GSA Office of the Chief Acquisition Officer

JUN 1 3 2005

MEMORANDUM FOR ROBERT R. JARRETT
ACTING DEPUTY DIRECTOR
DEFENSE ACQUISITION REGULATIONS COUNCIL

FROM: RALPH J. DESTEFANO, DIRECTOR
REGULATORY AND FEDERAL ASSISTANCE DIVISION

SUBJECT: FAR Case 2004-019, Earned Value Management Systems (EVMS)

Attached are comments received on the subject FAR case published at 70 FR 17945; April 8, 2005. The comment closing date was June 7, 2005.

Response Number	Date Received	Comment Date	Commenter
2004-019-1	06/01/05	06/01/05	Loeda Jackson (Retired SSA)
2004-019-2	05/06/05	06/05/05	Reza Jafari
2004-019-3	04/14/05`	04/14/05	Air Force (LA)
2004-019-4	04/19/05	04/19/05	DCMA
2004-019-5	04/21/05	04/21/05	DCMA
2004-019-6	04/28/05	04/28/05	DCMA
2004-019-7	05/18/05	05/18/05	DOT
2004-019-8	05/20/05	05/20/05	Finefield Consulting
2004-019-9	06/03/05	06/03/05	Missile Defense Agency

U.S. General Services Administration
1800 F Street, NW
Washington, DC 20405-0002
www.gsa.gov

Response Number	Date Received	Comment Date	Commenter
2004-019-10	06/06/05	06/06/05	Distributed Solutions, Inc.
2004-019-11	06/06/05	06/06/05	USAF
2004-019-12	06/06/05	06/06/05	AIA
2004-019-13	06/07/05	06/07/05	DHS/CIO
2004-019-14	06/07/05	06/07/05	DHS/CHCO
2004-019-15	06/07/05	06/07/05	DHS/IAIP
2004-019-16	06/07/05	06/07/05	DCAA
2004-019-17	06/07/05	06/07/05	DOE
2004-019-18	06/07/05	06/07/05	DOJ
2004-019-19	06/07/05	06/07/05	DOC
2004-019-20	06/06/05	06/06/05	CSA
2004-019-21	`06/07/05	06/07/05	HHS
2004-019-22	06/07/05	06/07/05	Data Networks Corp.
2004-019-23	06/07/05	06/07/05	ITAA
2004-019-24	06/07/05	06/07/05	Fluor Government Group
2004-019-25	05/13/05	05/13/05	Puma Systems, Inc.

Attachment

2004-019-1

Agency : NATIONAL AERONAUTICS AND SPACE ADMINISTRATION
Title : Federal Acquisition Regulation; Earned Value Management System (EVMS)
Subject Category : Federal Acquisition Regulation (FAR): Federal Acquisition Regulation (FAR): Fec Acquisition Regulation (FAR): Earned Value Management System Earned Value Management System Earned Value Management System
Docket ID : RIN 9000-AJ99; FAR 2004-019
CFR Citation : 48 CFR 2, 7, 34, 42, 52
Published : April 08, 2005
Comments Due : June 07, 2005
Phase : PROPOSED RULES

Your comment has been sent. To verify that this agency has received your comment, please contact the agency directly. If you wish to retain a copy of your comment, print out a copy of this document for you

Please note your REGULATIONS.GOV number.

Regulations.gov #: EREG - 4 Submitted Jun 01, 2005

Author : Ms. loeda jackson
Organization : retired - social security administration
Mailing Address :
Attached Files :

Comment : i disagree on evms because i have 31 yrs with federal govt. (retired). I applied for reporter position at Office of Hearing & Appeals (OHA) and the Manager (Mr. Fu told me i would have to sign statement that I have no relatives working at OHA in to work as a contract Court Reporter and since my daughter works at OHA I cann work as a Contract Court Reporter . This is a statement he included in the contract without a govt. form number. I presently have an EEOC pending on this statement regarding relatives that he included in contract - just wanted you to know that afte put the statement regarding relatives he hired sisters - in same position and one sis had 0 fed. govt. experience and sisters also worked as court reporters when contra court reporters would not show up for hearing - pls dont put all the authority in the hands of management. The sister with 0 fed. govt. experience got promoted in a position which is higher than the position i retired in .

2004-019-2

Agency : NATIONAL AERONAUTICS AND SPACE ADMINISTRATION
Title : Federal Acquisition Regulation; Earned Value Management System (EVMS)
Subject Category : Federal Acquisition Regulation (FAR): Federal Acquisition Regulation (FAR): Fec Acquisition Regulation (FAR): Earned Value Management System Earned Value Management System Earned Value Management System
Docket ID : RIN 9000-AJ99; FAR 2004-019
CFR Citation : 48 CFR 2, 7, 34, 42, 52
Published : April 08, 2005
Comments Due : June 07, 2005
Phase : PROPOSED RULES

Your comment has been sent. To verify that this agency has received your comment, please contact the agency directly. If you wish to retain a copy of your comment, print out a copy of this document for you

Please note your REGULATIONS.GOV number.

Regulations.gov #: EREG - 1 Submitted May 06, 2005

Author : Mr. Reza Jafari
Organization :
Mailing Address :
Attached Files :

Comment : EVMS provides a systematic framework to manage, monitor, and track performan the project for all projects, including Construction of Buildings. On Page 17946 Pa Background, it is noted that:
"The Clinger-Cohen Act of 1996 requires the Director of OMB to develop, as part of the budget process, a process for analyzing, tracking, and evaluating the risks and results of all major capital investments for information systems for the life of the system."
However it should be noted that the intent is to include Construction of Building a Facilities, and not just Information System.

One More Comment;
ADD TO PART 7

Notice To Proceed with Construction Shall not be provided to Contractor, without approved Earned Value Management Work Breakdown Structure, and approved Baseline (S Curve), and Schedule.

2004-019-3

"Wallace John I Civ SMC/SBP" <JOHN.WALLACE@LOSANGELES.AF.MIL>
04/14/2005 05:25 PM

To: farcase.2004-019@gsa.gov
cc: "Podzimek Eva B Civ SMC/SBP" <Eva.Podzimek@LOSANGELES.AF.MIL>, "Kent Roman H LtCol SMC/SBP" <Roman.Kent@LOSANGELES.AF.MIL>
Subject: FAR case 2004-019 Comments, as Discussed and Requested

INTEGRATED BASELINE REVIEW PRE-AWARD

ISSUE

- Office of Management and Budget (OMB) has "made available for public comment before the final inclusion in the FAR. The proposed rule requires EVMS on fixed-price contracts and that the Integrated Baseline Review be completed before contract award."

DISCUSSION

- This proposed process could cause undue hardship for a System Program Office (SPO) that is standing up. Protests on potential large programs would be inevitable after many Integrated Baseline Reviews (IBRs) done pre-award, which would drain manpower when a SPO needs them most. Often, manpower resources are hard to obtain when a SPO is in the initial stages of it's life cycle; and these resources could be squandered on protests.

- In addition, please note Integrated Baseline Reviews were set up as structured, combined military reviews; and there is concern about lack of discipline for other agencies. IBRs began about ten years ago; and are patterned after a post-award review. To take a post-award, disciplined, structured review and expect it to work pre-award for government organizations that are not experienced in how to run these reviews, could cause problems.

- Advanced discussion on this topic with OMB has ascertained that the intent was to get project managers to control costs, even during source selection. The current process uses a rating system for past performance of existing contractors called CPARs during source selection. An added concern during a Pre-Award IBR is that a (sub)contractor without a CPAR rating could appear much more healthy during source selection than an average past performing contractor, by providing a rosy self-evaluation to comply with the plan, as specified in 52.234-X2 (b) (1) (v).

- The history of EVMS is to rely on previously validated system descriptions and post-award reviews at both prime and large subcontractors to ascertain schedule projections as a means of controlling costs. If a contractor is not previously validated, and they produce a plan for an ACO in 52.234-X1(b) (1) or 52.234-X2(b)(1), does the review or approval by an ACO of that plan in either (b) (3) validate that contractor to

2004-019-3

have a system which controls cost? This question becomes especially critical at subcontractors, who will normally operate a system different than the prime. Therefore, does agreement on who the subcontractors are constitute either acceptance or validation by the government of the subcontractor EVM system description(s) in 52.234-X1 (c) or 52.234-X2 (c)?

IBR experience has shown lack of cost control can be masked at high levels. To assume that a Pre-Award IBR at a prime contractor that is not previously validated, controls costs from a subcontractor that is also not previously validated, will mean that protests brought by validated contractors will have a stronger case. This will be especially true if both the prime and sub in the protest have previously validated systems; and winners do not. Therefore, a Pre-Award IBR team would need to visit the subs prior to the prime to keep protests from being sustained; and subcontract internal control would need to be audited.

2004-019-4

"Platt, Dave"
<Dave.Platt@dcma.mil>
04/19/2005 09:46 AM

To: farcase.2004-019@gsa.gov
cc:
Subject: Proposed EVMS Changes

Standardization of EVMS for all gov't agencies is a great idea. Here's my comments:

1) The 90% cost and schedule goal to be effective really depends on how its applied. For example if award fees are allowed based on performance at a given time (every three months by quarter) then contractors will manipulate performance indicators to their benefit. Manipulation could be by doing replans complete work out sequence to keep schedule indicators higher while delaying overtime until near the end of the program. To this end, I believe award fees should be allowed based on milestones where pre-determined segments of work are completed for pre-determined cost. After milestone completion, the question would be did the contractor complete the expected segment on-time at the right price? Results would then dictate the appropriate award fee based on actual performance. While the performance indicators produced by the EVM System leading up to the milestone would simply provide early indications of possible end results. These early indications would allow both gov't and contractors real opportunities to affect end results.

2) The idea of performing pre-contract award IBR's may seem to be costly but may provide a good return on investment. To this end, I propose that pre-contract IBR's be limited to either the top two finalists or the finalist as a last test for meeting the requirements of the solicitation for contract award.

3) Allowing contractors to use third party certification or self assessment as a basis for acceptance of an EVM System is like asking the general public to notify the DMV how many times they've exceeded the speed limit last year. There needs to be some gov't check and balance here.

4) Allowing contractors an unlimited amount of time to demonstrate compliance to the EVMS requirements invites trouble. I suggest that demonstration of a compliant EVM System should be prior to any contract award fees and/or within the first 90 days after contract award. This would also work well if IBRs were performed prior to contract award.

Dave Platt,
EVMS Manager/Monitor
DCMA -Hamilton Sundstrand
Windsor Locks, CT
(860) 654-7593
Fax (860) 654-2879
Leading Systems Integration
Cost/Schedule/Technical Performance

2004-019-5

"Goldman, Bruce A."
<Bruce.Goldman@dcma.mil>

04/21/2005 09:29 AM

To: farcase.2004-019@gsa.gov
cc:
Subject: FAR 2004-019 Comments

Greetings,
In addition to specifying EIA Standard 748, I recommend a statement that determination for a contractor's meeting or qualifying to the Standard will include an evaluation process based on either the DoD Earned Value Management Implementation Guide (EMIR) or the NADIA Earned Value Management Intent Guide.

Regards,
Bruce Goldman
EVM Specialist
DCMA, Boeing Philadelphia
(610) 591 4588

2004-019-6

"Hurley, Charles" <Charles.Hurley@dcma.mil>

04/28/2005 02:36 PM

To: farcase.2004-019@gsa.gov
cc: "Wong, James" <James.Wong@dcma.mil>, "Vessella, Stephen J." <Stephen.Vessella@dcma.mil>, "Dillon, Brian" <Brian.Dillon@dcma.mil>, "Vecchio, Joseph G. Jr"
Subject: FAR CASE 2004-019

Comments on Proposed Change:

1. I agree with the overall intent of the change to standardize government-wide use of Earned Value Management System (EVMS) for major acquisitions.

2. I strongly disagree with the change that allows agencies to conduct Integrated Baseline Reviews (IBRs) prior to contract award. I believe that it is unreasonable to require offerors (contractors) to prepare for and support an IBR prior to contract award because it places an additional cost burden on offerors and also on the government agency program managers who are responsible for performing IBRs. Preparing for and supporting an IBR on a major weapon program is a significant task requiring substantial resources by both the contractor and the government program manager. Therefore, requiring offerors (contractors), who may not win award of the contract, to prepare for and support an IBR in the proposal evaluation/source selection phase is unreasonable. Also, our government program managers are struggling already with their existing workload and this change places another major burden on their plate. I am not convinced that the benefit would outweigh the additional expense and also this "pre-award IBR" process could result in delays of the award of contracts for weapons and supplies badly needed by our military forces.

Chuck Hurley

General Engineer
DCMAE EVMS Performance Advocate
Ph: (617) 753-4223 Fax: (617) 753-3207
Charles.Hurley@dcma.mil

2004-019-7

Elaine.Wheeler@dot.gov
05/18/2005 01:05 PM

To: farcase.2004-019@gsa.gov
cc:
Subject: FAR case 2004-019, EVMS

The Department of Transportation submits the attached comments for consideration. If you have any questions or comments, please let me know.

Sincerely,

Elaine Wheeler
Associate Director, Procurement Policy
Office of the Senior Procurement Executive
(202) 366-4272
elaine.wheeler@ost.dot.gov

<<EVMS2.doc>> EVMS2.doc

2004-019-7

DEPARTMENT OF TRANSPORTATION COMMENTS ON FAR CASE 2004-019 ON EARNED VALUE MANAGEMENT SYSTEM

1. Overall, we agree with the need for this EVMS coverage and how it has been approached in the case.

2. We concur with the Background information that IBRs conducted prior to award should be limited to those in the competitive range to reduce the burden on the Government and offerors. Accordingly, we recommend that such language be included in the FAR text. For example, under 52.234-X2(d), we recommend that it be changed to read:

"(d) Prior to contract award, as a minimum, the Government will conduct IBRs with offerors determined to be in the competitive range."

3. 34.000 Scope of part. In reviewing the OMB website, OMB Circular A-109 is no longer listed; therefore we question if it still exists. We recommend it be removed from this section if the Circular no longer applies.

4. In 34.X01(a) it states: "...insert a provision that is substantially the same as the provision at 52.234-X1...for contracts that require the contractor to use an EVMS and for which the Government may require an IRB after contract award." However, 52.234-X1 does not mention IBRs.

5. In 52.234-X1(a) it reads: "The offerors shall provide documentation that the cognizant ACO or a Federal department or agency has recognized that the proposed EVMS complies with the EVMS guidelines in ANSI/EIA Standard-748 ..." We believe "has recognized" dilutes the expected value of the FAR change and implies that EVMS is not that important. Because this issue involves major acquisitions costing millions of dollars, it is important to maintain high standards for implementing capital programming requirements. Accordingly, it is recommended that the word "validates" (not "recognize") be used.

2004-019-8

"Tony Finefield"
<tonyevm@earthlink.net
>

To: farcase.2004-019@gsa.gov
cc:
Subject: Comments on the Proposed EVMS FAR Clauses

05/20/2005 12:31 PM

I offer the following comments:

1. The major challenge inherent in the proposed FAR Clauses is the Pre-award IBR requirement. This is most evident in a competitive procurement where there is more than one Offeror. The need to conduct, during the source selection, multiple IBRs where (a) consistency of review among each of the Offerors is extremely difficult to achieve; (b) the possibility of inadvertent transfer of information between Offerors is potentially fatal to the source selection requiring a recompete or, at least, resubmission of proposals by the existing Offerors; and (c) the ability of any procuring activity, especially the smaller, civilian agencies, to conduct multiple IBRs given the current staffing of procurement agencies is limited. Finally, in addition to who pays for these customer-mandated reviews, including all the costs of establishing a baseline for the losing Offerors, I believe that the potential for protests are increased, given the three factors I cited above.

Even in a sole-source procurement, the requirement to conduct a pre-award IBR, for the stated reason of proving the Offeror capable of delivering on-schedule, since the selected source is the only one capable of meeting the procurement requirements, hence the "sole-source" designation. In this case, the only reason to conduct a pre-award IBR would be to get the PMB in place early so that the contractor can begin producing EVM information immediately. This creates an additional concern I have discussed below.

