



OFFICE OF THE UNDER SECRETARY OF DEFENSE
1100 DEFENSE PENTAGON
WASHINGTON, DC 20301-1100

COMPTROLLER

MAY 14 2019

MEMORANDUM FOR ASSISTANT SECRETARIES OF THE MILITARY DEPARTMENTS
(FINANCIAL MANAGEMENT AND COMPTROLLER)
DIRECTORS OF THE DEFENSE AGENCIES
DIRECTORS OF THE DOD FIELD ACTIVITIES

SUBJECT: National Defense Authorization Act Contract Closeout Authority (FPM19-06)

Section 836 of the Fiscal Year (FY) 2017 National Defense Authorization Act (NDAA), as amended by Section 824 of the FY 2018 NDAA, authorizes the Secretary of Defense to close a contract, or group of contracts, through negotiated settlement procedures, without costly reconciliation efforts or other corrective actions.

To be eligible under the provisions of this legislation, contracts must have been entered into at least 17 fiscal years prior to the current fiscal year, have no further supply or service deliverables due, and have been either determined to not otherwise be reconcilable due to missing records or determined to be not cost effective to reconcile. The attachment to this memorandum prescribes the criteria, requirements, and Department of Defense (DoD) Component responsibilities to implement the authorities granted by the NDAA.

The Defense Finance and Accounting Service (DFAS) will take the lead and partner closely with the Defense Contract Management Agency and Component financial management and contracting organizations to assist in identifying potential contracts for closeout under this authority. Additionally, DFAS and applicable Components must develop implementation procedures, in a collaborative effort, to facilitate the closeout of applicable contracts. Finally, each Component must identify a representative, who will provide closeout information required for tracking and potential reporting purposes, to my point of contact below.

Case #2018-D012 is currently in development to incorporate the legislation into the Defense Federal Acquisition Regulation Supplement at Subpart 204.802. Additionally, this contract closeout authority will be incorporated into the next published version of the DoD Financial Management Regulation, Volume 10, Chapter 20, Contract Reconciliation. My point of contact for this subject is Paul Huey at (614) 701-3117 or paul.a.huey.civ@mail.mil.

A handwritten signature in black ink, appearing to read "Mark E. Easton", is positioned above the printed name.

Mark E. Easton
Deputy Chief Financial Officer

Attachment:
As stated

Department of Defense
National Defense Authorization Act Contract Closeout Authority
Implementation Guidance

I. Authority to Settle and Close Financial Accounts

Section 836 of the Fiscal Year (FY) 2017 National Defense Authorization Act (NDAA), as amended by section 824 of the FY 2018 NDAA, provides the Secretary of Defense with the authority to close applicable contracts through the issuance of a negotiated settlement modification.

In accordance with the Defense Federal Acquisition Regulation Supplement (DFARS), Subpart 201.4, the Director, Defense Procurement and Acquisition Policy, issued Class Deviation 2018-O0014, dated May 4, 2018, implementing this closeout authority within the contracting community. The class deviation assigns the authority to make the determination of contracts meeting the legislative criteria to an official at least one level above the contracting officer.

Under this legislative authority:

- 1) Remaining balances on contract line items may be offset with remaining balances on other contract line items, or offset with remaining balances on other contracts meeting the specified criteria. The legislation provides for deviation from acquisition and fiscal law by authorizing the offsets:
 - a. Regardless of the year or type of appropriation involved (authorizing deviation from Title 31, United States Code (U.S.C.), Section 1502, and 31 U.S.C., § 1301(a); and
 - b. Regardless of whether the appropriation has closed/canceled (authorizing deviation from 31 U.S.C., § 1552-1553);
- 2) After closeout of any contract by the issuance of a negotiated settlement modification under the authority of this legislation, the payment or accounting offices concerned must adjust and close any open finance and accounting records related to the contract(s); and
- 3) No liability will attach to any accounting, certifying, or payment official, or any contracting officer, for any adjustments or closeouts made pursuant to the authority under the NDAA.

