§ 1502. Cost accounting standards

(a) Authority.—

(1) Cost accounting standards board.— The Cost Accounting Standards Board has exclusive authority to prescribe, amend, and rescind cost accounting standards, and interpretations of the standards, designed to achieve uniformity and consistency in the cost accounting standards governing measurement, assignment, and allocation of costs to contracts with the Federal Government.

(2) Administrator for federal procurement policy.— The Administrator, after consultation with the Board, shall prescribe rules and procedures governing actions of the Board under this chapter. The rules and procedures shall require that any action to prescribe, amend, or rescind a standard or interpretation be approved by majority vote of the Board.

(b) Mandatory Use of Standards.—

(1) Subcontract.—

(A) Definition.— In this paragraph, the term “subcontract” includes a transfer of commercial items between divisions, subsidiaries, or affiliates of a contractor or subcontractor.

(B) When standards are to be used.— Cost accounting standards prescribed under this chapter are mandatory for use by all executive agencies and by contractors and subcontractors in estimating, accumulating, and reporting costs in connection with the pricing and administration of, and settlement of disputes concerning, all negotiated prime contract and subcontract procurements with the Federal Government in excess of the amount set forth in section 2306a (a)(1)(A)(i) of title 10 as the amount is adjusted in accordance with applicable requirements of law.

(C) Nonapplication of standards.— Subparagraph (B) does not apply to—

(i) a contract or subcontract for the acquisition of a commercial item;

(ii) a contract or subcontract where the price negotiated is based on a price set by law or regulation;

(iii) a firm, fixed-price contract or subcontract awarded on the basis of adequate price competition without submission of certified cost or pricing data; or

(iv) a contract or subcontract with a value of less than $7,500,000 if, when the contract or subcontract is entered into, the segment of the contractor or subcontractor that will perform the work has not been awarded at least one contract or subcontract with a value of more than $7,500,000 that is covered by the standards.

(2) Exemptions and waivers by board.— The Board may—

(A) exempt classes of contractors and subcontractors from the requirements of this chapter; and

(B) establish procedures for the waiver of the requirements of this chapter for individual contracts and subcontracts.

(3) Waiver by head of executive agency.—

(A) In general.— 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 $15,000,000 if that official determines in writing that the segment of the contractor or subcontractor that will perform the work—

(i) is primarily engaged in the sale of commercial items; and
(ii) would not otherwise be subject to the cost accounting standards under this section.

(B) In exceptional circumstances.— The head of an executive agency may waive the applicability of the cost accounting standards for a contract or subcontract under exceptional circumstances when necessary to meet the needs of the agency. A determination to waive the applicability of the standards under this subparagraph shall be set forth in writing and shall include a statement of the circumstances justifying the waiver.

(C) Restriction on delegation of authority.— The head of an executive agency may not delegate the authority under subparagraph (A) or (B) to an official in the executive agency below the senior policymaking level in the executive agency.

(D) Contents of federal acquisition regulation.— The Federal Acquisition Regulation shall include—

(i) criteria for selecting an official to be delegated authority to grant waivers under subparagraph (A) or (B); and

(ii) the specific circumstances under which the waiver may be granted.

(E) Report.— The head of each executive agency shall report the waivers granted under subparagraphs (A) and (B) for that agency to the Board on an annual basis.

(c) Required Board Action for Prescribing Standards and Interpretations.— Before prescribing cost accounting standards and interpretations, the Board shall—

(1) take into account, after consultation and discussions with the Comptroller General, professional accounting organizations, contractors, and other interested parties—

(A) the probable costs of implementation, including any inflationary effects, compared to the probable benefits;

(B) the advantages, disadvantages, and improvements anticipated in the pricing and administration of, and settlement of disputes concerning, contracts; and

(C) the scope of, and alternatives available to, the action proposed to be taken;

(2) prepare and publish a report in the Federal Register on the issues reviewed under paragraph (1);

(3) (A) publish an advanced notice of proposed rulemaking in the Federal Register to solicit comments on the report prepared under paragraph (2);

(B) provide all parties affected at least 60 days after publication to submit their views and comments; and

(C) during the 60-day period, consult with the Comptroller General and consider any recommendation the Comptroller General may make; and

(4) publish a notice of proposed rulemaking in the Federal Register and provide all parties affected at least 60 days after publication to submit their views and comments.

