

Cost Accounting Standards Board Notice
To Elicit Public Views on Whether and How to Amend CAS Rule To
Address the Application of Indefinite Delivery Vehicles
Case Number CASB 2021-01

I. Background

The Office of Federal Procurement Policy, Cost Accounting Standards Board, is publishing this notice to elicit public views on whether and how to amend its rules to address the application of Cost Accounting Standards (CAS) to indefinite delivery vehicles (IDVs). Notice of this action was published in the Federal Register on June 18, 2024 (89 FR 51491).

On June 28, 2018, the Advisory Panel on Streamlining Acquisition Regulations established by Section 809 of the FY 2016 National Defense Authorization Act¹ (the Section 809 Panel) recommended that the CAS Board amend its rules to address when CAS applies to indefinite delivery vehicles (IDVs). IDVs are contracts where work is awarded through the placement of individual task and delivery orders as requirements arise, with a minimum guaranteed order value and a ceiling amount reflecting the maximum total value of orders that can be placed under the contract. IDVs may be awarded to either a single contractor or multiple contractors. The Panel observed that the popularity of these vehicles has grown significantly, especially over the last 15-20 years, to the point where IDVs have been estimated to account for roughly half of the annual federal contract obligations based on a 2017 analysis conducted by GAO.

The Panel observed that the Board's lack of regulatory guidance on the application of CAS to IDVs has resulted in inconsistencies in determinations regarding when CAS applies to these vehicles. The Panel cited a 1976 CAS Board working group paper addressing the application of CAS to basic ordering agreements (a form of an IDV) as the only relevant statement the Board has made on the issue of CAS applicability to IDVs. Based on these findings, the Panel recommended that the "CASB regulations should adopt the DoD CAS Working Group [76-2] guidance for all IDVs, including IDCs [indefinite delivery contracts], notwithstanding their inherent legal differences from basic agreements, BOAs [basic ordering agreements], and BPAs [blanket purchase agreements]." More specifically, the Panel recommended that the Board take the following three actions:

1. Add specific guidance for IDVs to CAS program requirements at 48 CFR 9903.201-1 that would determine CAS applicability at the time of order placement.
2. Evaluate each order for CAS applicability on its own.
3. Add a definition of indefinite delivery vehicle, using the existing definition at FAR 4.601.

Research by the Board in the area of CAS coverage for IDVs yielded a minimum of regulatory or legal history beyond the discussion in the working group paper cited by the Panel.

¹ Pub. L. 114-92.

In addition, the Board identified no definitive case law on the question of CAS coverage for IDVs.

II. Discussion

In light of the significant increase of IDVs in Government procurement, both by dollars and by volume, the Board is considering the benefits and drawbacks of revising its rules to address when CAS applies to IDVs. In doing so, the Board seeks to ensure its continued ability to achieve uniformity and consistency in the cost accounting practices governing measurement, assignment, and allocation of costs to contracts with the United States Government.

Criteria for evaluating alternatives

The Board has identified the following provisional principles to support its evaluation of alternatives:

1. Help each contract party to manage risk, especially price risk to the Government and cost risk to the contractor.
2. Reduce regulatory burden to both the Government (in the form of oversight) and to the contractor (in the form of compliance).
3. Encourage competition and robust participation in the Federal marketplace.
4. Minimize complexity by providing guidance that is clear and straightforward.
5. Promote consistency in the application of CAS.

Alternatives

For the purpose of facilitating public feedback, the Board provisionally identified the following six possible approaches for addressing CAS coverage to IDVs.

- i. *Order-by-order.* Each task order and delivery order would be treated as an individual contract and CAS would apply only to those orders whose values met the coverage thresholds. (This is the approach described above that was recommended by the Section 809 Panel.)
- ii. *Maximum award value.* CAS would apply to all orders under an IDV, no matter the value of the order, if the ceiling amount of the IDV met the coverage thresholds.
- iii. *Minimum award value.* CAS would not apply to any orders under an IDV unless its minimum guarantee amount met the CAS coverage thresholds, in which case CAS would apply to all orders.
- iv. *Cumulative threshold.* CAS would apply at the point where the cumulative value of the orders awarded crosses the dollar threshold for CAS coverage. At that point, the current order and all subsequent orders awarded would be covered by CAS.

- v. *Order-by-order for multiple award IDVs and maximum award value for single award IDVs.* For multiple award IDVs each order would be regarded as if it were an individual contract for CAS coverage (see alternative no. 1). For single-award IDVs, coverage would be based on the maximum award value (see alternative no. 2).

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

None of the approaches described above are intended to change exemptions that otherwise would apply to contracts and subcontracts in accordance with 48 CFR 9903.201-1(b), such as for the acquisition of commercial items.

III. Public Comment

The Board seeks public comment on the benefits and drawbacks of amending its rules to address IDVs. The Board especially welcomes feedback on the considerations it has identified for evaluating alternatives, the alternatives enumerated above, and any additional evaluation considerations or alternatives that are not described in this notice that commenters would like the Board to consider.