Department of Defense
National Defense Authorization Act Contract Closeout Authority
Implementation Guidance

II. Eligibility Criteria

To be eligible under the provisions of this legislation, a contract must meet the following criteria:

- 1) Entered into at least 17 fiscal years prior to the current fiscal year,
- 2) No further supply or service deliverables due under the terms of the contract, and
- 3) Determined to not otherwise be reconcilable because:
 - a. The records have been lost or destroyed, or
 - b. The records are available but the contracting activity, at least one level above the contracting officer, has determined that the time and effort required to determine the exact amount owed to the U.S. Government, or owed to the contractor, is disproportionate to the amount at issue.

III. Reporting Requirement

The NDAA legislative authority includes a requirement that the Secretary of Defense must notify the congressional defense committees of any contracts closed that included a waiver or deviation from acquisition or fiscal law. This congressional notification must occur not later than 10 days after exercising this closeout authority, and must include identification of each provision of law or regulation waived to affect closeout. Any required reporting under this authority will be accomplished by the Office of the Under Secretary of Defense for Acquisition and Sustainment, Defense Pricing and Contracting (OUSD(A&S)/DPC) in accordance with changes proposed to DFARS, Procedures, Guidance, and Information 204.804 via Defense Acquisition Regulation Case 2018-D012. Although no routine reporting requirement is anticipated within the Financial Management (FM) community, all Components must maintain documentation of contracts and records closed under this authority.

IV. Responsibilities

On behalf of the Department of Defense (DoD):

- 1) The Defense Finance and Accounting Service (DFAS) will:
 - a. Partner with and assist Component FM and contracting activities by identifying contracts within its entitlement and accounting systems that may be eligible for closeout under the legislative provisions;

Department of Defense

National Defense Authorization Act Contract Closeout Authority

Implementation Guidance

- (i) For contracts administered by the Defense Contract Management Agency (DCMA), collaborate with DCMA to develop a list of potential contracts for closeout, and provide relevant payment and accounting data for eligible contracts within the Mechanization of Contract Administrative Services (MOCAS) system.
 - (ii) For contracts where administration is performed by the Components, collaborate with the Component FM and contracting activities to develop a list of potential contract candidates from DFAS vendor payment systems, and provide any relevant payment and accounting data to the appropriate Component contracting activity.
 - (iii) For contracts paid by Component-managed Enterprise Resource Planning (ERP) systems, provide data, when accessible and as requested, to Component FM and contracting activities to facilitate the identification and closeout of applicable contracts.
 - b. Provide support to the DCMA and Component FM and contracting activities to assist in the closeout initiative;
 - c. Receive and process negotiated settlement modifications from DCMA and the Component contracting activities to affect closeout within the payment and/or accounting systems; and
 - d. Maintain a documented record of all contracts closed under the NDAA legislative authority. Create a standardized process and format to consolidate and track NDAA contract closure data.
- 2) The DCMA will:
- a. Perform analysis of the MOCAS system and coordinate with DFAS to develop a list of potential contracts within the MOCAS system for closeout under the legislative authority;
 - b. Establish priorities and determine, based on all available payment and accounting system data, which contracts meet the criteria specified by the legislation;

Department of Defense

National Defense Authorization Act Contract Closeout Authority

Implementation Guidance

- c. For contracts meeting the legislative criteria, perform a negotiated settlement with the contractor and issue settlement modifications for each contract, or group of contracts, being closed under the NDAA authority;
 - d. Submit the settlement modifications to DFAS for processing and closure of the affected payment and accounting system records;
 - e. File and maintain a copy of the settlement modifications in the official contract file and close the file; and
 - f. Coordinate with DFAS to establish a standardized tracking process. Submit contract closure information related to this NDAA authority to DFAS for consolidation and tracking.
- 3) The Component FM Activities will:
- a. Assist in the identification of potential contracts for closeout that meet the legislative criteria by performing an analysis of open contracts;
 - b. Receive and review listings of potential contracts provided by DFAS from their vendor payment systems and provide any available supporting financial data to assist the contracting community in making closeout determinations;
 - c. Assist, where possible, in identifying potential contracts within Component-managed ERP systems which meet the criteria specified by the legislation, and provide financial management data when available;
 - d. For contracts paid by Component-managed ERP systems, assist the contracting activities in closing the contract(s) and the affected payment/accounting system records; and
 - e. Coordinate with DFAS and the contracting activities to establish a standardized tracking process. Submit contract closure information related to this NDAA authority to DFAS for consolidation and tracking.