There may be a potential disconnects with existing FAR requirements. One of the essential ingredients of establishing the Performance Measurement Baseline (PMB) is the "extraction" of MR from the contract value. Prior to contract award, the Offeror is prohibited by FAR from proposing costs or prices that are not factual, judgmental; and must be verifiable. (FAR 2.1 Definitions) In this case, the Offeror would have to establish a PMB = CBB = proposed value which would then by reviewed by the source selection IBR Team. If selected as the successful bidder, the baseline would have to be adjusted after contract award for negotiated (a) schedule changes; (b) scope changes: (c) negotiation losses; and (d) the establishment of a management reserve value. If any of these four elements change, then the baseline that was reviewed as part of the source selection would have to be reviewed again, at least to verify the differences from the pre-award review. This would then cause an additional drain on program office resources that would, in my mind, continue to reinforce the non-value added nature of the IBR.

3. There are some wording issues that I have with the proposed FAR changes:

(a) Part 32(b)(6) Require the use of an earned value management system that meets the guidelines...: in all other documents, including the new DOD EVM requirements, the word "complies" or "compliance" is used. In this part, the word "meets" is used.

Meet is defined as "To come into conformity with the views, wishes, or opinions of" Comply is defined as "To act in accordance with another's command, request, rule, or wish." It seems to me that comply carries much more weight than meet.

2004-019-8

(b) Part 34, 34.X03 (a). In the requirement to insert a solicitation clause, the words "...in solicitations for contracts that require the contractor to use an earned value management system (EVMS) and for which the Government **may require** an Integrated Baseline Review (IBR) after contract award." (emphasis added) indicate the optional nature of the IBR after contract award. The language in 34.X3 (b) for the pre-award IBR "...in solicitations for contracts that require the contractor to use an EVMS and for which the Government **will require** an IBR prior to contract award." (emphasis added) the IBR is not optional. Either an IBR is required or it isn't.

(c) Part 42.1106(d). "For major acquisitions contracting officers shall require contractors to submit earned value management system monthly reports (see subpart 34.2 and OMB Circular A-11, part 7, section 1H4, Exhibit 300)." This language says to me that contractors will be required to submit EVM information to the contract administration office whether it is contractually required or not. Who pays for this information? Is it an overhead charge or a direct charge to the contract? What if the customer does not ask for this information and is unwilling to pay the contractor to generate it?

(d) Part 52.234-X3 Earned Value Management System, subparagraph (c): "Agencies may conduct Integrated Baseline Reviews (IBR)." The word "may" is permissive and will be used by customer and contractor program managers to eliminate the need for an IBR after contract award. The clause goes on to say: "If a pre-award IBR has not been conducted, such a review shall be scheduled as early as practicable after contract award,..." The word "shall" (I have been told) in contract language is NOT permissive. So, these first two sentences in the clause seem to contradict each other. Why not just start with the second sentence and eliminate the ambiguity?

Tony

Tony Finefield
Finefield Consulting
714-642-8795
tonyevm@earthlink.net

2004-019-9

"Melton, David CIV MDA/DMA" <David.Melton@mda.mil >

06/03/2005 03:00 PM

To: farcase.2004-019@gsa.gov
cc:
Subject: FAR case 2004-019

FAR Organization:

I am concerned with the practicality and advisability of executing the pre-award Integrated Baseline Review (IBR) concept. Upon examining the Federal Acquisition Regulation (FAR), it is presumed that the performance of a pre-award IBR would fall under FAR Subpart 15.3, Source Selection, specifically 15.306 (d), which addresses exchanges with offerors after establishment of the competitive range. The FAR Earned Value Management System case (FAR Case 2004-19) does not refer to Subpart 15.3 or 15.306.

Execution of the pre-award IBR would require, at the least, a minimalist and highly-trained team under the direct supervision of the Procuring Contracting Officer (PCO). All lines of inquiry would have to be carefully screened by the PCO to avoid any possibility for perception of impropriety, bias, or favoritism. In any event, the advent of the pre-award IBR would require the establishment of a totally new methodology, a new approach to team composition, and new rules of engagement. Without clearly defined objectives for the pre-award IBR, it would be difficult to develop a consistent, rational modus operandi for the execution of these delicate activities. Although the "pre-award IBR" could be conducted to clarify the means by which the prospective offerors plan to execute the contract and as a "fact finding" or risk identification measure, the risk of protest by unsuccessful offerors is still very high.

Performing several IBRs at the various offerors during the source selection phase can lead to a myriad of problems, among them: (1) inconsistencies between the reviews conducted at the various offerors; (2) inadvertently divulging proprietary information; and (3) lack of resources for the procuring agency to effectively conduct multiple IBRs during a compressed timeframe.

In addition, the conduct of a pre-award IBR does not guarantee a positive result, or the divulgence by the offerors of performance measurement baseline (PMB) planning beyond the very near term. This is currently manifested in the reluctance of contractors to agree to an IBR prior to completion of negotiations and installation of a firm PMB, even though they are working under coverage of an Authorization to Proceed (ATP) and Not-To-Exceed (NTE) value. Accordingly, the need for a follow-up IBR can be expected to examine the PMB subsequent to selection, negotiation, and official award. To expand on this theme, the following is reproduced with minor changes from the comments submitted on the EVMS case by Finefield Consulting: "Following award, the baseline would have to be adjusted for negotiated (a) schedule changes; (b) scope changes: (c) negotiation losses; and (d) the establishment of a management reserve value. If any of these four elements change, then the baseline that was reviewed as part of the source selection would have to be reviewed again, at least to verify the differences from the pre-award review. This would then cause an additional drain on program office resources that would continue to reinforce any perception of the non-value added nature of the IBR."

2004-019-9

If indeed it is intended that the individual agencies reimburse the offerors for the costs associated with supporting the pre-award IBRS, it would create a significant and unreasonable drain on already shrinking procurement dollar resources.

On balance, the risk of protests and a tenuous return on the investment of time and expense would appear to outweigh any benefits that might be realized.

Wording suggestions applicable to the proposed FAR changes:

(1) Part 32(b)(6) Require the use of an earned value management system that meets the guidelines...: Recommend the use of the word "complies" as more appropriate.

(2) Part 34, 34.X03 (a). In the requirement to insert a solicitation clause, the words "...in solicitations for contracts that require the contractor to use an earned value management system (EVMS) and for which the Government may require an Integrated Baseline Review (IBR) after contract award." indicate the optional nature of the IBR after contract award. Recommend that "may require" be changed to "will require" to be consistent with the language in 34.X3 (b) for the pre-award IBR, wherein it states that "the Government will require an IBR prior to contract award." (underline added)

(3) Part 52.234-X3 Earned Value Management System, subparagraph (c): "Agencies may conduct Integrated Baseline Reviews (IBR)." To eliminate the permissiveness implied by the word "may", recommend substitute "shall" to forestall any ambiguity.

(4) Part 52.234-x3 Earned Value Management System, subparagraph (c), first sentence, 2nd line, after "scheduled" add the words "and initiated", since it is important to indicate that the IBR should commence during the allotted timeframe.

Respectfully,

David Melton

EVM Focal Point,
Missile Defense Agency

2004-019-10

"Tuttle, Peter" <PeterT@distributedinc.com>

06/06/2005 11:09 AM

To: farcase.2004-019@gsa.gov
cc: "Falcone, Ron" <RonF@distributedinc.com>, "DiBenedetto, Anthony" <TonyD@distributedinc.com>
Subject: FW: FAR Case 2004-019 Earned Value Management System

Dear Ms. Duarte:

First of all, thank you for the opportunity to participate and provide comments.

Distributed Solutions Inc. (DSI) is a small business founded in 1992. We have recently relocated to Reston, Virginia and specialize in the manufacture of a robust electronic contract management software solution suite of products called the Automated Acquisition Management System (AAMS). AAMS is currently deployed in over fifteen federal agencies.

1. DSI understands that an Earned Value Management System (EVMS) is not a reporting system, contract administration, cost analysis, accounting, or a contractor's task management system. It is a measure of the value of physical progress in a project and as such adds additional effort to the work of managing a project. EVMS may be cost-effective and have value for major R&D programs, but it may not be appropriate on contracts for COTS supplies or services with fixed man-hour rates and categories that are considered level-of-effort. Additionally, we firmly believe that any decision to whether or not to use EVMS on a program should be part of a formal documented acquisition strategy where its use and applicability is addressed in detail.

2. We believe that EVMS will drive up costs for contracts and help to defeat the purpose of procurement reform because in a 1998 RAND study their interviews of industry managers revealed:

a) It has been reported that EVMS requires the collection of cost data on at least one level below what a typical contractor would have done for a comparable commercial program;

b) Contractors have claimed that EVMS cost millions of dollars to set up;

c) Compared to similar commercial efforts, EVMS required three times more people for some contractors.

3. DSI strongly believes that EVMS will reduce competition and will have a chilling effect on small business participation in federal contracting because:

a) The proposed FAR change allowing EVMS Integrated Baseline Reviews before award would increase the burden of proposal development costs especially for small businesses, with no guarantee of any return on investment;

b) Additionally, it is even more onerous (regarding the burden of proposal costs for small businesses) while we are aware of RFPs that are canceled, reduced in scope, or where the award represents only an "empty shell" IDIQ contract with no guarantee of even enough work to recoup costly proposal investments;

c) It is well understood that for IDIQ contracts and contracts with option-years the government can effectively terminate by merely not providing the anticipated funding over the agreed-to period of performance!

4. We agree with the Under Secretary of Defense for Acquisition, Technology and Logistics Memorandum of 7 March 05 that states, "EVMS is discouraged on firm-fixed price, level of effort, and time and materials effort..."

2004-019-10

5. DSI also believes that OMB Circular A-11 makes allowances that EVMS is not applicable for certain types of acquisitions. Part 7, Section 300-4 indicates in the description of performance-based acquisition management that "...EVMS is required for those parts of the investment where development effort is required." Later, the same description paragraph indicates that "...a defined quality assurance plan should be the basis for monitoring contractor or in-house performance..." for operational or state-ready systems.

6. Additionally, DSI recommends that the 20 million dollar threshold for invoking EVMS be revisited. Just because an acquisition is larger than the established threshold does not mean it is appropriate for EVMS use. The use of EVMS on a multi-million dollar purchase of COTS computer equipment or fixed-price IT services is much less appropriate than for a multi-million dollar combat system developmental program where there are many unknowns. If, however, a dollar amount threshold is going to be mandated by the government, DSI suggests that it be raised to a minimum of 50 million dollars because a fee-guideline for lower risk efforts would probably only generate 1.2 million dollars (6%) in fees as compared to the more than 2 million dollars needed as an upfront investment to set up, before award, a certifiable EVM system as contractors have claimed from paragraph 2b above.

7. Accordingly, for FAR Case 2004-019, DSI recommends that GSA waive any requirements to include EVMS clauses in any of their contracts for "commercial" end items, products, and/or services that have already been proven in the marketplace, and performance-based acquisitions. Additionally, we recommend that the determination to use EVMS be program-specific based on the circumstances, and that the decision to use EVMS be part of a greater acquisition strategy.

Please feel free to call either Tony DiBenedetto, Esq. or the undersigned at (703) 471-7530 if you require additional assistance or need clarification on these comments.

Regards,

Peter Tuttle, CPCM
Senior Procurement/Policy Analyst
Distributed Solutions, Inc.

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2004-019-11

"Leif John E Maj HQ AFMC/PKP" <John.Leif@wpafb.af.mil>

06/06/2005 02:53 PM

To '"larhonda.erby@gsa.gov"' <larhonda.erby@gsa.gov>

cc

bcc

Subject Comments for FAR Case 2004-019, Earned Value Management System

Ms. Erby-

I submitted comments via the online form for the subject FAR case on 20 May. I wanted to call and confirm that the comments have been received since the public comment period closes tomorrow. The woman with whom I spoke was not able to locate the actual comments I submitted, so I wanted to contact you to make sure they are included in the review of the case. I submitted them with the name of Phil McManus from ESC/PK as the point of contact. Please let me know if you received the comments and that they will be included for your review. Please contact me if you have any questions.

Just in case, below are the comments I submitted:

The goal of standardizing the use of Earned Values Management Systems (EVMS) throughout the Government is welcomed but the implementation of Integrated Baseline Reviews (IBR) prior to contract award is problematic for several reasons.

1. An IBR is a resource intensive process and can require significant expenditures of time and money.

2. For competitive acquisitions, this would increase bid and proposal expense for the offerors, extend the time needed to conduct the source selection process, and tie-up critical Government manpower resources that are already stretched thin. If the intent of conducting a pre-award IBR is to better assess cost realism and identify technical/schedule risks on cost type contracts, it may be difficult to make an equitable competitive range determination prior to the IBR. Therefore, an IBR may be needed for all offerors. The adverse impact to cost and schedule may outweigh the added precision of the cost realism analysis. The FAR Case makes mention of a "modified IBR" but does not explain what is meant. Since the value of an IBR is tied to the discipline and integrity of the process, modifying or scaling-back that process seems counter productive.

3. For Sole Source acquisitions, a pre-award IBR, although only needed for the one contractor, still poses problems. First, unlike a competitive acquisition where competition can drive contractors to be unrealistically optimistic in terms of cost and schedule, contractors are far less likely to be optimistic when negotiating the cost and schedule on sole source acquisitions. Therefore, the value-added of a pre-award IBR versus a post award IBR is far less significant in terms of cost realism. Furthermore, until the cost line is negotiated there is no "cost baseline" to load into EVMS. Even if there is little or no difference at the cost line, contractors could be reluctant to show the Government the Management Reserve it intends to include in the cost baseline prior to the conclusion of negotiations.

V/r,
John E. Leif, Maj, USAF
HQ AFMC/PKPA
COM: (937) 656-0351
DSN: 986-0351

2004-019-12

June 6, 2005

General Services Administration
Regulatory Secretariat (VIR)
1800 F Street, NW, Room 4035
ATTN: Ms. Laurieann Duarte
Washington, DC 20405

Subject: Federal Acquisition Regulation; Earned Value Management System (EVMS).

Reference: FAR Case, 2004-019, 70 F.R. 17945, Friday, April 8, 2005.

Dear Ms. Duarte:

We appreciate the opportunity to offer comments on the proposed rule entitled, "Federal Acquisition Regulation; Earned Value Management System (EVMS), published on Friday, April 8, 2005 (70 F.R.17945). Detailed suggested changes to the proposed rule are included in the enclosure.

The Earned Value Management System (EVMS), derived from DOD's Cost/Schedule Control System Criteria (C/SCSC) first begun in the late 1960's, has matured and proven to be a successful program management approach that has been widely adopted by Government and industry. This success led to the adoption of a generally accepted commercial standard, ANSI/EIA-748, that has also been recognized internationally. Today, many commercial firms utilize this program management approach for both commercial and governmental work (at the Federal, State and local levels). We believe that standardizing the EVMS approach across the Federal Government is an excellent idea. However, we urge the FAR Council to establish only those minimal EVMS requirements that will not greatly increase the cost to the Government to acquire supplies and services.

On the specific issue of conducting Integrated Baseline Reviews (IBRs) prior to contract award, exercising of significant options or major contract modifications, we believe this to be inadvisable in almost all instances.

- Requiring performance of effort in advance of contract award, other than submittal of a proposal, is contrary to all existing precepts of Government contracting. Any costs incurred for pre-contract effort, unless recognized as legitimate anticipatory costs of the contract, might be considered unallowable under existing FAR Part 31 rules for IR&D and B&P.

- For those companies (bidders) that have an approved EVMS compliant with ANSI/EAI-748-A and already demonstrated in use on prior Government contracts, we believe pre-award IBRs should be prohibited. For those companies (bidders) without an existing or approved EVMS, this should be considered in the management risks of the source selection evaluation, based on their proposed system implementation (i.e., comprehensive EVMS Plan for compliance) described in their proposal.