(d) Effective Dates.— Rules, regulations, cost accounting standards, and modifications thereof prescribed or amended under this chapter shall have the full force and effect of law, and shall become effective within 120 days after publication in the Federal Register in final form, unless the Board determines that a longer period is necessary. The Board shall determine implementation dates for contractors and subcontractors. The dates may not be later than the beginning of the second fiscal year of the contractor or subcontractor after the standard becomes effective.

(e) Accompanying Material.— Rules, regulations, cost accounting standards, and modifications thereof prescribed or amended under this chapter shall be accompanied by prefatory comments and by illustrations, if necessary.

(f) Implementing Regulations.— The Board shall prescribe regulations for the implementation of cost accounting standards prescribed or interpreted under this section. The regulations shall be incorporated into the Federal Acquisition Regulation and shall require contractors and subcontractors as a condition of contracting with the Federal Government to—
(1) disclose in writing their cost accounting practices, including methods of distinguishing direct costs from indirect costs and the basis used for allocating indirect costs; and

(2) agree to a contract price adjustment, with interest, for any increased costs paid to the contractor or subcontractor by the Federal Government because of a change in the contractor’s or subcontractor’s cost accounting practices or a failure by the contractor or subcontractor to comply with applicable cost accounting standards.

(g) **Nonapplicability of Certain Sections of Title 5.**— Functions exercised under this chapter are not subject to sections 551, 553 to 559, and 701 to 706 of title 5.

U.S.C. 422 (f)) [now 41 U.S.C. 1502 (a), (b)] to the extent necessary to increase the thresholds established in section 9903.201-2 of title 48 of the Code of Federal Regulations from $25,000,000 to $50,000,000.

“(2) Paragraph (1) requires only a change of the statement of a threshold condition in the regulation referred to by section number in that paragraph, and shall not be construed as—

“(A) a ratification or expression of approval of—

“(i) any aspect of the regulation; or

“(ii) the manner in which section 26 of the Office of Federal Procurement Policy Act [now 41 U.S.C. 1501 et seq.] is administered through the regulation; or

“(B) a requirement to apply the regulation.

“(d) Implementation.—The Administrator for Federal Procurement Policy shall ensure that this section [see Tables for classification] and the amendments made by this section are implemented in a manner that ensures that the Federal Government can recover costs, as appropriate, in a case in which noncompliance with cost accounting standards, or a change in the cost accounting system of a contractor segment or subcontractor segment that is not determined to be desirable by the Federal Government, results in a shift of costs from contracts that are not covered by the cost accounting standards to contracts that are covered by the cost accounting standards.

“(e) Implementation of Requirements for Revision of Regulations.—(1) Final regulations required by subsection (c) shall be issued not later than 180 days after the date of the enactment of this Act [Oct. 5, 1999].

“(2) Subsection (c) shall cease to be effective one year after the date on which final regulations issued in accordance with that subsection take effect.

“(g) Inapplicability of Standards to Certain Contracts.—The cost accounting standards issued pursuant to section 26(f) of the Office of Federal Procurement Policy Act [(former) 41 U.S.C. 422 (f)] [now 41 U.S.C. 1502 (a), (b)], as amended by this section, shall not apply during fiscal year 2000 with respect to a contract entered into under the authority provided in chapter 89 of title 5, United States Code (relating to health benefits for Federal employees).

“(h) Construction Regarding Certain Not-For-Profit Entities.—The amendments made by subsections (a) and (b) [see Tables for classification] shall not be construed as modifying or superseding, nor as intended to impair or restrict, the applicability of the cost accounting standards described in section 26(f) of the Office of Federal Procurement Policy Act [(former) 41 U.S.C. 422 (f)] [now 41 U.S.C. 1502 (a), (b)] to—

“(1) any educational institution or federally funded research and development center that is associated with an educational institution in accordance with Office of Management and Budget Circular A–21, as in effect on January 1, 1999; or

“(2) any contract with a nonprofit entity that provides research and development and related products or services to the Department of Defense.

“(i) Effective Date.—The amendments made by subsections (a) and (b) [see Tables for classification] shall take effect 180 days after the date of enactment of this Act [Oct. 5, 1999], and shall apply with respect to—

“(1) contracts that are entered into on or after such effective date; and

“(2) determinations made on or after such effective date regarding whether a segment of a contractor or subcontractor is subject to the cost accounting standards under section 26(f) of the Office of Federal Procurement Policy Act [(former) 41 U.S.C. 422 (f)] [now 41 U.S.C. 1502 (a), (b)], regardless of whether the contracts on which such determinations are made were entered into before, on, or after such date.”