revising the introductory paragraph to place.

52.249—[Amended]

89. Amend section 52.249—3 by revising the date of the clause to read "(Date)"; and removing from paragraph (d)(2) "$500,000" and adding "$550,000" in its place.

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

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

* * * * *

PART 53—FORMS

53.219 [Amended]

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

53.301—294 [Amended]

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

53.301—295 [Amended]

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

OFFICE OF MANAGEMENT AND BUDGET
Office of Federal Procurement Policy

48 CFR Parts 9901 and 9903

Cost Accounting Standards Board (CAS) Changes to Acquisition Thresholds

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

ACTION: Proposed rule with request for comment.


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

ADDRESSES: Due to delays in OMB's receipt and processing of mail, respondents are strongly encouraged to submit comments electronically to ensure timely receipt. Electronic comments may be submitted to casb2@omb.eop.gov. Please put the full body of your comments in the text of the electronic message and also as an attachment readable in either MS Word or Corel WordPerfect. Please include your name, title, organization, postal address, telephone number, and e-mail address in the text of the message. Comments may also be submitted via facsimile to (202) 395-5105.

FOR FURTHER INFORMATION CONTACT:

SUPPLEMENTARY INFORMATION:

A. Background

Analysis of Statutory Acquisition-Related Thresholds

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

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

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

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

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

B. Paperwork Reduction Act

The Paperwork Reduction Act, Public Law 96–511, does not apply to this rulemaking, because this rule imposes
PART 9903—CONTRACT COVERAGE

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

Subpart 9903.2—CAS Program Requirements

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

§9903.201–1 CAS applicability.
   * * * * *
   (b) * * *
   (2) Negotiated contracts and subcontracts not in excess of $550,000.
   For purposes of this paragraph (b)(2) an order issued by one segment to another
   segment shall be treated as a subcontract.
   * * * * *
   (7) Contracts or subcontracts of less than $8.5 million, provided, that at the
   time of award, the business unit of the contractor or subcontractor is not
   currently performing any CAS-covered contracts or subcontracts valued at $8.5
   million or greater.
   * * * * *

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

§9903.201–2 Types of CAS coverage.
   * * *
   (1) Receive a single CAS-covered contract award of $56.5 million or more; (2) Receive $56.5 million or more in net CAS-covered awards during its
   preceding accounting period.
   (b) Modified coverage.
   (1) Modified CAS coverage requires only that the contractor comply with Standard
   9904.401, Consistency in Estimating, Accumulating, and Reporting Costs, Standard
   9904.402, Consistency in Allocating Costs Incurred for the Same Purpose, Standard
   9904.405, Accounting for Unallowable Costs and Standard
   Modified, rather than full, CAS coverage may be applied to a covered contract if
   less than $56.5 million awarded to a business unit that received less than
   $56.5 million in net CAS-covered awards in the immediately preceding cost accounting period.
   (2) Modifed CAS coverage with modified CAS coverage to that
   business unit during that cost accounting period must also have
   modified coverage with the following exceptions: if the business unit receives
   a single CAS-covered contract award of $56.5 million or more, the contract must be subject to full CAS coverage.
   Thereafter, any covered contract awarded in the same cost accounting
   period must also be subject to full CAS coverage.
   * * * * *
   (3) Applicable Standards. Coverage

D. Public Comments

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

List of Subjects in 48 CFR Part 9903

Accounting, Government procurement.

Joshua B. Bolten,
Director.

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

PART 9901—RULES AND PROCEDURES

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

2. Revise section 9901.306 to read as follows:

§9901.306 Standards applicability.
   Cost Accounting Standards promulgated by the Board shall be mandatory for use by all executive agencies and by contractors and subcontractors in estimating, accumulating, and reporting costs in connection with pricing and administration of, and settlement of disputes concerning, all negotiated prime contract and subcontract procurements with the United States Government in excess of $550,000, other than contracts or subcontracts that have been exempted by the Board’s regulations.

PART 9903—CONTRACT COVERAGE

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

Subpart 9903.2—CAS Program Requirements

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

§9903.201–1 CAS applicability.
   * * * * *
   (b) * * *
   (2) Negotiated contracts and subcontracts not in excess of $550,000.
   For purposes of this paragraph (b)(2) an order issued by one segment to another
   segment shall be treated as a subcontract.
   * * * * *
   (7) Contracts or subcontracts of less than $8.5 million, provided, that at the
   time of award, the business unit of the contractor or subcontractor is not
   currently performing any CAS-covered contracts or subcontracts valued at $8.5
   million or greater.
   * * * * *