Aerospace Industries Association of America, Inc.
1000 Wilson Boulevard, Suite 1700 Arlington, VA 22209-3901 (703) 358-1000 www.aia-aerospace.org

2004-019-12

- In most cases, there will be an insufficient technical or cost baseline prior to contract award upon which a bidder could prepare for an IBR. Such an IBR would likely be no more than a demonstration of the processes, tools, training and systems used for EVMS – subjects that can adequately be described in a proposal. Other issues, such as technical, cost and schedule risks can be assessed from the management, technical and cost proposals as well.

    - Major acquisitions usually involve one or more subcontractors to the prime contractor. It would be resource and schedule prohibitive to perform an integrated IBR or sequential IBRs prior to award.

- We question how the IBRs would be timed and supported by the government. Would they be performed in parallel or sequentially? If performed in parallel would the government have the resources to support the numerous IBR's to be conducted simultaneously?

- If the cost of supporting a government review of an IBR for a prospective bidder must be borne by the proposing company, only one company (the winning bidder) will actually be able to recover this cost. Even if the bidders are restricted to those in the competitive range, all but the successful bidder would suffer a financial loss. For business enterprises, regardless of size, this is a needless hardship. For some small businesses, the cost may pose such a hurdle to doing business with the federal government that they may elect not to bid – resulting in less outreach to small business at either the prime contractor or subcontractor level.

- While a "modified" IBR is noted in the proposed rule, there is no definition of what this might entail. Given a competitive situation, it is likely that companies (bidders) would spend as much, if not more, cost preparing for such a review as one conducted after contract award.

- If the requirement for a pre-award IBR is his retained in the final published rule, we believe that the requirement for a post-award IBR should be deleted.

The following are comments on the proposed rule:

- Adoption of a $20 million dollar threshold expands application significantly beyond current experience by industry in working with those agencies and departments of the federal government requiring EVMS. This will add to the costs for management and reporting of supplies and services provided to the Government at both the prime contractor and subcontractor levels.

Instead, we recommend that the Government adopt the following criteria:

- $50 million dollar threshold for development programs and $200 million dollar threshold for production programs, at the prime contract and subcontract levels.
- $20 million dollars up to $50 million dollars for selected programs where risks are deemed to be significant, with approval of head of the contracting activity, at the prime contract and subcontract levels.
- For application of EVMS on contracts under $20 million dollars at the prime contract or subcontract levels, the approval of the head of the Agency or Department should be required. Such approval should require a cost benefit analysis and risk assessment to justify the application of EVMS in lieu of other program management methods.

2004-019-12

- EVMS requirements shall not apply to firm-fixed-price (FFP), time and material (T&M), or level-of-effort (FP LOE), or FAR Part 12 commercial item prime contracts or subcontracts – except that in the latter instance, the Government may solely rely on whatever systems are used by the commercial company to provide management controls.

- A significant portion of the cost of EVMS is in reporting. The FAR should clearly state that reporting shall be limited to that referenced in the ANSI/EIA-748 standard with contractor format preferred. Any additional reporting requirements shall require specific approval by the head of the contracting activity based on a cost benefit analysis and risk assessment.

- Acquisition Plans should include methodology the Government will employ to analyze and use the earned value data to assess and monitor performance. This oversight shall not extend beyond the intent or requirements of the ANSI/EIA-748 standard or the contracts' terms and conditions and Statement of Work (SOW).

- Oversight of EVMS should be done for the contractor's entire company or facility, encompassing all contracts that have an EVMS requirement, preferably by the Administrative Contracting Officer (ACO). To have separate oversight contract by contract, where there are multiple contracts being performed, would result in both increased Government and contractor costs. The potential also exists for differing department or agency interpretations, which could disrupt common systems that most companies implement for EVMS. Recurring oversight should be done in a joint fashion, using both Government (Administrative Contracting Officer) and contractor personnel.

We applaud the proposed revisions as an important beginning and look forward to continuing to work with the Government on this important issue in the future. If you have any questions on issues covered in this letter, please call Mr. Terry Marlow at telephone at (703) 358-1040.

Sincerely,

Robert T. Marlow
Vice President, Government Division

Enclosure

2004-019-12

Enclosure

7.105 Contents of written acquisition plans.

Strike "(whether prior to or post award)."

34.000 Scope of part and also for 34.X01 Policy.

Insert "for development programs with a value of $50 million or more and for production programs with a value of $200 million or more in lieu of designated as major acquisitions consistent with OMB Circular A-11."

34.X03 Solicitation provisions and contract clause.

Strike sub-paragraph (b) in its entirety.

42.1106 Reporting requirements.

Add to sub-paragraph (d) following monthly reports "in contractor format (preferred)."

52.234-X2 Notice of Earned Value Management System – Pre-Award IBR.

Recommend deletion of this entire section.

52.234-X3 Earned Value Management System.

Subparagraph (c) – change to read "The Contracting Officer may also require an IBR at (1) exercise of significant options or (2) incorporation of major modifications, where such options or modifications are equal to or greater than 50% of the prior contract value. Such reviews will normally be scheduled after award of the contract action." (Changes underlined)

2004-019-13

"Christian, Trisha <CTR>"
06/07/2005 01:58 PM

To: farcase.2004-019@gsa.gov
cc:
Subject: DHS/CIO/WMO Comment in reference to the Proposed EVMS Rule Change (FAR case 2004-019)

The Wireless Management Office of the Department of Homeland Security (DHS), Office of the Chief Information Officer (CIO) respectfully submits the following comments in reference to the Proposed Earned Value Management System (EVMS) Rule Change (FAR case# 2004-019):

Background: In order to implement EVMS requirements in OMB Circular A-11, the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are proposing to amend the Federal Acquisition Regulation (FAR). Specifically, an Integrated Baseline Review (IBR), otherwise not conducted until after the award, would in some cases become part of the procurement selection process.

WMO Recommendations: The WMO is opposed to an IBR prior to or in lieu of proposal development and review for three primary reasons:

1. **Conducting an IBR prior to proposal development would be an unnecessary use of government resources:** For sole source procurements the principles can be built into the contract at the outset via proposal development. Even in competitive procurements, although more difficult and expensive than in a sole source case, the government need not spend time and money to get a formal IBR with vendors when the same topics (risks, program baseline, expectations) will be addressed at the project kick-off meeting. Moreover, mutual understanding of the contract's requirements would require more than just a single or even multiple reviews, but rather require continuous technical interchanges, formal design reviews, program reviews, and other formal and informal meetings. Customer understandings are modified by the reality of technical capabilities, cost, and schedule. Contractor understandings are modified by the reality of contracts terms and conditions. The document does not convincingly demonstrate that a pre-contract IBR can duplicate or replace this development process.
2. **Conducting an IBR pre-contract would distort a vendor's intent and thus the response:** If the IBR is done pre-contract, it is by definition part of the selection process. That means a vendor is likely to be in the "sell" mode and not the "execute" mode. The baseline that would be developed would be one that sells the specific vendor approach with minimum risk, lower cost, and so forth. It would also have to be changed after contract award to be useful as a management tool.
3. **Conducting an IBR pre-contract would raise vendor costs and reduce incentive to provide a quality, competitive response:** From the vendor's perspective, pre-contract IBRs would raise cost. The development of a baseline is a complex process involving the specific program managers/staff (who will not be available unless the contract is

019-13

won) that will be responsible for the program, the negotiated contract, and the negotiated schedule (neither are available until after the contract award). The cost of pre-contract work would be a business expense to the firm as there would be no contract to charge. It may be chargeable to the contract if allowed by the specific contract but only if the contractor wins. If the contractor does not win, the cost would likely come out of a bidding and proposal budget. Alternatively, the government could fund the development of the baselines and then perform the IBR, but the government is also generally reluctant to spend the money. As a result, vendors would be logically become more risk averse to bidding on government contracts, which would thus erode the benefits to the government of competitive bids.

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2004-019-14

"Christian, Trisha <CTR>"

06/07/2005 02:05 PM

To: farcase.2004-019@gsa.gov
cc:
Subject: DHS/CHCO/HCI Comment in reference to the Proposed EVMS Rule Change (FAR case 2004-019)

The Human Capital Innovation group of the Department of Homeland Security (DHS), Office of the Chief Human Capital Officer (CHCO)

respectfully submits the following comments in reference to the Proposed Earned Value Management System (EVMS) Rule Change (FAR case# 2004-019):

"While the proposed rules are in alignment with Clinger Cohen, the back-end impact to staffing requirements within each program office will be significant. Most offices in the civilian government sector do not yet have sufficient numbers of certified program managers, and DHS as a whole is somewhat understaffed in Contracting Officers, especially those cross-trained in OMB 300/EVMS and DHS/DAU Program Manager requirements. While many of the older bureaus might have sufficient staff to reassign in support of pre-IRB and EVMS tracking, DHS HQ and TSA do not.

In addition, while very sensible to do, adding levels of IRB and Agency Head review will lengthen the front-end planning and approval process timelines across all projects.

It is believed by some, the requirement for all contractors and small businesses to set up EVMS within their organizations will impact the overall cost of acquisitions. With flat-lined budgets ("budget-neutral"), funding being an issue."

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2004-019-15

"Christian, Trisha <CTR>"
06/07/2005 02:20 PM

To: farcase.2004-019@gsa.gov
cc:
Subject: DHS/IAIP/CIO Comment in reference to the Proposed EVMS Rule Change (FAR case 2004-019)

The Chief Information Officer of the Department of Homeland Security (DHS), Information Analysis and Infrastructure Protection (IAIP) Directorate

respectfully submits the following comments in reference to the Proposed Earned Value Management System (EVMS) Rule Change (FAR case# 2004-019):

"There is a basic concern with implementing a particular program management methodology across the board for capital investments without giving agencies the flexibility to determine program management methodologies best suited to a program by virtue of its requirements, urgency, available funding, and even its program manager. To apply EVMS to all capital programs in the acquisition phase also includes capital programs which acquire only services or technology without any development activity, which is more the focus of EVM methodology.

Providing a threshold for when EVMS must be implemented. In the current version of A-11 and A-130, EVMS must be used for ALL major systems. OMB's change, implied via the draft FAR language, established $20M and above as the threshold, which is in line with what DHS was already doing. However, the draft language also indicates that OMB reserves the right to dictate EVMS for other systems. So, if one is a PM for a $15M program, does one incorporate EVMS, with potentially higher costs for compliance, just in case OMB dictates it down the road? Similarly, should some kind of EVMS requirements be inserted in contract language so that if significant program/cost/contract/scope growth occurs, which exceeds the threshold, EVMS requirements can be invoked?

Addressing the "certification of ANSI Standard [748] compliance" requirement. Experience shows that capital planning at Dept of Energy (DOE), only DOD's DCAA was given the authority (by DOD) to certify compliance. OMB appears to be allowing for the program's PMO evaluation of compliance -- in the acquisition plan, "discuss how the contractor's EVMS will be verified for compliance with the American National Standards Institute/Electronics Industries Alliance (ANSI/EIA) standard" – vice a more formal certification. Although verifying compliance with the ANSI Standard is certainly less of an impact than certification, it begs the question of who might be qualified to make compliance evaluations. Would the "agency" reserve this authority? Is this something that is better for someone outside the PMO to do, and if so, who would that be?

Grandfathering of existing contracts. These FAR changes would obviously impact new contracts being awarded for efforts that would require EVMS. There is no indication that current contracts would have to be modified to address these issues. Nor is there indication that they will NOT have to be modified.

Additional Questions & Recommendations:

1. Regarding the statement, "OMB does not expect EVMS on acquisitions at or below $20 million total cost." Is that life cycle cost or acquisition cost?

019-15

2. Para 2.101. The definition, "Earned value management system means a project management tool..." implies that EVMS is a single tool and not a methodology that can successfully be accomplished with a variety of existing tools.

3. Recommended change to the FAR Part 34, 34.005-2(b)(6), Change "Require the use of an earned value management system that meets the guidelines of ANSI/EIA Standard-748," to "Require the use of an earned value management system that meets the criteria of ANSI/EIA Standard-748. Rationale: "guidelines" implies the option of complying or not, which is not in line with the sentiment of "require the use..." There are other instances of the word "guidelines" in this context that should also be changed to "criteria."

4. If the program has contractor and Government components, EVMS has to be applied to both, which means the contractor has to supply data to the Government for the Government to incorporate with its own data (assume Government would not want to provide the Government data to the contractor) to accomplish the EVMS reporting. That would suggest that the Government would want to obtain the info electronically. Assuming all this is true, would such a requirement have to be spelled out in the FAR? Or just the contract?"

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2004-019-16

DEFENSE CONTRACT AUDIT AGENCY
DEPARTMENT OF DEFENSE
8725 JOHN J. KINGMAN ROAD, SUITE 2135
FORT BELVOIR, VA 22060-6219

IN REPLY REFER TO

PPD 730.5.3.10

June 7, 2005

MEMORANDUM FOR GENERAL SERVICES ADMINISTRATION, REGULATORY SECRETARIAT (VIR)

ATTENTION: Ms. Laurieann Duarte

SUBJECT: Comments on FAR Case 2004-019

We have reviewed the proposed new earned value management (EVM) FAR coverage published in the Federal Register under FAR Case 2004-019. Based on our review of the proposed rule, we provide the following comment:

The proposed FAR coverage at FAR 34.X03, Solicitation provisions and contract clauses, and 52.234-X3, Earned Value Management System (EVMS), uses the term "responsible Federal department or agency" as the entity involved in determining the contractor's compliance with the EVMS guidelines, and in approving subsequent changes. That term is not defined, and thus, it is not clear how the "responsible Federal department or agency" is established. The proposed regulations do not clearly delineate the roles and responsibilities for approval and oversight of contractor EVM systems in circumstances where a contractor is awarded EVM-covered contracts by more than one Federal department or agency. DFARS 242.302(a)(41) clearly assigns the responsibility to the Defense Contract Management Agency (DCMA) for reviewing EVMS plans and monitoring compliance when a contractor is awarded DoD contracts that require the use of EVM guidelines.

Implementation of the proposed FAR rule creates the potential for multiple agencies or departments to each self assume the responsibility to review contractor's EVM plans and monitor compliance. Failure to clearly establish a single Government entity for the review and oversight of contractor EVM compliance may lead to duplication of efforts, inconsistent

2004-019-16

treatment, and differing opinions on the adequacy of the contractor's EVM system and reporting. To reduce the potential for these problems, and any confusion regarding the Federal agency responsible for EVM oversight, we suggest that the existing FAR definition at FAR 2.101 for "Cognizant Federal agency" be revised to include EVM surveillance. This change, along with the use of the phrase "Cognizant Federal agency" at FAR 34.X03 and 52.234-X3, in lieu of "responsible Federal department or agency," would minimally establish a single Federal agency as the Government's focal point for approving and monitoring contractor EVM systems.

PPD 730.5.3.10
June 7, 2005
SUBJECT: Comments on FAR Case 2004-019

2004-019-16

We appreciate the opportunity to review and provide comments on the proposed FAR coverage. Please direct any questions on this matter to Ms. Victoria Post, Program Manager, Policy Programs Division, at (703) 767-2270.

/s/ Terry M. Schneider
/for/ Robert DiMucci
Assistant Director
Policy and Plans

2004-019-17

"Fischetti, Michael"
<Michael.Fischetti@hq.doe.gov>

06/07/2005 03:46 PM

To: '"farcase.2004-019@gsa.gov"' <farcase.2004-019@gsa.gov>
cc: "Wright, Denise" <Denise.Wright@hq.doe.gov>, "Tower, James" <James.Tower@hq.doe.gov>, "Donnelly, Mike" <Mike.Donnelly@hq.doe.gov>
Subject: Department of Energy Comments to Proposed EVMS Rule

Ms. Denise Wright is our point of contact and can be reached at (202) 287-1340 or at the address above.

