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Applicability of Cost Accounting Standards to Indefinite Delivery Vehicles —What will be the Final Answer?

On June 18, 2024, the Cost Accounting Standards Board (“Board”) published a notice eliciting public comments regarding ‘whether or how’ to revise its rules regarding the application of Cost Accounting Standards (“CAS”) to indefinite delivery vehicles (“IDVs”). As clear regulatory requirements currently do not exist and have never existed, this Board action is long-awaited. The Board has sole authority to prescribe the rules governing when and how to apply CAS to IDVs. This matter was also addressed, with recommendations, by the Section 809 Panel (“Panel”) in its June 28, 2018 [final report](#) (volume 2 of 3). The Panel’s reported recommendation was method

number one below.

CAS coverage is applicable to specific contracts based on the contract's stated value at the time of award; if the award value exceeds established statutory thresholds and the contract is not otherwise exempt. IDVs, most commonly indefinite delivery, indefinite quantity ("IDIQ") contracts, however, are awarded without a stated value. IDIQs are contractual vehicles that allow the government to procure goods or services on an as-needed basis through the issuance of task or delivery orders under the overarching IDIQ. IDIQ contract awards have steadily increased over the last 20 years and now represent a significant portion of total government contract award value. IDIQs are typically awarded with a five-year duration and a maximum potential value and minimum guaranteed value over the entire period of performance. Task or delivery orders are issued at values specific to each order.

Absent any established authoritative requirements, the actual practice undertaken over the years by industry and the government has largely centered on two methods to apply CAS coverage under IDV contracts, i.e., maximum potential award value or specific task or delivery order value.

The Board established case number CASB 2021-01 to study this matter and initially identified six potential methods for which it is seeking public comments:

1. **Order-by-order.** Each task order and delivery order would be treated as an individual contract and CAS would apply only to those orders whose values met the coverage thresholds.
2. **Maximum award value.** CAS would apply to all orders under an IDV, no matter the value of the order, if the ceiling amount of the IDV met the coverage thresholds.
3. **Minimum award value.** CAS would not apply to any orders under an IDV unless its minimum guaranteed amount met the CAS coverage thresholds, then, CAS would apply to all orders.
4. **Cumulative threshold.** CAS would apply at the point where the cumulative value of the orders awarded crosses the dollar threshold for CAS coverage. At that point, the current order and all subsequent orders awarded would be covered by CAS.
5. **Order-by-order for multiple award IDVs and maximum award value for single award IDVs.** For multiple award IDVs each order would be regarded as if it were an individual contract for CAS coverage (see alternative no. 1). For single-award IDVs, coverage would be based on the maximum award value (see alternative no. 2).

6. **Order-by-order for multiple award IDVs and cumulative threshold for single award IDVs.** For multiple award IDVs each order would be regarded as if it were an individual contract for CAS coverage (see alternative no. 1). For single-award IDVs, CAS would apply at the point where the cumulative value of the orders awarded crosses the dollar threshold for CAS coverage. At that point, the current order and all subsequent orders awarded would be covered by CAS (see alternative no. 4).

The CAS Board noted they plan to consider several factors during their assessment, including i) maintaining uniformity and consistency in the measurement, assignment or allocation of costs; ii) the reduction of regulatory burden to both parties; iii) the management of cost risk to both parties; and iv) the continuation of robust competition.

Further, regardless of what approach may be selected, current CAS exemptions pursuant to 48 CFR 9903.201-1(b) are intended to not change.

Takeaway

Why does this matter? This matters because an accurate universe of CAS-covered contracts is necessary when addressing the administrative requirements (FAR Part 30) related to the calculation, submission, and settlement of cost impacts (either general dollar magnitude or detailed cost impact) arising from the unilateral or mandatory change to established cost accounting practices, or government assertions of CAS noncompliance. Task or delivery orders awarded under IDIQ contracts need to be included in the CAS-covered contract universe, when appropriate.

As authoritative guidance or regulation does not exist, and may not soon exist, contractors should maintain and consistently apply established procedures to assess, determine, and document if, and when, CAS applies to IDIQ contracts. Factors to consider should include: i) single-or multiple-award status; ii) if multiple-award, applicable task or delivery order competition and award type—fixed-price, cost reimbursement, time-and-material; iii) if single-award, agency acquisition history and total award volumes compared to the maximum potential value; and iv) prior government communication regarding the overall acquisition intent and total potential expected value.

Also, and importantly, it is unclear how any final revisions to the current CAS rules will be

implemented. Namely, how will CAS coverage applicable to individual task or delivery orders awarded on or after the effective date of the final rule, when the same task or delivery order is awarded under an IDIQ executed prior to the effective date of the final rule, be determined. This same situation arose when, effective July 1, 2018, the threshold requiring the submission of certified cost or pricing data under the Truth-in-Negotiations Act was revised from \$750,000 to \$2,000,000. As a resolution, contractors were permitted to request from the government a contract modification to incorporate the revised threshold amount. Now contractors should consider the possibility of how any forthcoming final rule(s) will be implemented from a legal policy point of view, assuming the final rule may not clearly state how it will be implemented.

Lastly, the initial methods listed above consider both single- and multiple-award IDIQ situations. The Board appears to lean towards CAS coverage under multiple-award IDIQ contracts to be applied at the individual task or delivery order level (see Nos. 5 & 6 above). This approach makes sense, considering the potential competitive nature of task or delivery order awards, variation in order type and corresponding CAS exemptions applicable under 48 CFR 9903.201-1(b). It makes further sense, in our view, to select a single method (No. 1 above) for consistent application across all IDIQ contracts, including both single- and multiple-awards.

To speak to a member of [BDO's Government Contracting Consulting Team](#) regarding CAS-related or other compliance related questions, please contact us .

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