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

§9903.201–2 Types of CAS coverage.
   * * *
   (1) Receive a single CAS-covered contract award of $56.5 million or more; (2) Receive $56.5 million or more in net CAS-covered awards during its
   preceding accounting period.
   (b) Modified coverage.
   (1) Modified CAS coverage requires only that the contractor comply with Standard
   9904.401, Consistency in Estimating, Accumulating, and Reporting Costs, Standard
   9904.402, Consistency in Allocating Costs Incurred for the Same Purpose, Standard
   9904.405, Accounting for Unallowable Costs and Standard
   Modified, rather than full, CAS coverage may be applied to a covered contract if
   less than $56.5 million awarded to a business unit that received less than
   $56.5 million in net CAS-covered awards in the immediately preceding cost accounting period.
   (2) Modifed CAS coverage with modified CAS coverage to that
   business unit during that cost accounting period must also have
   modified coverage with the following exceptions: if the business unit receives
   a single CAS-covered contract award of $56.5 million or more, the contract must be subject to full CAS coverage.
   Thereafter, any covered contract awarded in the same cost accounting
   period must also be subject to full CAS coverage.
   * * * * *
   (3) Applicable Standards. Coverage

D. Public Comments

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

List of Subjects in 48 CFR Part 9903

Accounting, Government procurement.

Joshua B. Bolten,
Director.

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

PART 9901—RULES AND PROCEDURES

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

2. Revise section 9901.306 to read as follows:

§9901.306 Standards applicability.
   Cost Accounting Standards promulgated by the Board shall be mandatory for use by all executive agencies and by contractors and subcontractors in estimating, accumulating, and reporting costs in connection with pricing and administration of, and settlement of disputes concerning, all negotiated prime contract and subcontract procurements with the United States Government in excess of $550,000, other than contracts or subcontracts that have been exempted by the Board’s regulations.
proposed, the offeror will advise the Contracting Officer immediately.

(4) * * *

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

II. Cost Accounting Standards—Eligibility for Modified Contract Coverage

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

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

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

* * * * *

7. Section 9903.201–4 is amended by revising:

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

The revisions read as follows:

9903.201–4 Contract clauses.

(a) * * *

(b) * * *

Cost Accounting Standards (October 2005)

* * * * *

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

(End of Clause)

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

(2) * * *

Disclosure and Consistency of Cost Accounting Practices (October 2005)

* * * * *

(d) * * *

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

* * * * *

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

(2) * * *

Cost Accounting Standards—Educational Institution (October 2005)

* * * * *

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

(1) * * *

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

* * * * *

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

9903.201–5 Waiver.

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

(1) Is primarily engaged in the sale of commercial items; and

(2) Would not otherwise be subject to the Cost Accounting Standards under this Chapter.

* * * * *

9903.202 Disclosure requirements.

9. Section 9903.202–1 is amended by revising (b)(1) and (2); (c); and (f)(2)(i), (ii), and (iii) to read as follows:

9903.202–1 General requirements.

* * * * *

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

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

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

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

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

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

* * * * *

(f) Educational institutions-disclosure requirements.

(1) * * *

(2) * * *

(i) Any business unit of an educational institution that is selected to receive a CAS-covered contract or subcontract in excess of $550,000 and is part of a college or university location.
DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration

50 CFR Part 216
[Docket No. 051110296–5296–01; I.D. 102405A]
RIN 0648–AU02

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

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

ACTION: Advance notice of proposed rulemaking.

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

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

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

• E-mail: 0648–AU02.NOAA@noaa.gov. Include in the subject line the following document identifier: 0648–AU02–NOAA.
• Mail: Marine Mammal Branch Chief, Protected Resources Division, Pacific Islands Regional Office, National Marine Fisheries Service, 1601 Kapiolani Boulevard, Suite 1110, Honolulu, HI 96814.

FOR FURTHER INFORMATION CONTACT: Chris Yates or Jennifer Sepez, Pacific Islands Regional Office, 808–944–2105; or Trevor Spradlin, Office of Protected Resources, 301–713–2322.

SUPPLEMENTARY INFORMATION:

Background

Viewing wild marine mammals in Hawaii is a popular recreational activity for both tourists and residents alike. In the past, most recreational viewing was done from Kauhako Bay, and Dohl (1980) noted that “cruise boats” would seek out and run through groups of spinner dolphins during an initial study of the dolphins in 1979, and in follow up research, Norris et al. (1985) found that spinner dolphins were particularly sensitive to disturbance during the early stage of their entry into the bay. Forest (2001) compared sightings records of spinner dolphins in Kealakekua Bay from 1979–1980 and 1993–1994, and found that the dolphins were utilizing the bay and engaging in aerial behaviors less frequently than before, and suggested increasing human disturbance as a cause. Courbis (2004) reported high levels of vessel and swimmer traffic in Kealakekua Bay and neighboring Honanau Bay and Kauhako Bay, and found that spinner dolphins exhibited decreased aerial activity during their entry and exit into Kealakekua Bay when compared to previous studies, as well as increased aerial activity during mid-day when dolphins typically rest. Spinner dolphins in Kealakekua Bay also appeared to have shifted their preferred resting area in response to vessel and swimmer presence. In Kona Bay, dolphins were documented avoiding swimmers and leaving the bay.