- *"34.000 Scope of part. This part describes acquisition policies and procedures for use in acquiring major systems consistent with OMB Circular No. A-109; and the use of earned value management systems in acquisitions designated as major acquisitions consistent with OMB Circular A-11."*

1. The propose FAR rule cites A-11, which does not distinguish between fixed-price and cost type contracts. DOE does not generally support use of EVM on firm-fixed price prime contracts. DOD has issued a policy that states EVM is discouraged on firm-fixed price work. The issue seems to be with the A-11 language, not the proposed FAR clause. Was a clarification intended?

2. We question the reference to OMB Circular A-109. The status of OMB Circ. A-109 is in doubt. It is not listed on OMB's website as an active circular. We understand it is being considered for deletion. Also, this is the only mention of it in the rule. Following this citation, only OMB Circ. A-11 is mentioned. Recommend deletion of this reference to A-109.

- *"34.X03 (b) The contracting officer shall insert a provision that is substantially the same as the provision at 52.234-X2, Notice of Earned Value Management System-Pre-Award IBR, in solicitations for contracts that require the contractor to use an EVMS and for which the Government will require an IBR prior to contract award."*

3. Part 34.X01 paragraph (b) states that agencies shall consider the use of an IBR. Other sections of the proposed rule are not as clear that IBRs are optional. Caution and clarification is recommended on this section and the attendant clause, 52.234-X2. The only way we envision an independent baseline to exist on which to perform an IBR prior to award is if the baseline was previously developed either privately or under a prior government contract. If developed under prior government contract, the government will be furnishing the baseline as GFI to the contractor or prospective offeror (and would need to be validated by an IBR before any contract is awarded). There is no need of the clause in this situation.

If developed privately, then an IBR would not be a joint contractor/government assessment. The Government cannot require any contractor to participate in an assessment prior to award. Proper contract coverage and funding must be provided to avoid anti-deficiency act implications.

- *"52.2345-X3 (c) Agencies may conduct Integrated Baseline Reviews (IBR). If a pre-award IBR has not been conducted, such a review shall be scheduled as early as practicable after contract award, but not later than 180 days after award. The Contracting Officer may also require an IBR at (1) exercise of significant options or (2) incorporation of major modifications. Such reviews will normally be scheduled before award of the contract action."*

4. Paragraph c. states that agencies may conduct an IBR, however it also states that if a pre-award IBR has not been conducted; such review shall be conducted not later than 180 days after contract award. This confuses whether IBRs are truly at agency discretion.

5. Paragraph (c) also states that IBRs will normally be scheduled before award. DOE does not support this statement. Both the use and timing of IBRs should be discretionary and based on the dollar value and complexity of the contract. Many DOE major acquisitions are executed by Management and Operating (M&O) contractors responsible for design and planning activities necessary to establish the

"Performance Measurement Baseline," which must be in place prior to an IBR, which can take years. Recommend ", but not later than 180 days after award" be deleted and replaced with "in accordance with agency procedures."

2004-019-18

"Mildred.Tyler2@usdoj.gov" <Mildred.Tyler2

06/07/2005 03:57 PM

To: "'farcase.2004-019@gsa.gov'" <farcase.2004-019@gsa.gov>
cc:
Subject: Comments on FAR Case 2004-019

Attached are my comments regarding the above.

Comments on FAR Case 2004.doc

2004-019-18

Comments on FAR Case 2004-019:

In considering the potential requirement for contractors to conduct an IBR prior to award, it should be recognized that the typical post award IBR takes place thirty to ninety days *after* award under current practice. The reason for this delay is that it often takes a number of weeks for the contractor to develop and refine their understanding of the project and their work plans so as to have the detailed information available necessary for a comprehensive IBR to be held. If the requirement for the first IBR is advanced to a pre-award date, there is little likelihood that the level of information available to the contractor will be sufficient to allow a meaningful IBR to be conducted.

From a vendor perspective, there is the implication that prospective bidders will be required to expend considerable additional cost in attempting to fashion a meaningful IBR, knowing that the apparent quality of their EVM plan is likely to influence the selection of the winning bidder.

While the proposed regulations acknowledge that OMB will not expect an EVMS to be applied to acquisitions at or below $20 million, agencies will have the discretion to require the application of an EVMS on much smaller projects. In recognition of this likelihood, the regulations should not be written so as to encourage the imposition of pre-award IBRs on smaller acquisitions where it is increasingly likely that more of the potential credible bidders will be companies having more modest experience in the use of earned value management systems. Doing so may well reduce the pool of otherwise credible bidders. Coupled with the likelihood that pre-award EVM plans are going to be subject to a greater incidence of revision and re-baselining due to less solid information being available at the time the plans are formed, the benefit to the Government of an IBR held before a solid baseline can be defined is quite minimal, while to cost to bidders is very real.

2004-019-19

nBarrere@doc.gov
06/07/2005 07:54 PM

To: farcase.2004-019@gsa.gov
cc: jeritta.parnell@gsa.gov
Subject: FAR Case 2004-019: DOC Comments on Earned Value Management System (EVMS) Proposed Rule

These comments are submitted by the Office of Acquisition Management and Financial Assistance, Department of Commerce. We appreciate the opportunity to comment on the proposed EVMS rule and support efforts to improve the management of government contracts.

The rule, as presently drafted, could be extremely costly for civilian agencies and their contractors (and subcontractors) to implement and possibly delay the award of critical acquisitions.

The rule's policy section states "Earned Value Management Systems (EVMS) is required in acquisitions designated, in accordance with agency procedures, as major acquisitions, subject to OMB Circular A-11." Based on guidance provided A-11, we interpret this to mean EVMS applies to developmental, not steady-state (or operational) acquisitions. If this is correct, we suggest it be clarified in the rule.

Since EVMS is a new concept to most civilian agencies and their contractors, we recommend the rule reference sites where authoritative guidance and policy on EVMS and conducting Integrated Baseline Reviews (IBRs) may be found. Civilian agencies and their contractors, particularly small businesses, will need more guidance on EVMS and IBRs than is included in the rule.

The rule solicits comment on whether all contracts covered by EVMS should require an Integrated Baseline Review (IBR) either before or after award. At 34.X02(b), the rule states "The IBR is a joint assessment by the offeror or contractor, and the Government, of the--(1) Ability of the project's technical plan to achieve the objectives of the scope of work; (2) Adequacy of the time allocated for performing the defined tasks to successfully achieve the project schedule objectives; (3) Ability of the Performance Measurement Baseline (PMB) to successfully execute the project and attain cost objectives, recognizing the relationship between budget resources, funding, schedule and scope of work; (4) Availability of personnel, facilities, and equipment when required, to perform the defined tasks needed to execute the program successfully; and (5) The degree to which the management process provides effective and integrated technical/schedule/cost planning and baseline control." Based on that definition, the IBR appears to cover much of the same ground traditionally addressed in competitive acquisition process: The government issues a solicitation detailing its objectives and requirements; the offeror assesses the government's need, develops a solution, and puts together a competitive proposal; and the government evaluates the proposal, enters into discussions, assesses the proposal's quality and selects a contractor for award. Is it possible the IBR could be considered just one aspect of the evaluation and negotiation process leading to award for major acquisitions subject to EVMS? Whatever the IBR process is ultimately determined to be, it should be structured to guard against undermining an offeror's commitment or a contractor's obligation to perform--especially under a fixed-price, performance-based type arrangement.

The rule also solicits comment on what should be the downselect policy to limit the number of offerors subject to an IBR before award. We appreciate

that agencies are going to have to expend considerable resources, time, and money to ensure EVMS compliance and conduct IBRs. We do not have a recommendation regarding a downselect policy, but whatever policy may emerge needs to balance the interests of agencies and their contractor community (particularly small business).

In the Regulatory Flexibility Act discussion, the rule notes that "…the impact of this rule has not been ascertained across all agencies" and that "Small businesses may be impacted by their lack of certification of an EVMS System at the time of award or the cost of the requirement for an IBR prior to award where an agency does not absorb the cost of the IBR. Likewise, agencies will be affected by the possible cost of IBRs for which they absorb the costs". At Commerce, there are no known funds or resources available to implement EVMS or perform IBRs. Funding and resources requirements will need to defined and budgeted.

The rule also requires that offerors/contractors have an EMS system "recognized" by the government as being compliant with the guidelines of ANSI/EIA standard 748 (current version at the time of award), but does not identify which government entity "recognizes" compliance. This raises a number of questions, such as: What official or function within an agency is qualified to "recognize" EVMS compliance? What constitutes a "recognized" EVMS system? What documentation is the assessing agency required to provide "recognizing" an offeror has an EVMS compliant system? Is that recognition binding on other government agencies? If an agency determines an offeror does not have a compliant EVMS system, is that negative determination subject to protest? Are there specific protocols available to agencies and offerors explaining how the government will evaluate business practices for EVMS compliance purposes? Without standard protocols or operating guidance, each agency's process will be different.

The rule should provide for a suitable phase-in period (at least 6 to 12 months), during which agencies can develop their own EVMS programs and approaches to performing EVMS compliance checks and IBR reviews, identify and train the appropriate personnel (e.g., Project Managers, Contracting Officer Representatives, Contracting Officers), and contract for EVMS support services.

Finally, the rule should recognize the significant impact EVMS implementation will have on agencies and contractors and address the more significant issues identified before going final.

Please contact Nbarrere@doc.gov with any questions about these comments.

The proposed EVMS rule is posted on GSA's website at
http://www.acqnet.gov/far/ProposedRules/proposed.htm

2004-019-20

Contract Services Association

June 6, 2005

Ms. Laurieann Duarte
General Services Administration
FAR Secretariat (VIR)
1800 F Street, NW
Room 4035
Washington, DC 20405

RE: FAR Case 2004-019; Proposed Rule – Earned Value Management Systems (EVMS)

Dear Ms. Duarte:

The Contract Services Association (CSA) respectfully submits the following comments on the notice of proposed rulemaking (NPR), Earned Value Management System (EVMS), published in the Federal Register on April 8, 2005 (70 F.R. 17945-17949). This proposed rule establishes standard EVMS provisions, a standard clause, and a set of guidelines for Government-wide use.

CSA is the nation's oldest and largest association of service contractors representing over 200 companies that provide a wide array of services to Federal, state, and local governments. CSA members perform over $40 billion in Government contracts and employ nearly 500,000 workers, with nearly two-thirds of CSA companies using private sector union labor. CSA members represent the diversity of the government services industry and include small businesses, 8(a)-certified companies, small disadvantaged businesses, women-owned, HubZone, Native American owned firms and global multi-billion dollar corporations. CSA promotes Excellence in Contracting by offering significant professional development opportunities for government contractors and government employees, including the only program manager certification program for service contractors.

CSA's comments on the proposed rule are presented in three parts:

(1) Executive Summary of Recommendations
(2) Overview of EVMS
(3) Detailed analysis of proposed rule

Due to the complexity and far-reaching implications of EVMS, CSA recommends that there be:

(1) a public meeting to provide an opportunity for interested parties to engage in a dialogue prior to publication of a final rule, and/or
(2) a second proposed rule following receipt and analysis of public comments.

Should you have further questions, please contact Ms. Cathy Garman, CSA Senior Vice President for Public Policy, at 703-243-2020.

Sincerely,

Chris Jahn

Chris Jahn
President

1000 Wilson Boulevard, Suite 1800 Arlington, VA 22209 703-243-2020
www.csa-dc.org

2004-019-20

I. EXECUTIVE SUMMARY OF RECOMMENDATIONS

■ **Contract type.** The use of EVMS should be limited to cost-type and fixed-price incentive acquisitions for development, including research, development, test, and evaluation (RDT&E) and task/delivery orders, other than time and materials (T&M) or level-of-effort (LOE). EVMS should *not* be required on production contracts; commercial item acquisitions; contracts for services; or firm-fixed price contracts, fixed price LOE contracts, or T&M contracts.

■ **Threshold for applicability of EVMS.** A single, Government-wide threshold of $50 million should be established for prime contracts, *excluding* options, for acquisitions for development efforts, e.g., systems prototypes and testing, RDT&E and/or task/delivery orders (other than T&M or LOE).

■ **Applicability to small business.** Small businesses that receive prime contracts valued at $50 million or more, excluding options, likewise should be subject to EVMS requirements.

■ **Joint ventures, teaming arrangements.** In the case of a joint venture, the joint venture is to use a single, mutually agreed upon EVMS. In the case of a teaming arrangement, the prime contractor is responsible for meeting the EVMS requirements.

■ **Flow-down to subcontractors.** There should be no flow-down to subcontractors, regardless of dollar value.

■ **Inflation adjustment to threshold.** The dollar threshold for applying EVMS to prime and subcontracts and to small businesses should be indexed to inflation.

■ **Integrated Baseline Reviews (IBRs).** IBRs should be required only post-award.

■ **Determination of EVMS acceptability.** A single Government entity should be responsible for determining acceptability of a contractor's EVMS. All members of that entity must receive training in the use of EVMS from either the Defense Acquisition University (DAU) or a private entity, and be certified by the DAU, under standards established by the DAU, as qualified in the use of EVMS.

■ **EVMS reports.** The cognizant contracting officer should provide the contractor with written comments and a proposed/agreed upon course of action, if any, within 10 calendar days after receipt of the monthly EVMS report, and document the contract file accordingly. Failure to do so should be deemed a waiver of the Government's right to require corrective action or take adverse action. In any event, a deviation of less than 10 percent of cost/schedule should *not* be grounds for corrective action on the contractor's part.

■ **Allowability of associated costs.** Each solicitation and resulting contract for which EVMS is required is to contain a provision for reimbursement to the contractor of the direct and allocable indirect costs associated with developing, maintaining, and using EVMS, with a corresponding change to the Federal Acquisition Regulation (FAR) cost principles to reflect the allowability of such costs.

■ **EVMS changes, surveillance.** The proposed clause at FAR 52.234-X3(d) requiring advance approval of contractor-proposed EVMS changes should be revised to state that such determinations be made at the next regularly scheduled system surveillance. Also, the proposed clause at FAR 52.234-X3(e) should be revised to state that surveillance is to be performed every six months by one or more individuals who have been trained and certified in the use of EVMS, and, further, that the contractor be notified at least seven calendar days in advance of such periodic surveillance. The provision in that same clause regarding access to records and data should be deleted.

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II. OVERVIEW OF EVMS

The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) to standardize the use of Earned Value Management Systems (EVMS) across the Government by establishing uniform policy, provisions, and procedures.

EVMS is not a new concept; it was pioneered by industrial engineers. Within the Federal government, the Defense Department (DOD) is the principal user of EVMS. EVMS has been used sporadically by the military services since the mid-1960s. The precursor of EVMS was the cost/schedule control system criteria (C/SCSC). The gradual shift to EVMS reflected a growing realization that C/SCSC did not capture in an integrated fashion whether the cost incurred, the time expended, and the level of performance attained were in sync. It was not until December 1996 that EVMS received high-level attention within DOD. Then-Under Secretary of Defense (Acquisition and Technology) Paul Kaminski issued a memorandum replacing C/SCSC with EVMS for performance-based systems.

During the transition period in the mid-1990s, DOD asked industry to develop an industry standard. In August 1996, industry responded with proposed EVMS "Guidelines." DOD in turn incorporated those guidelines into the DOD FAR Supplement in December 1997. A revised EVM policy was issued March 2005, followed by an implementation guide in April 2005.

Title V of the Federal Acquisition Streamlining Act of 1994 (FASA) required agency heads to approve or define the cost, performance, and schedule goals for major acquisitions and achieve, on average, 90 percent of the goals established. Building on FASA, the Clinger-Cohen Act of 1996 directed the Office of Management and Budget (OMB) to develop, as part of the budget process, a process for analyzing, tracking, and evaluating the risks and results of all major capital investments for information systems for the life of the system. OMB Circular A-11, Part 7 (Planning, Budgeting, Acquisition, and Management of Capital Assets), and the supplement to Part 7 (the Capital Programming Guide), were written to meet the statutory requirements of FASA and the Clinger-Cohen Act.

