that spinner dolphins were particularly sensitive to disturbance during the early stage of their entry into the bay. Forest (2001) compared sightings records of spinner dolphins in Kealahou Bay from 1979-1980 and 1993-1994, and found that the dolphins were utilizing the bay and engaging in aerial behaviors less frequently than before, and suggested increasing human disturbance as a cause. Courbis (2004) reported high levels of vessel and swimmer traffic in Kealahou Bay and neighboring Honaunau Bay and Kauhako Bay, and found that spinner dolphins exhibited decreased aerial activity during their entry and exit into Kealahou Bay when compared to previous studies, as well as increased aerial activity during mid-day when dolphins typically rest. Spinner dolphins in Kealahou Bay also appeared to have shifted their preferred resting area in response to vessel and swimmer presence. In Kauhako Bay, dolphins were documented avoiding swimmers and leaving the bay in