A contractor's EVMS is supposed to comply with the guidelines in the American National Standards Institute/Electronics Industries Alliance (ANSI-EIA), standard ANSI/EIA-748. However, ANSI/EIA-748 is not prescriptive but rather descriptive; it consists of 32 industry guidelines that establish the acceptable requirements for an adequate integrated cost, schedule, and technical management system. Accordingly, EVMS must be tailored to the context of each contract to which it is to be applied. Indeed, the Defense Contract Management Agency (DCMA) Guidebook (Earned Value Management System – System Surveillance) states, *"No single EVMS can meet every supplier's performance management needs. It is the supplier's responsibility to develop and apply the specific procedures to comply with these guidelines."*[1] In addition, the proposed rule, at FAR Part 7.105 (Contents of written acquisition plans) leaves it to each agency to determine during the acquisition planning stage, on a case-by-case basis, the "methodology" to be employed in analyzing and using a contractor's EVMS data to assess and monitor contract performance. This in and of itself is an acknowledgment on the Government's part that there is no such thing as a "one-size-fits-all" approach to implementing EVMS.

EVMS represents a profound shift in program management. Whereas the Government "owned" the C/SCSC system, it is the contractor that "owns" its EVMS system. EVMS essentially applies a percentage of completion approach – an approach typically used on construction projects – to monitoring progress on major capital acquisitions.

Without question, EVMS raises the bar in terms of providing visibility into whether a program is on target with respect to cost, schedule, and technical performance. CSA believes that, appropriately used,

[1] *See:* http://guidebook.dcma.mil/79/guidebook_process.htm

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EVMS can be an effective project management tool. EVMS can serve as an early warning system to alert the parties – both the Government and the contractor – to potential or actual problems in a program. However, the proposed rule is devoid of any acknowledgment that EVMS imposes a significant additional obligation upon as well as potential risk to contractors, or that such obligation and risk carry a price.

There needs to be some recognition in the rule that EVMS – like other complex disciplines – is not an exact science, and that even despite a contractor's best efforts, a program may encounter problems. Indeed, cost, schedule, and technical problems have been encountered in major defense and space programs that currently employ EVMS. Mere awareness of a potential/actual variance in cost/performance/technical parameters does not by itself point to a cause, let alone a solution. Particularly on large and complex programs, it is impossible to predict at the outset precisely how the work will progress.

Nor is EVMS a mechanical process on the part of Government personnel. Implementation of EVMS will entail an investment of considerable time and attention on the part of the contracting officer and other Government personnel. The proposed FAR Part 42.1106(d) contemplates that the contractor submit monthly status reports to the contracting officer; in turn, the contracting officer will have to review and evaluate those reports and determine what, if any, action to take as a result. This will of necessity entail a judgment call on the part of the contracting officer. There may be occasions when a tradeoff among the EVMS parameters may be necessary; for example, it may be possible to accelerate performance to offset schedule slippage, but only at the expense of cost or technical achievement.

If EVMS is to succeed, there needs to be a concomitant obligation on the Government's part to *communicate* with the contractor *promptly* and in writing what, if any, action should be taken to rectify a problem. If, for example, the contracting officer decides, after reviewing a contractor's EVMS report, that a variance from the baseline cost, schedule, or technical parameters warrants some sort of action on the contractor's part, the contractor should be informed within 10 days in writing and the contract file should be documented contemporaneously as to the cause of variance and who will bear the cost of the proposed corrective action. On the other hand, if the contracting officer determines that no action is needed notwithstanding a variance, the contractor must be so informed within 10 days and the contract file documented to that effect. A contractor should not be put in the position of having to guess where it stands, only to be informed retroactively that it is noncompliant. It would be counterproductive to use EVMS in a "gotcha" mentality.

In short, EVMS is not a panacea. It does not prevent problems from arising, nor does it present a means for correcting them. It is merely an indicator, not a solution. It will take time, effort, and patience on the part of both the Government and industry to make EVMS work. Unrealistic expectations about what EVMS can do will lead to mistrust, a breakdown in communication, and, ultimately, litigation – resulting in delay and disruption in contract performance – the very problems EVMS is designed to avoid.

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III. DETAILED ANALYSIS OF PROPOSED RULE

Limitations as to contract type. CSA strongly recommends that use of EVMS be confined exclusively to cost-type and fixed price incentive acquisitions for development, including research, development, test, and evaluation (RDT&E) and task/delivery orders, other than time and materials (T&M) or level-of-effort (LOE). Use of EVMS for production contracts; commercial item acquisitions; contracts for services; and certain types of contracts (e.g., firm-fixed price, fixed price LOE, or T&M) is inappropriate.

By the time a program is in production, the major technical risks have been addressed; thus use of EVMS is unnecessary. As for commercial item acquisitions, EVMS is inappropriate both because it is not customarily used in the commercial marketplace and because commercial item acquisitions are by definition on a firm-fixed price, fixed price with economic price adjustment, or time and materials/labor hour basis.

Use of EVMS on firm-fixed price contracts is superfluous because such contracts by definition commit a contractor to achieving a certain outcome at a certain price, and thus provide sufficient incentive for the contractor to achieve the desired outcome within the parameters of the contract.

Use of EVMS also is incompatible with LOE-type contracts because such contracts do not entail a budget or schedule against which to measure performance; rather, they entail the purchase of a given amount of labor dedicated to a particular task irrespective of whether the contractor achieves a specific outcome.

Similarly, use of EVMS in T&M contracts is inappropriate because it is extremely difficult to establish a technical, cost, or schedule baseline as the scope requirements change frequently. Support for this position can be found in a recent memorandum issued by Acting Under Secretary of Defense (Acquisition, Technology & Logistics) Michael W. Wynne. The memorandum[2] states:

> EVM is discouraged on firm-fixed price, level of effort, and time and materials efforts, including contracts, subcontracts, intra-government work agreements, and other agreements, regardless of dollar value.

Dollar threshold. The proposed rule, at FAR 34.X01 (Policy) does not specify a dollar threshold for requiring use of EVMS but states only that EVMS will be required in acquisitions designated as "major acquisitions." The supplementary information to the proposed rule states: "OMB does not expect EVMS on acquisitions at or below $20 million total cost. However, OMB or the agency may identify a lower dollar acquisition as a major acquisition for application of EVMS." Thus, the proposed rule contemplates that the dollar threshold for requiring application of EVMS will vary from agency to agency.

CSA strongly recommends that there be *a single, Government-wide threshold* for use of EVMS. Offerors should not be able to exploit an inconsistency in thresholds for purposes of EVMS in deciding whether to bid on a solicitation issued by Agency X or Agency Y. A procurement of supplies and equipment, information technology services, or construction that is deemed "major" by one agency likewise should be deemed major by all agencies. CSA recommends adoption of a threshold of ***$50 million in prime contract value***, excluding the value of options, for application of EVMS requirements. A $20 million threshold, as contemplated in the proposed rule, does not reflect the reality that a significant portion of a prime contract is subcontracted. It is one thing to require EVMS on a prime contract worth $50 million, with 50 percent of the work subcontracted, but quite another to require it on a $20 million contract, of which 50 percent is subcontracted. Further, a threshold of $50 million is sufficiently high to exclude the vast majority of small businesses from the requirement to use EVMS. While being aware of the resource-intensive nature of EVMS, and being sensitive to the special needs of small businesses, exempting small businesses from the EVMS requirement (at any threshold) would put non-small businesses at a competitive disadvantage when competing for a prime contract/order.

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[2] "Revision to DoD Earned Value Management Policy," March 7, 2005.

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In addition, CSA recommends that there be an escalation clause built in to the rule to take into account inflation. The intent is to limit use of EVMS only to "major acquisitions." Over time, $50 million likely will no longer be considered "major." Congress addressed the impact of inflation on acquisition-related dollar thresholds in the FY05 National Defense Authorization Act (P.L. 108-375). Section 807 of that Act authorizes the Office of Federal Procurement Policy (OFPP) to amend dollar thresholds for procurement statutes.

Joint ventures, teaming arrangements. In the case of a joint venture, it is appropriate to require the joint venture to use a single, mutually agreed upon EVMS. In the case of a teaming arrangement, the prime contractor should be responsible for meeting the EVMS requirements.

Flow-down to subcontractors. The proposed rule contains a solicitation provision at FAR 52.234-X1 that calls for offerors to "identify the major subcontractors, or major subcontracted effort if subcontractors have not been selected, planned for application of the [EVMS] guidelines," and for the prime contractor and the Government to mutually agree on the subcontractors selected for application of EVMS guidelines. In addition, the proposed rule contains a contract clause, FAR 52.234-X3(f), which provides that the prime contractor "shall require the subcontractors specified below to comply" with EVMS requirements. CSA contends that to impose a flow-down of the requirement to use EVMS to a subcontractor would constitute a breach of the concept of privity. A prime contractor can, in its contractual arrangements with its subcontractors, stipulate the terms and conditions of the subcontract, including but not limited to the requirement to report periodically on cost, schedule, and performance, though perhaps not to the same rigorous standard as would be available under EVMS. It is fundamentally the prime contractor's responsibility – not that of the Government – to monitor the performance of its subcontractors. Accordingly, paragraph (c) in the proposed clause at FAR 52.234-X1 and paragraph (f) in the proposed clause at FAR 52.234-X3 should be deleted.

Integrated Baseline Reviews (IBRs). IBRs are a key component of EVMS. As stated in the supplementary information accompanying the proposed rule, an IBR is a collaborative undertaking on the part of the contractor and the Government in which the parties jointly assess:

(1) the ability of the project's technical plans to achieve the objectives of the scope of work;
(2) the adequacy of the time allocated for performing the defined tasks to successfully achieve the project schedule objectives;
(3) the ability of the Performance Measurement Baseline (PMB) to successfully execute the project and attain cost objectives, recognizing the relationship between budget resources, funding, schedule, and scope of work.
(4) the availability of personnel, facilities, and equipment when required to perform the defined tasks needed to execute the program successfully; and
(5) the degree to which the management process provides effective and integrated technical/schedule/cost planning and baseline control.

As stated in the supplementary information accompanying the proposed rule, the "traditional approach" is to conduct an IBR "only after contract award." The Councils specifically request comments "on the feasibility of conducting IBRs before award." The supplementary information poses several scenarios: requiring IBRs for all contracts prior to award; requiring IBRs on only certain types of contracts; and requiring a "modified IBR" at the pre-award stage.

CSA strongly recommends that IBRs *not* be required at the pre-award stage, regardless of contract type. It is our view that the use of a pre-award IBR as a source selection tool is contrary to the very purpose of an IBR. By virtue of assessing baseline adequacy, a pre-award IBR incentivizes high-cost implementations that drive the perceived risk to zero. As such, it diminishes competitiveness and innovative solutions. Certainly, this is not the sort of outcome the Government desires.

Further, one of the key elements in performing an IBR is a PMB. The level of detail that is reflected in the PMB typically does not exist during the proposal stage.

Prior to contract award, the budget baseline has only limited fidelity. The task assessments or Bases of Estimates (BOEs) have not been segregated into control accounts, and therefore, assessing the adequacy of the budget baseline would need to be performed again once the baseline is laid in. Any pre-award IBR comparison of two or more contractors would boil down to Company A's applied rates (direct and indirect) and anticipated efficiencies versus Company B's.

Also, one of the goals of an IBR is to assess the risk in the PMB. Since proposal values are often decremented during negotiation, an assessment of risk after decrementing proposal values would be different than an assessment of the initial proposal values. Prior to contract award, it is too early to identify all risks associated with the statement of work (SOW). For instance, if the contract is awarded lower than the offeror's floor value, the cost risks are increased. In this same instance, if the contractor determines that, due to same, some SOW will not be performed due to budget constraints, technical risks also will be increased.

In addition, the detailed schedule evolves significantly from the time the initial BOEs are developed through negotiations and into the early stages of requirements maturation post-award. To prepare a detailed schedule prior to award would entail a vast amount of work, and would be a waste of time and effort. Another IBR would have to be conducted after contract award, which would mean that a considerable amount of work would have to be redone.

Another key concern is that, in providing the sort of information to the Government at the pre-award stage, there is an added risk that a contractor's technical solution and other sensitive information could lead to technical transfusion. By design, the IBR entails an extensive review of all detailed cost, technical, and schedule data by the Government and contractor/subcontractor teams. Membership on these teams could be extensive for major proposals. Unless a separate IBR Government team for each contractor's proposal is "fire-walled" from the price and technical evaluation team, conducting a pre-award IBR could jeopardize the integrity of the competition. Protecting one offeror's proposal from those of other offerors would pose a challenge due to the sheer number of Government and support contractor personnel involved, and the level of detail in the data being reviewed. A pre-award IBR would involve numerous Government personnel in the evaluation process with access to the contractor's most sensitive cost, schedule, and approach data. This widespread knowledge of the most sensitive aspects of a contractor's proposal would greatly compound the challenge of preserving procurement integrity. In the case of teaming arrangements, a pre-award IBR may be unworkable, given the policies that some agencies have on the use of exclusive teaming arrangements. In such arrangements, disclosure of and access to the procurement-sensitive data needed for an effective pre-award IBR would be problematic, given the need to shield such data from teammates that also may be teamed with competing offerors.

Conducting pre-award IBRs also could have the unfavorable consequence of the Government's molding the contractor's proposal to a "preferred solution" as opposed to understanding the offeror's unique technical approach. Moreover, successive discussions among competing parties and the Government could well result in inadvertent "technical leveling" – a common denominator of all the proposals.

Due to the technical complexity of major acquisitions involving EVMS, it is often necessary to refine contract requirements and clarify, or even modify, technical approaches immediately after contract award through discussions with the Government. The accomplishment of these actions, to the extent needed to prepare for, and conduct, an effective pre-award IBR, would be highly unlikely without a significant increase in lead time, which is contrary to efforts on the part of Federal agencies to shorten acquisition lead time.

There also is a concern about the cost of a pre-award IBR, especially in a competitive procurement. Even though the expectation is that it would be paid for by the Government, there is concern about how that

would work in practice. Short of any specific guidance on the mechanics of a down-select process, a wide range of implementations, many inappropriate, can be expected.

For all the above reasons, CSA recommends that the proposed FAR clause 52.234-X2 (Notice of Earned Value Management System – Pre-Award IBR) be deleted in its entirety.

With respect to conducting another IBR prior to (1) exercise of significant options or (2) incorporation of major modifications, as envisioned in proposed clause FAR Part 52.234-X3(c) (Earned Value Management System), CSA recommends that the IBR not be conducted until after the option/modification is agreed to. Just as a pre-award IBR is inadvisable because the IBR objectives cannot be met until the baseline is established, so, too, a pre-option/modification IBR is inadvisable because the baseline has not yet been established. Accordingly, CSA recommends that the language in the referenced proposed FAR clause be revised to state:

> Such reviews will normally be conducted within 90 days of the contract action.

Determining acceptability/compliance of an EVMS. The proposed rule, at FAR Part 7.105 (Contents of written acquisition plans), provides that the acquisition plan is to address how the contractor's EVMS "will be verified for compliance with" the ANSI/EIA standard.[3] Further, the proposed FAR clause at 52.234-X1(a) contemplates that an offeror "shall provide documentation that the cognizant administrative contracting officer (ACO) or a Federal department or agency has recognized that the proposed" EVMS complies with the EVMS guidelines in ANSI/EIA-748, or whatever the current version is at the time of the solicitation. What sort of documentation is contemplated? What set of criteria are to be used in making the compliance determination? Further, who in the department or agency besides the ACO is qualified to make such a determination? Absent specifics as to each of these, there could be inconsistent interpretations and results. An EVMS that is deemed compliant by a particular ACO might not be deemed compliant by another. This would subject a contractor to considerable uncertainty.

CSA recommends that the rule mandate a single Government entity or unit to be responsible for determining acceptability of a contractor's EVMS. All individuals in that entity/unit must receive appropriate training in EVMS, and be certified by the DAU. Acceptance of a contractor's EVMS by any such individual should be recognized by all agencies, thus obviating the need for additional acceptance/certification reviews.

Process for handling EVMS reports. The monthly reports to be required of a contractor under the proposed rule will enhance the Government's real-time awareness of the cost, schedule, and performance status of a project, but that in turn should impose an obligation on the part of the Government to act promptly on that information. A contractor should not have to guess whether the Government views a variance as material, nor should the Government be allowed to keep silent about a variance in cost/schedule/performance only to assert retroactively that a contractor has fallen short. The proposed rule does not provide any criteria for what constitutes a material deviation. Thus, one contracting officer might consider a 5 percent schedule slippage over a three-month period tolerable, while another might not. Without some sort of adjectival or numerical criteria, a contractor could be subjected to inconsistent treatment in implementing EVMS from contract to contract. Accordingly, CSA recommends that the cognizant contracting officer provide the contractor with written comments and proposed actions, if any, on its EVMS report within 10 calendar days after receipt of the monthly report. The contract file shall be documented within 10 days of the receipt of each EVMS report as to the results of the report, discussions with the contractor, and course of action, if any. The file shall be updated as necessary, with a copy forwarded to the contractor within five calendar days of any update. Failure to document the file in a timely manner shall be deemed a waivet of the government's right to require corrective action or take other adverse action. In other words, the Government should not be able to retroactively declare the

[3] It is suggested that the proposed addition of a sentence to FAR 7.105(b)(1) instead be appended to FAR 7.106, Additional requirements for major systems, inasmuch as EVMS would apply only to major systems.

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contractor to have been negligent or in default.

As to materiality of variance in cost, schedule, and performance parameters, CSA suggests that the proposed rule adopt the litmus test used in OMB Circular A-11; the circular calls for a justification of continued performance of a project if it deviates from established parameters by 10 percent or more. In that same vein, CSA recommends that a deviation of less than 10 percent of cost/schedule/performance shall *not* be grounds for corrective action on the contractor's part.

In the event of an adverse variance from a cost/schedule baseline, the parties should use a defined procedure, such as that contained in the Department of Defense Contract Pricing Reference Guide (Vol. 4, Advanced Issues in Contract Pricing, Chapter 4, Forecasting Cost Overruns) in resolving the matter.

System Surveillance. The proposed FAR clause at 52.234-X3(d) contemplates that contractor-proposed changes to its EVMS require the "approval of the ACO or Federal department or agency, prior to implementation" unless a waiver is granted. In the event the advance approval requirements are waived, the contractor is to notify the ACO or Federal department or agency "at least 14 calendar days prior to the effective date of implementation."

CSA recommends that the proposed clause at FAR 52.234-X3(e) be revised to state that surveillance is to be performed bi-annually (every six months from the date of award/modification) by one or more individuals who have received training and certification in the use of EVMS, and, further, that the contractor be notified at least seven calendar days in advance of such periodic surveillance.

With respect to determining the acceptability of contractor-proposed EVMS changes, CSA recommends that FAR 52.234-X3(d) be revised to state that such determinations be made at the next periodic system surveillance, rather than in advance. Furthermore, with respect to contractor-proposed EVMS changes, CSA recommends that paragraph (d) of the clause be revised to require that the ACO or Federal department or agency advise the contractor of the acceptability of such changes "in writing within 30 calendar days after the periodic review during which a contractor-proposed change was presented to the ACO or Federal department or agency."

Access to records. The provision in the proposed clause at FAR 52.234-X3(e) with respect to providing "access to all pertinent records and data requested by the Contracting Officer or a duly authorized representative" to permit Government surveillance to ensure that EVMS conforms, and continues to conform, with the guidelines in ANSI/EIA-748, or current version, is unnecessary. The existing access to records coverage in the FAR affords the Government ample means to ensure that a contractor's EVMS continues to conform to the guidelines. Accordingly, CSA recommends that paragraph (e) of the clause be deleted in its entirety.

Allowability of costs. The proposed rule is silent on the issue of allowability of the costs associated with developing and maintaining an EVMS, as well as the costs associated with implementing EVMS on a given contract. EVMS is a very real cost of doing business, and must be recognized as such. Accordingly, CSA strongly recommends the inclusion of explicit language in the rule on cost reimbursement. The costs associated with developing and maintaining an EVMS should be treated as indirect costs; the costs associated with implementing EVMS on a given contract should be direct-charged to that contract. The FAR cost principles should be revised accordingly.

Public meeting; second proposed rule. In view of the fact that there has never been mandatory Government-wide coverage on EVMS, and given the complexity and far-reaching implications of EVMS, CSA urges that there be:

(2) *a public meeting* to provide an opportunity for interested parties to engage in a dialogue prior to publication of a final rule and/or
(2) *a second proposed rule* following receipt and analysis of public comments.

2004-019-21

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06/07/2005 05:05 PM

To: "'farcase.2004-019@gsa.gov'" <farcase.2004-019@gsa.gov>
cc: "Schoenberg, Alan (HHS/OS)" <Alan.Schoenberg@hhs.gov>, "Trelogan, Andree (HHS/OS)" <Andree.Trelogan@HHS.gov>, "Clark, Philip (HHS/OS)" <Philip.Clark@hhs.gov>, "Kar, Madan (HHS/OS)"
Subject: FAR case 2004-019 --Federal Acquisition Regulation; Earned Value Management System (EVMS)

To the Councils:

HHS is concerned about the breadth of the proposed FAR rule on EVMS. Broad application of the rule will require more policies and procedures and much broader training. Instead, HHS recommends setting the threshold for application of the EVMS clauses at $20 million. A $20-million threshold will allow agencies to work out difficulties with EVMS certification and Integrated Baseline Reviews (IBRs) on a handful of major acquisitions and selected high-risk initiatives. When the EVMS certification and IBR process are solidly established, the threshold can be lowered, applying the EVMS clauses more broadly. The points below support the logic of this method:

The success of EVM and the relevance of its reports depend on the quality and completeness of the IBR. It is unclear whether Federal agencies do or will perform IBRs consistently, given the guidance and experience to date.

EVMS has been shown to be effective, but most agencies are not prepared to expand its use. EVMS reports and information are most meaningful and useful when government program and acquisition teams are adequately trained and experienced in EVM-based program and acquisition management.

Regarding EVMS certification, DoD indicated that DCMA cannot handle EVMS certifications for the civilian agencies. So, how civilian agencies will certify contractors' systems is to be determined.

Request you consider this methodology as you review our comments on subject proposed rule.

As alternate CAAC representative attached are HHS' comments on subject case.

<<HHS Comments FAR CASE 2004-019.doc>>

V/R, Doris

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Office of Acquisition Management and Policy
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HHS Comments FAR CASE 2004-019.doc

2004-019-21

Department of Health and Human Services (HHS) Review Comments
Federal Acquisition Regulation [FAR Case 2004-01]; Earned Value Management System (EVMS)

The Civilian Agency Acquisition Council and the Defense Acquisition Regulation Council (Councils) specifically requested comments on:

I. **The feasibility of conducting Integrated Baseline Reviews (IBR) before award. Should all contracts require IBRs before award? If not, on what type of contracts should IBRs be conducted before award?**

- FAR 52.234-X3(c) – Earned Value Management System. If a pre-award IBR has not been conducted, such a review shall be scheduled as early as practicable after contract award, but not later than 180 days after award. Please clarify the need for a pre-award IBR after contract award.
- Pre-award IBRs could be overly burdensome on agencies to review and determine the compliance of each EVMS offeror. Remember, if the agency conducts a Pre-Award IBR it has to be done with all offerors within the competitive range. How will certification of EVMS compliance of multiple offerors occur?
- FAR 34.X02 (b) The IBR is a joint assessment by the offeror or contractor, and the Government; this could potentially result in increased training and resource requirements for agencies.
- The success of EVM and the relevance of its reports depend on the quality and completeness of the IBR. It is unclear whether Federal agencies do or will perform IBRs consistently, given the guidance and experience to date.
- EVMS has been shown to be effective, but most agencies are not prepared to expand its use. EVMS reports and information are most meaningful and useful when government program and acquisition teams are adequately trained and experienced in EVM-based program and acquisition management.
- Recommend the selection of the IBR – pre-award or post-award be left to the discretion of the agency depending on the agency's approved policies and procedures. IBRs should only be conducted for those offerors who have a chance of getting the award e.g., offerors in the competitive range.
- Given the size and complexity of the investments that would require IBRs, the Government IBR reviewers would need to be very knowledgeable of Information Technology (IT) project estimating to accurately assess the adequacy of the contractor's plan. The IBR reviewers should be independent of the program management staff. Also, offering incentives and penalties for EVM performance could distort plans to consider a conservative approach unless a knowledgeable program management and acquisition team is conducting the IBR.

2004-019-21

II. Would a modified IBR be a better choice before award?

- FAR 52.234-X2 Notice of Earned Value Management System—Pre-Award IBR (b)(1)(ii) Distinguish between the offeror's existing management system and modifications proposed to meet the guidelines. FAR should include the flexibility to scale the scope of the IBR to the type of contract.

III. What should be the 'down-select' policy to limit the number of offerors subject to an IBR before award?

- The 'down-select' policy should be limited to 2-3 offerors in the competitive range after discussions for the IBR before award. The offerors should have a technical approach, which calls for a unique design.

IV. Small Businesses will be required to set up systems if awarded a major acquisition contract or a large subcontract under a major acquisition. However, an analysis of data in the Federal Procurement Data System (FPDS) on actions and dollars on contracts above $20 million for supplies and equipment, Information Technology (IT) services and construction, areas where EVMS is likely to be applied, indicated that small business only received 3.8 percent of the $36.8 billion and 5.8 percent of the 345 actions. Because the FPDS does not collect data on EVMS use, the data above is only an approximation of the effect on small business. The Councils are seeking comments on the potential impact of having to implement a program management system that meets the EVMS guidelines in ANSI/EIA Standards 748-A.

- EVMS is not simple to implement. It requires that the contractor have a cost accounting system that can provide a great deal of detail regarding the costs incurred and events scheduled through every element of the project's cost breakdown structure. It also mandates that the requirement to handle EVMS reporting be flowed-down to subcontractors through several tiers of subcontracts. On the Government side, the contracting agency has to be able to certify that the contractors' accounting systems are capable of performing to the rigorous standards required by EVMS, or (if it chooses to employ a contractor or another government agency to perform that function) at least to be able to use EVMS reports, assure the quality of those reports, and intensively manage the contracts through the EVMS system.
- EVMS requirements affect more than just the prime contractor. It's an overhead cost for which the government will have to pay through several tiers of subcontractors.

2004-019-21

V. Additional Comments:

- HHS is concerned about the breadth of the proposed FAR rule on EVMS. Broad application of the rule will require more policies and procedures and much broader training. Instead, HHS recommends setting the threshold for application of the EVMS clauses at $20 million. A $20-million threshold will allow agencies to work out difficulties with EVMS certification and Integrated Baseline Reviews (IBRs) on a handful of major acquisitions and selected high-risk initiatives. When the EVMS certification and IBR process are solidly established, the threshold can be lowered, applying the EVMS clauses more broadly.
- **EVMS Certification**: The Department of Defense (DoD) has indicated that Defense Contract Management Agency (DCMA) cannot handle EVMS certifications for the civilian agencies. There does not seem to be any clear process established for conducting civil agency certifications. Because EVMS certification is a central element of the FAR rule, it appears that certification resources and procedures need to be established before implementing the rule.
- Government personnel will have to be trained in monitoring EVMS, and agencies will need a cadre of program management and acquisition personnel certified in the use of EVM.
- The proposed rule doesn't distinguish between DME and Steady State investments. The OMB Circular A-11 doesn't require EVMS for steady state investments. Recommendation: Add language to the proposed amendment to distinguish between EVM requirements for DME and Steady State, consistent with OMB Circular A-11.
- EVMS is closely allied with performance-based contracting. The FAR requires that a Government Quality Assurance system be in place when P-B contracting is considered. EVMS is so rigorous, however, that agencies might have to develop formal Quality Assurance plans, which could mean adding Full Time Equivalents (FTEs) or hiring contractors, and additional training which would lead to increasing the expense of contracting.

VI. Additional Editorial Comments:

PART 2 – DEFINITIONS OF WORDS AND TERMS

2.101 Definitions.
(b) * * *
Earned value management system is (replace 'means' by 'is') a project management tool
. . . . . .

PART 7—ACQUISITION PLANS

(b) * * *
(10) * * * (Replace 'If' with 'When') 'When' an earned value management is (delete 'to be') used,

END OF COMMENTS

2004-019-22

"Sam Cottrell"
<sam.cottrell@dncx.com
>

06/07/2005 07:13 AM
Please respond to
sam.cottrell

To: farcase.2004-019@gsa.gov
cc:
Subject: [Docket No: RIN 9000-AJ99; FAR 2004-019];[FR Doc: 05-06864]; [Page 17945-17949]; Federal Acquisition Regulation (FAR): Earned Value Management System

Comments on FAR Case 2004-019:

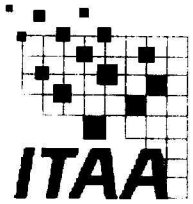
In considering the potential requirement for prospective contractors to conduct an integrated baseline review (IBR) prior to award, it should be recognized that the typical post award IBR takes place thirty to sixty days after award under current practice. The reason for this delay is that it often takes a number of weeks for the contractor to refine and solidify their understanding of the project, its detailed requirements and their work plans, so as to have the detailed information available necessary for a comprehensive IBR to be held. If the requirement for the first IBR is advanced to a pre-award date, there is little likelihood that the level of information available to the contractor will be sufficient to allow a meaningful IBR to be conducted.

From a vendor perspective, there is the implication that prospective bidders will be required to expend considerable additional cost in attempting to fashion a meaningful IBR, knowing that the apparent quality of their EVM plan is likely to influence the selection of the winning bidder.

While the proposed regulations acknowledge that OMB will not expect an EVMS to be applied to acquisitions at or below $20 million, agencies will have the discretion to require the application of an EVMS on much smaller projects. In recognition of this likelihood, the regulations should be written so as to discourage the imposition of pre-award IBRs on smaller acquisitions where it is increasingly likely that more of the potential credible bidders will be companies having more modest experience in the use of earned value management systems. Doing so may well reduce the pool of otherwise credible bidders. Coupled with the likelihood that pre-award EVM plans are going to be subject to a greater incidence of revision and re-baselining due to less solid information being available at the time the plans are formed, the benefit to the Government of an IBR held before a solid baseline can be defined is quite minimal, while the cost to bidders is very real.

Sam Cottrell
Data Networks Corporation

2004-019-23



June 7, 2005

Via E-mail
General Services Administration
Regulatory Secretariat (VIR)
1800 F Street, N.W.
Room 4035
ATTN: Laurieann Duarte
Washington, DC 20405

Re: FAR Case 2004-019; Earned Value Management Systems, 70 Fed. Reg. 17945 (April 8, 2005)

Dear Ms. Duarte:

The Information Technology Association of America ("ITAA") 1/ and the Professional Services Council ("PSC") 2/ are pleased to submit these joint comments in response to the proposed rule dated April 8, 2005 (70 Fed. Reg. 17,945) to amend the Federal Acquisition Regulation (the "FAR") to implement an earned value management system ("EVMS") policy Government-wide. Both ITAA and PSC support the Federal Government's objective of tracking and analyzing cost, performance, and schedule goals for all major acquisitions. Although EVMS is by no means a cure-all with respect to project management, we do believe EVMS is a useful tool for Government purchasers and contractors in assessing whether large, complex programs are realizing these objectives.

1/ ITAA provides global public policy, business networking, and national leadership to promote the continued rapid growth of the IT industry. ITAA consists of over 400 corporate members throughout the U.S. and a global network of 50 countries' IT associations. The Association plays the leading role in issues of IT industry concern, including information security, taxes and finance policy, digital intellectual property protection, telecommunications competition, workforce and education, immigration, online privacy and consumer protection, government IT procurement, human resources and e-commerce policy. ITAA members range from the smallest IT start-ups to industry leaders in the Internet, software, IT services, ASP, digital content, systems integration, telecommunications, and enterprise solution fields. For more information visit www.itaa.org.

2/ PSC is the leading national trade association that represents companies of all sizes providing professional and technical services to virtually every agency of the Federal Government, including information technology, engineering, logistics, operations and maintenance, consulting, international development, scientific, environmental and social sciences.

2004-019-23

Government-wide implementation of EVMS, however, does pose some difficult issues. One significant issue facing the Government pertains to the significant amount of training of Government personnel that will be necessary to ensure the effective and consistent implementation of EVMS and integrated baseline reviews ("IBRs") across the Government and the effective use of the data produced during contract performance by a contractor's EVMS. ITAA and PSC urge the FAR Councils to ensure that adequate training, including the requisite funding, is in place prior to implementing any final rule.

In addition, the proposed rule poses several issues and concerns involving the significant costs of implementation (and the resulting impact on small and medium-size businesses), the protection of competition-sensitive data, any application of EVMS beyond cost-based contracts, and the scope of the Government's audit rights with respect to EVMS-related data. Each of these issues and concerns are discussed in detail in Sections I through VI below.

Our comments are organized as follows. Section I presents our opinion that a requirement for an IBR prior to contract award would not be in the Government's interests for several reasons, including:

- Pre-award IBRs will fail to address changes to a contractor's performance plan and budget as a result of negotiations prior to award or refinements made after award.
- Pre-award IBRs will pose a significant risk that competition-sensitive or source-selection information relating to one offeror's proposal could be disclosed inadvertently by Government personnel if personnel are permitted to participate in IBRs of multiple offerors engaged in the competition or if members of the IBR teams are permitted to serve on a source selection evaluation panel. Additional "firewall" mechanisms between Government personnel (and support contractors engaged in IBRs or source selection activity) would be necessary to mitigate the risk of inadvertent disclosure.
- Many potential offerors will be discouraged from competing for contracts associated with major acquisitions if no contract mechanism is in place to ensure that offerors will be reimbursed for the costs incurred in connection with the IBRs.

If the FAR Councils nonetheless believe that the benefits to be derived from pre-award IBRs outweigh these negative factors, we urge the Councils to adopt a modified approach to the IBR as discussed in Section I.D. below.

Section II presents our view that commercial-item contracts and subcontracts should be exempt from the proposed EVMS requirements.

Section III explains why the proposed EVMS requirements should apply solely to cost-reimbursement and incentive-type contracts, subcontracts, and intra-governmental work agreements.

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Section IV presents our joint recommendations on how the EVMS rule can be structured to mitigate any adverse impact on small and medium-sized businesses, including establishing prime-contract and subcontract thresholds tied to EVMS applicability and establishing a contract mechanism through which a contractor's costs incurred in implementing a contract's EVMS requirements may be recovered.

Section V contains our suggested revisions to the audit-rights provision set out in proposed clause 52.234-X3, which we believe is overly broad.

Finally, Section VI sets out our view that the language of proposed clause 52.234-X3(d) would require the approval by multiple administrative contracting officers of any proposed changes to a contractor's EVMS, leading to potential confusion and increased cycle time for system changes.

Considering the complexity of these and other issues relevant to the proposed rule, both ITAA and PSC strongly recommend that the FAR Councils hold one or more public hearings on this issue, followed by another proposed rule, prior to finalizing any rule.

I. Integrated Baseline Reviews Prior to Contact Award Would Not Further the Government's Interests.

The aspect of the proposed rule that poses the greatest concern to ITAA and PSC involves the Councils' proposal to authorize IBRs ***prior to contract award***. Traditionally, Government agencies (mainly Department of Defense ("DoD") agencies and NASA) required IBRs only after a contract has been awarded. Also, current DoD policy provides for the application of IBRs solely in the post-award context. We believe that use of IBRs to date has been limited to the post-award context for good reason. As explained below, attempting to perform IBRs prior to contract award poses several issues that seem to outweigh the potential benefits.

A. Pre-Award IBRs Would Fail to Accurately Reflect the Contractor's Final Performance Plan and Budget.

For an IBR to be meaningful, it must accurately reflect the plan for performance. In this regard, a key element of every IBR is the assessment of a performance measurement baseline ("PMB"). PMBs are intended to be complete, time-phased budget plans against which program performance is measured. Budgets assigned to the schedule control accounts and to higher-level contract work breakdown structure elements, applicable indirect budgets, and undistributed budgets form the PMB budget plan. Importantly, a PMB should reflect the contractor's entire work plan; otherwise, it will not accurately measure performance. The level of detail that is required to establish an accurate PMB, however, normally does not exist during the proposal process.

Along these same lines, performance plans often change during contract negotiations in response to Government comments, leading to decrements in proposed budgetary values (e.g., at the time of final proposal revisions). "Major acquisitions" typically pertain to complex projects,

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and as such it is often necessary to refine contract requirements and clarify, or modify, technical approaches during the proposal discussion phase and/or after contract award as the contractor refines its approach based on further analysis and discussion with the Government customer. An IBR that accurately reflects the risks inherent in a proposed approach is only possible after the contractor's proposed approach and associated budget plan have been finalized and accepted by the Government.

This point is readily illustrated through an examination of the objectives for EVMS set out in the proposed FAR 34.X02.

- *IBRs are meant to "verify the technical content and realism of the related performance budgets and schedules."* This objective cannot be met pre-award because the budget baseline has not been established yet. The task assessments or basis of estimates have not been segregated into control accounts, and therefore, assessing the adequacy of the budget baseline would need to be performed again after the baseline is finalized, which necessarily occurs following contract award. In addition, the detailed schedule usually is developed only after contract award. This is for good reason—developing a detailed schedule prior to contract would demand a vast undertaking. These tasks would be a duplication of effort and would add cost.

- *IBRs are intended to "provide mutual understanding of the inherent risks in offeror's/contractor's performance plans and the underlying management control systems."* This objective cannot be met through a pre-award IBR because, prior to contract award, neither the contractor nor the Government can be reasonably sure that they have accounted for all material risks associated with the statement of work ("SOW"). For example, agency budget constraints could lead the purchasing agency and contractor to pull back on performing certain technical tasks, resulting in an increase in technical risks.

- The proposed FAR policy further provides that *"[t]he IBR is a joint assessment by the offeror or contractor, and the Government, of the ...[a]bility of the Performance Measurement Baseline (PMB) to successfully execute the project and attain cost objectives, recognizing the relationship between budget resources, funding, schedule, and scope of work."* An IBR so defined cannot exist pre-award—the PMB has not been established, so the contractor and the Government cannot assess whether it is accurate. Moreover, as a result of changes to, and finalization of, the PMB, another IBR would be required shortly following contract award, rendering much of the pre-award IBR work redundant.

B. Pre-Award IBRs Pose Technical-Leveling Concerns.

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In addition, both ITAA and PSC are concerned that pre-award IBRs substantially increase the risk of technical leveling and raise potential procurement-integrity issues. Specifically, the IBRs will pose the risk that competition sensitive or source-selection information about one offeror could be inadvertently disclosed to a competitor through the IBR process.

IBRs involve the participation of both Government and contractor personnel. With pre-award IBRs, if Government personnel (and its contracted advisors) are assigned to multiple pre-award IBRs during a competition, a significant risk would arise that an understanding of one offeror's approach gained by a Government employee through an IBR could be disclosed inadvertently to a competitor during that competitor's IBR. Having such personnel assigned to multiple IBRs would place them in the difficult position of having to segregate in their heads competition-sensitive information of multiple offerors.

The only way to mitigate this risk to a reasonable degree would be to establish separate Government teams for each offeror as part of the IBR process. Moreover, each IBR team should be separate from the source-selection evaluation process to help ensure no inadvertent disclosures of source-selection information. A firewall to restrict the flow of information across IBR teams and to and from personnel assigned to the source-selection function also will be necessary. Although these safeguards will be expensive in terms of cost and drain on government manpower, contractors will be disinclined to engage in the pre-award IBR process unless such safeguards are in place.

Finally, pre-award IBRs raise additional concerns regarding the protection of contractor data from teammates that may be part of multiple bidding teams. Pre-award IBRs pose further problems where they require the involvement of a major subcontractor and the prime contractor desires to restrict access by the subcontractor to the prime contractor's information because the subcontractor may be teaming with other prime contractors in the instant or related competitions.

C. Potential Offerors May Be Discouraged from Competing if Costs Incurred in Connection with Pre-Award IBRs Are Not Reimbursed.

Many potential offerors will likely be discouraged from competing for contracts associated with major acquisitions if no contract mechanism is in place to ensure that the offeror will be reimbursed its costs incurred as part of a pre-award IBR. The commentary that accompanied the proposed rule, however, suggests that procuring agencies may require companies to absorb the cost of a pre-award IBR. *See* 70 Fed. Reg. 17945, 17946 (April 8, 2005) ("Small businesses may be impacted by their lack of certification of an EVM System at time of award or the cost of the requirement for an IBR prior to award ***where an agency does not absorb the cost of the IBR***." (Emphasis added)).

The costs incurred and the drain on contractor personnel resources to conduct an IBR can be very significant. If the Government insists upon a pre-award IBR, fairness dictates that a contract mechanism be established through which the offeror recovers the cost of performing the

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IBR. For small businesses and other firms that do not compete for major acquisitions regularly or are new to the Government market, it is especially important that the costs of performing an IBR be recoverable immediately, rather than being allocable through overhead to future contracts that may never materialize. We recommend that the Councils amend the proposed rule to provide a mechanism through which contractors can directly charge to the applicable contract the cost of conducting a pre-award IBR. One possible approach would be to permit "pre-award IBRs" only when funded by separate contracts as part of a down-select phase of a competition.

D. If a Pre-Award Review is Necessary, a Modified IBR Approach Should Be Used.

If the Government insists that a pre-award review mechanism is necessary, we strongly recommend that it be limited to a modified IBR approach. Such a modified IBR approach would target only the following objectives:

- ***Assess the SOW***: ensure that both parties understand and agree to the SOW as stated;
- ***Assess the contractor's approach to ANSI/EIA-748***: allow the Government customer to determine whether it is satisfied with the contractor's systemic approach to ANSI/EIA-748;
- ***Assess the contractor's scheduling process***: ensure that the contractor has adequate processes in place to maintain, track, and report significant schedule conditions to the Government customer;
- ***Assess the contractor's risk management process***: allow the Government customer to validate that the contractor has adequate policies and procedures in place to assess, track, quantify, and report cost and schedule risks;
- ***Assess the contractor's business systems***: allow the Government customer to verify that the business systems in place at the contractor's facility are adequate to report performance and maintain control over costs of the program, provided that this requirement should not apply if the contractor's business systems have been approved by a Government audit agency (e.g. DCAA);
- ***Assess resource requirements***: allow the Government customer to validate that the contractor has the ability to increase or maintain the staff and resources to support the technical and business requirements of the program.

II. Commercial Item Contracts and Subcontracts Should Be Exempt From the Proposed EVMS Requirements.

Commercial-item contracts and subcontracts should be exempt from the proposed EVMS requirements. The acquisition reforms of the 1990s—including the Federal Acquisition Streamlining Act of 1994 ("FASA") and the Clinger-Cohen Act—mandate that Government agencies adopt practices and impose requirements that are consistent with customary commercial

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practice to the maximum extent practicable. Following these reforms, the law currently requires that:

- Government purchasing agencies define their requirements so that, to the maximum extent practicable, the procurement results in the acquisition of a commercial item;
- Government purchasing agencies revise, to the maximum extent practicable, their procurement policies, practices, and procedures not required by law to reduce impediments to the acquisition of commercial items; and
- Government purchasing agencies ensure that commercial item contracts contain only those terms and conditions that are required by law or that are customary in the commercial marketplace.

These statutory requirements have been implemented in FAR Part 12.

Contractual EVMS requirements are not customary within the commercial market. Although EVM as a project-management tool increasingly is being applied on commercial projects, most commercial companies neither have the infrastructure nor the knowledge to implement an EVMS, and EVMS is rarely a commercial contractual requirement. Applying the proposed EVMS requirements to commercial-item contracts and subcontracts would pose a large impediment for many commercial companies that otherwise are inclined to compete for major acquisitions. The reduced competition could lead to increased costs and reduced innovation for the goods and services purchased by the Government.

In addition, the applicable statutes and regulations require that commercial-item contracts be priced on a firm-fixed price, fixed-price with economic price adjustment, time-and-materials or labor hours basis. As discussed in Section III below, the FAR Councils should also exclude these contract types from the EVMS requirements.

III. The Proposed EVMS Requirements Should Apply Only to Cost Reimbursement and Incentive Type Contracts, Subcontracts, and Intra-Governmental Work Agreements.

The proposed EVMS requirements should apply only to cost-reimbursement and incentive-type contracts, subcontracts, and intra-governmental work agreements. The requirements should not be applied to firm-fixed-price, level-of-effort, or time-and-materials efforts, including contracts and subcontracts. The rationale for applying the proposed EVMS requirements to cost or incentive-based efforts is not present for these other contract types.

The type of government oversight necessary for cost-based contracts is not necessary with firm-fixed-price contracts, which, by regulation, are intended to impose minimum administrative requirements upon the contracting parties. *See* FAR § 16.202-1. This contract type places upon the contractor the maximum risk and full responsibility for all costs, thereby providing maximum incentive for the contractor to control costs and perform effectively. A key

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control that ensures that the contractor is capable of bearing this risk is that before a contractor is eligible for a contract award, the contracting officer must affirmatively determine that the contractor is a presently responsible contractor. This determination includes finding that the contractor possesses the resources and capabilities required to perform the work. Therefore, under firm-fixed-priced contracts, Government surveillance of the contractor's costs of performing the contract is not necessary. As such, the Government's interest in imposing an EVMS requirement for firm-fixed-price contracts is minimal, at best.

Similarly, EVMS requirements should not be applied to level-of-effort contracts because performance for this contract type is not measured against budget or schedule. Under these contracts, the Government simply is contracting for a fixed amount of labor that is priced in accordance with the contract's terms. Applying the EVMS requirements to these contracts would be wasted effort.

Finally, EVMS should not apply to time-and-materials contracts given the nature of these contracts. By regulation, time-and-materials contracts should be used only when "it is not possible at the time of placing the contract to estimate accurately the extent or duration of the work or to anticipate costs with any reasonable degree of certainty." FAR 16.601(b). An important element of these contracts is a ceiling price that a contractor exceeds at its own risk. FAR 16.601(c). Time-and-materials terms very often are used when fixed-priced terms are not advisable because it is impossible to predict up-front the full extent of the work effort. Due to the inherent uncertainty with respect to the extent or duration of the work, no reliable baseline exists with which to measure performance. Consequently, application of the proposed EVMS requirements is not advisable for time-and-materials efforts.

These recommendations are consistent with the Department of Defense policy annunciated in Under Secretary of Defense Wynne's memorandum dated March 7, 2005. The memorandum specifically states: "EVM is discouraged on firm-fixed price, level of effort, and time and materials efforts, including contracts, subcontracts, intra-government work agreements, and other agreements, regardless of dollar value." ITAA and PSC urge the FAR Councils to adopt a similar exclusion.

IV. The Proposed Rule Should Seek To Minimize the Impact of the EVMS Requirements on Small to Medium-Sized Businesses.

Both ITAA and PCS are concerned that the proposed EVMS requirements may negatively impact the willingness of small and medium-sized companies to compete for contracts deemed to be major acquisitions. As indicated in Section I.C. above and despite our objections, to the extent that an agency imposes a pre-award IBR requirement, the agency should reimburse the company for those costs incurred in connection with the requirement. If the costs are not reimbursed, the increased competition costs will be prohibitive for many contractors, especially small and medium-size businesses. In addition, we have the following specific suggestions for mitigating the potential harm to small and medium-size businesses.

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A. EVMS Validation Should Not Be Required For Contracts Valued at Less than $50 Million.

As proposed, the rule does not set a fixed dollar threshold at which the EVMS requirements become applicable. Instead, the applicability of the requirements is tied to what the Office of Management and Budget defines as a "major acquisition." In the interests of clarifying the rule and minimizing its impact on industry, we recommend that the FAR Councils specify dollar amount thresholds tied to EVMS implementation.

Specifically, we recommend that the Councils revise the proposed rule to state that no formal review to validate, certify, or accept the contractor's compliance with ANSI/EIA-748 shall be required prior to award for contracts valued at less than 50 million in then-year dollars. This recommendation is consistent with Under Secretary of Defense Michael Wynne's March 7, 2005 memorandum, which applies the formal validation requirement only to contracts valued at more than $50 million.

This $50 million threshold is also consistent with the proposed rule's approach as reflected in the contract clauses in FAR §§ 52.234-X1 and 52.234-X2, which explicitly provide offerors the opportunity to either (1) show that validation by another Federal agency or by an administrative contracting officer has been achieved, or (2) identify how the offeror plans to support the EVMS guidelines. We commend the FAR Councils on this approach and believe that the approach should be carried forward to the third proposed contract clause at FAR § 52.234-X3, which appears to require validation at the request of the administrative contracting officer.

B. EVMS Requirements Should Not Be Applied to Contracts and Subcontracts Valued at Less than $20 Million, Unless an Exception Is Approved by the Procuring Agency's Senior Acquisition Executive.

ITAA and PSC both urge the Council to consider stating explicitly that EVMS requirements may not be imposed on contracts valued at less than 20 million in then-year dollars, unless otherwise authorized by the procuring agency's senior acquisition executive. When such authorization is present for contracts and subcontracts valued at less than $20 million, only a reduced EVMS reporting burden should be imposed. Although the proposed FAR language does not prescribe any specific EVMS reports or reporting process, it does reference OMB Circular A-11. For contracts valued at less than $20 million, we recommend that the FAR explicitly reflect that the procuring agency may impose only the minimum reporting requirements necessary for the agency to satisfy its obligations under OMB Circular A-11.

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C. The EVMS Rule Should Explicitly State that Contracts Must Permit Recovery of EVMS Costs Allocable to that Contract.

The cost of complying with the EVMS requirements for any particular contract should be directly chargeable to that contract. The EVMS rule should explicitly state that costs to comply with the EVMS, any IBR, and any related reporting requirements posed by a contract and otherwise allocable to that contract may be charged as a direct cost against that contract.

As an example, one way to accomplish this objective would be to include separate contract line item numbers (CLINs) encompassing the contract value to perform any IBR and implement and administer any EVMS requirements that are allocable to the specific contract. For example, both the contractor and the Government program-management teams need to be dedicated to timely and focused planning at contract start to develop a successful plan and lay a strong foundation for PMB change control over the life of the contract. For dynamic programs, this enables the program teams to absorb and manage changes to the PMB more effectively. An initial planning CLIN could be issued under a cost-plus-award-fee structure to assure a collective incentive across the program management teams. The proposal Basis of Estimates ("BOE") and Integrated Master Schedule ("IMS") should include appropriate detail to accomplish the initial EVMS and IBR planning effort in this CLIN. Under this suggested approach, the remaining work scope, ongoing EVMS planning and managing, and future IBRs conducted during the life of the program would be contained in other CLINs. The proposal BOEs and IMS should contain the work scope for ongoing EVMS planning and managing and future IBRs planned to be conducted over the life of the contract.

V. The Scope of the Government's Audit Rights in Proposed Clause 52.234-X3 Is Overly Broad.

The scope of the proposed audit rights contained in proposed clause 52.234-X3 is overly broad. The proposed language would grant contracting officers access to "all pertinent records and data" to "permit Government surveillance to ensure that the EVMS conforms, and continues to conform" with the EVMS performance criteria (70 Fed. Reg. 17945, 17949). Our specific concern is that Government personnel may deem EVMS input or output concerning other customers to be relevant to the question of whether a contractor's EVMS conforms to ANSI/EIA-748. As such, the proposed FAR language could be read to permit access to records produced by the EVMS that contains contractor proprietary data or the proprietary data of the contractor's other customers, which may be subject to separate nondisclosure agreements with those customers.

In our view, after the Government approves a contractor's EVMS, the Government does not need to review the EVMS further unless there is reason to question the EVMS reporting data produced by the contractor to the Government. Even in such a situation, however, the Government's access to the EVMS records needs to be limited to those records that relate to the specific Government contract or that relate to the contractor's policies, procedures, and systems

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of controls that were implemented in connection with its EVMS, as opposed to the input or output relating to other customers.

Accordingly, we propose the following revisions to FAR § 52.234-X3:

(e) The contractor agrees to provide access to all ~~pertinent~~ records and data requested by the Contracting Officer or a duly authorized representative that reasonably may be deemed pertinent to whether ~~Access is to permit Government surveillance to ensure that~~ the EVMS conforms, and continues to conform, with the performance criteria referenced on paragraph (a) of this clause. Provided, however, this paragraph (e) does not permit the Contracting Officer or a duly authorized representative to seek access to records and data pertaining to the contractor's performance of third-party contracts.

These revisions are necessary to protect contractor proprietary information.

VI. Approval of Changes to EVMS by Multiple Administrative Contracting Officers May Cause Confusion and Increase Cycle Time for System Changes.

Finally, ITAA and PSC are concerned that proposed clause 52.234-X3 could result in a requirement or practice that multiple administrative contracting officers review and approve/disapprove a contractor's changes to its EVMS. Specifically, proposed 52.234-X3 provides in part:

> (d) Unless a waiver is granted by the ACO or Federal department or agency, Contractor proposed EVMS changes require approval of the ACO or Federal department or agency, prior to implementation. The ACO or Federal department or agency, shall advise the Contractor of the acceptability of such changes within 30 calendar days after receipt of the notice of proposed changes from the Contractor. If the advance approval requirements are waived by the ACO or Federal department or agency, the Contractor shall disclose EVMS changes to the ACO or Federal department or agency at least 14 calendar days prior to the effective date of implementation.

This proposed language is similar to the language located at current DFARS 252.242-7002(d) (Earned Value Management System), which provides:

> (d) Unless a waiver is granted by the ACO, Contractor-proposed EVMS changes require approval of the ACO prior to implementation. The ACO shall advise the Contractor of the acceptability of such changes within 30 calendar days after receipt of the notice of proposed changes from the Contractor. If the advance approval requirements are waived by the ACO, the

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> Contractor shall disclose EVMS changes to the ACO at least 14 calendar days prior to the effective date of implementation.
>
> * * *

In the case of the DoD, the agency designated as the Executive Agency for EVMS is the Defense Contract Management Agency (DCMA). The DCMA performs the duties of the ACO in most major-weapons-systems acquisitions. Other acquisitions are supported by EVMS Specialists at lower levels. If a DoD contractor desires to change its EVMS, it may apply to DCMA or the cognizant ACO. The cognizant ACO may then request support from DCMA, if necessary.

The unitary ACO situation in DoD does not exist in the remainder of the government. If a contractor supports several non-DoD departments and agencies (organizations), the proposed clause could be read to require the contractor to submit a request for a system change to all organizations it supports. Each organization would, in essence, have a vote. If all except one organization approves, does the one disapproval override the approving organizations? On the converse, if all organizations except one disapprove, may the contractor use the one approval to make the change?

Under the proposed clause, each agency or department will be responsible for review and approval of EVM Systems. Many of the smaller agencies do not have adequate staffing to appropriately review requests, especially with the increased number of contractors that will have EVM Systems. This will cause a requirement to increase the organizations' budgets or reallocate resources from other mission critical acquisition functions or be regarded as mission without resources causing blanket waivers.

We recommend that the Government establish an executive agent for considering requests for changes to Earned Value Management Systems. This authority is the only way that a unified approval system may be controlled.

Based on the regulatory structure stated in the proposed rule, the Office of Management and Budget could be the executive agent. Alternatively, the Department of Defense currently has an Executive Agent for Earned Value Management Systems in the Defense Contract Management Agency. Given the additional resources to perform the function, that office has the background, knowledge, and processes to perform EVMS surveillance for the government.

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2004-019-23

ITAA and PSC appreciate this opportunity to provide our comments on this very important issue. The membership of our associations supports the Government's focus on earned value management as a useful management tool for tracking and analyzing project performance. Our comments set out above are not intended to be critical of the proposed rule, but are intended to promote an implementation of a Government-wide earned value management rule that best promotes an effective and efficient procurement system.

We would be pleased to respond to any questions or comments the FAR Councils may have on these comments. Olga Grkavac can be reached at (703) 284-5311 or at ogrkavac@itaa.org. Alan Chvotkin can be reached at (703) 875-8059 or at chvotkin@pscouncil.org.

Respectfully submitted,

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Respectfully submitted,

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Senior Vice President and Counsel
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2004-019-24

Peter.Blair@fluor.com
06/07/2005 08:04 AM

To: farcase.2004-019@gsa.gov
cc:
Subject: Fluor Government Group response to rule change 2004-019

(See attached file: FGG response to proposed FAR rule change - R1d.doc)

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FGG response to proposed FAR rule change - R1d.doc

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FAR rule change – case 2004-019, Fluor Government Group response

To be submitted to:
http://www.acqnet.gov/far/ProposedRules/proposed.htm, case number 2004-19, prior to June 7, 2005.

Authored by: Peter S Blair, Project Controls Director, Fluor Government Group (FGG)
Send comments to: Peter.Blair@Fluor.com

Summary:

The proposed rule change implements EVMS requirements into the OMB Circular A-11 part 7 and the supplement to part 7. The rule establishes standard EVMS provisions, a standard clause and a set of guidelines for Government wide use. The guidelines include a requirement and timing of an Integrated Baseline Review (IBR) prior to award.

Fluor Government Group (FGG) Summary response:

In general FGG endorses the proposed rule changes as long as a "fit for purpose" approach is used. Incorporating a consistent set of requirements and guidelines Government wide will provide a more common understanding between the customer and contractor of project deliverables, and in time, streamline processes used.

FGG concerns are summarized into four areas:

1. Applicability - As proposed, the rule change would affect only FAR Parts 2, 7, 34, 42, and 52 and is implied not to be applicable to Part 36, Construction and Architect-Engineer Contracts. Additionally, the term Government wide, could be interpreted to include Firm Fixed Price (FFP) awards, since EVMS is structured for cost type awards, FFP awards should be excluded.

2. Impacts to small business – It is our position that flow down requirements of EVMS will: a) eliminate the use of some small businesses due to technical inadequacy, and, b) increase prime

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contract cost to incorporate the small business financial practices into their EVM system.

It is our belief that the statistical value used in assessing the impact to small business is understated in that it only assessed prime contracts and did not include subcontracts

3. Full EVMS compliance on small projects will increase project cost. Although in practice EVMS should be used, applying the rigors of compliance as it relates to larger programs to small projects will increase the amount of documentation, internal checks and balances and audit support.

   FGG suggests a threshold for full application of EVMS to be set at for projects that are over 12 months in duration and have annual spend plans in excess of $100M per year. For projects that meet the initial threshold and have continuous project cost under $100M per year the project reporting requirements should be scaled back and tailored fit to meet the project needs and risks.

   It is our suggestion that if EVMS compliance audits are performed on projects under the threshold, they are limited to the 32 criteria as defined in the ANSI/EIA standard only and exclude other Government guidelines, Data Instruction Documents (DiDs), and other criteria currently in use on major programs.

4. IBR's in advance of project awards are one approach to solidifying a project baseline and supporting the detailed estimate and schedule. It should be understood that the baseline credibility is only as good as the scope definition and the time provided to develop the cost estimate, schedule and perform appropriate risk assessments to the technical, cost and schedule components of the baseline.

   Incorporating a pre award IBR requirement will increase cost to the bidders. This proposed action implies that current project reimbursable IBR cost will now be moved to pre award and increase the bidders overhead proposal cost. Therefore, this action will likely have undesired affects by reducing competition and increase company overhead cost.

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In many cases the smaller projects can not afford the time required to perform these tasks adequately and meet their end objectives. Larger projects could have the time given the potentials for larger risks. Therefore, FGG suggests that a tiered approach be used based on:

a. Large programs/project should evaluate the time impact as it relates to the risk of doing the IBR pre award
b. Small programs/projects where scope is well defined use a very scaled back IBR only when time is provided for in the end objectives
c. Task Order based and other contracts types where scope is not well defined at the time of award should be excluded from pre award IBR's

Specific responses to issues or concerns:

1. **B, Regulatory Flexibility Act,** addresses concerns dealing with requiring EVMS on small businesses. The concern is subdued based on the sampling of only prime contract awards that indicate only 3.8% of awards actually go to small businesses.
   a. FGG response: The concern of the potential impact to small businesses is valid. The statistical sampling is somewhat misleading as it only evaluates the prime contract award. Prime contractors often subcontract a large portion of work to small businesses. The flow-down requirements would impact awards to small businesses by a) elimination based on inadequate systems, and, b) cause additional effort and cost on the part of the prime contractor to incorporate the small business practices into their system.

      The impact to small business can be severe since the rule change may inadvertently reduce the amount of small business subcontract awards. Additionally, small businesses may have to incur significant costs at risk if they are required develop a compliant EVM system and/or participate in pre award IBR's.

2. **Part 7 – Acquisition Plans,** under subpart 7.105, it reads "… discuss how the offeror's /contractor's EVMS will be verified for compliance with the ANSI/EIA standard...."

a. FGG response: For smaller projects, if required, have the offeror/contractor provide: a), a previously certified system description, or, b), a previously certified system description with tailored to fit changes, or, c), an Advanced Agreement (AA) explaining how the 32 criteria will be met. Furthermore, for smaller projects, compliance should be "tailor fitted" using only the 32 criteria and should not be subject to other Government guidelines, instructions documents and other requirements currently used on larger programs/projects

3. **Part 7 – Acquisition Plans,** under subpart 7.105, it continues to read "…and the timing and conduct of Integrated Baseline Reviews (whether prior to or post award. See 34.202."
   a. (draft) FGG response: see FGG summary comment #4 above

4. **52.234-X2 Notice of Earned Value management System – Pre award IBR,** defines the notices used to require submittals and approvals of EVM systems and the use of pre- award IBR's
   a. FGG response: see FGG summary comment #3 & 4 above

2004-019-25

Agency : DEFENSE DEPARTMENT
Title : Federal Acquisition Regulation; Earned Value Management System (EVMS)
Subject Category : Federal Acquisition Regulation (FAR): Federal Acquisition Regulation (FAR): Fec Acquisition Regulation (FAR): Earned Value Management System Earned Value Management System Earned Value Management System
Docket ID : RIN 9000-AJ99; FAR 2004-019
CFR Citation : 48 CFR 2, 7, 34, 42, 52
Published : April 08, 2005
Comments Due : June 07, 2005
Phase : PROPOSED RULES

Your comment has been sent. To verify that this agency has received your comment, please contact the agency directly. If you wish to retain a copy of your comment, print out a copy of this document for you

Please note your REGULATIONS.GOV number.

Regulations.gov #: EREG - 2 Submitted May 13, 2005

Author : Mr. Eric Christoph
Organization : Puma Systems, Inc.
Mailing Address :
Attached Files :

Comment : The changes to FAR as written assume that EVMS data is collected and managed by contractors. There are large numbers of OMB 300 programs, however, that hav significant number of contractors both large and small contributing to the overall I statistics reported in the Exhibit 300. Currently only a fraction of these organizatio have ANSI compliant EVM systems, and practically no small businesses or specia consultants have a need for or can afford to implement this level of control. The government on the other hand often has significantly greater opportunities to achie economies of scale through, for example, setting up Program Managment Offices, many programs may determine that it is more effective and efficient to manage the own EVMS as opposed to relying on contractors to do it for them.

The proposed FAR changes should provide an exception in the case that the government agency, office, or program itself decides to own and/or manage the E' with the contractors reporting status as directed by the government program mana the contract statement of work (for instance, only milestones completed and hours labor category and WBS task). In many cases this will eliminate the need for both and small contractors to create their own EVMS, especially in the case of smaller organizations for whom this requirement will be an extremely unfair burden and tl enforcement of which will deny the government access to the full pool of availabl technical expertise, as well as severely limit the governments ability to implement functions such as activity based costing that cut across multiple contracts.