ARMED SERVICES BOARD OF CONTRACT APPEALS

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| Appeal of - | ) | |
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| Science Applications International Corporation | ) | ASBCA No. 63509 |
| | ) | |
| Under Contract No. N00024-14-C-6301 *et al.* | ) | |

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OPINION BY ADMINISTRATIVE JUDGE MCLISH

Science Applications International Corporation (SAIC) appeals from a final decision of a Defense Contract Management Agency (DCMA) Corporate Administrative Contracting Officer (CACO) determining that five unilateral changes SAIC made to its cost accounting practices resulted in material increased costs to the government. SAIC challenges the contracting officer's materiality decision. The Board held a three-day evidentiary hearing and the parties submitted post-hearing briefs. Because we find that the contracting officer did not abuse her discretion in making the materiality determinations at issue, we deny the appeal.[1]

FINDINGS OF FACT

**I. *The Contract and Applicable CAS Provisions***

1. SAIC provides services and solutions for mission support, information technology, weapons platforms, and military logistics, with specialties in engineering and IT applications (compl. ¶ 1; answer ¶ 1). On September 30, 2014, SAIC was awarded Contract No. N00024-14-C-6301, which SAIC selected as a representative

[1] Both parties filed motions for summary judgment. We deferred consideration of the motions until the hearing and merits briefing. As we now rule on the merits, we deny the summary judgment motions as moot.

contract potentially affected by the claims in this appeal (R4, tab 1 at G-1, G-76).[2]

2. The subject contract included Federal Acquisition Regulation (FAR) clauses FAR 52.230-2, COST ACCOUNTING STANDARDS (MAY 2014); FAR 52.230-3, DISCLOSURE AND CONSISTENCY OF COST ACCOUNTING PRACTICES (MAY 2014); and FAR 52.230-6, ADMINISTRATION OF COST ACCOUNTING STANDARDS (JUN 2010) (R4, tab 1 at G-76).

3. These clauses require the contractor to follow the Cost Accounting Standards (CAS) and to establish, disclose and follow consistent cost accounting practices. FAR 52.230-2(a)(1)-(3); 52.230-3(a)(1)-(3). The contractor is permitted to make unilateral changes to its cost accounting practices under certain circumstances. The "cognizant federal agency official" (CFAO) is charged with resolving any cost impacts resulting from practice changes, including whether the amounts are material. FAR 30.601, 30.602. In determining materiality, the CFAO must consider the six criteria set out in 48 C.F.R. § 9903.305 (the CAS Materiality Criteria). FAR 30.602(a). If the CFAO determines that the cost impact is immaterial, no contract price adjustment may be made. FAR 30.602(c)(1); 30.604(f). If a unilateral change materially increases costs to the government, the contractor must agree to a contract price adjustment that provides for the government to preclude or recover those increased costs. FAR 52.230-2(a)(4), (5); 52.230-3(a)(4); 30.606(c).

## II. *SAIC's Unilateral Changes to Its Cost Accounting Practices*

4. In early 2018, SAIC notified DCMA that it had adopted 11 unilateral cost accounting practice (CAP) changes, effective at the beginning of SAIC's 2019 fiscal year (FY19) (R4, tab 2 at G-92-166).

5. Ms. Margarita Ramos served as the CACO assigned to SAIC. As such, she also was the CFAO responsible for resolving any cost impacts resulting from SAIC's unilateral CAP changes (app. br. at 13 n.5; gov't br. at 12).

6. In FY19, when SAIC made its unilateral CAP changes, SAIC held approximately 1,200 active government contracts, 793 of which were subject to CAS (tr. 1/143). Ms. Ramos estimated that, as of FY19, approximately 98 percent of SAIC's contracts were with the Federal Government (tr. 2/48).

7. SAIC operates through three segments reporting to its corporate home office (also known as Company 9): the [redacted] (also

[2] The parties numbered pages in their Rule 4 submissions with a prefix of letters and leading zeros. We have dropped the leading zeros and cite only the letter prefix and the numeric page number.

referred to as Company 116), the [redacted] (Company 110), and a commercial segment not covered by CAS. Both the [redacted] hold CAS-covered contracts, with [redacted] generating the largest revenue share and holding the vast majority of government contracts. (Tr. 1/34-35, 2/139)

8. Ms. Ramos reviewed SAIC's disclosure statement revisions and determined they were adequate and compliant with CAS and FAR Part 31 (R4, tab 4 at G-171-72; tab 5 at G-173-74).

9. At Ms. Ramos' request, SAIC submitted general dollar magnitude (GDM) cost impact proposals pursuant to FAR 30.604(b) (R4, tab 3 at G-167-70; app. supp. R4, tab S0118 at G-SAIC-2627).[3]

10. After an initial submission in June 2018, SAIC submitted revised GDM proposals for the eleven CAP changes in October 2021, and detailed supporting Excel files (R4, tab 3 at G-168-70, tab 6 at G-184-87, tab 7 at G-188-93; app. supp. R4, tabs S0106, S0107, S0109, S0110, S0112, S0118 at G-SAIC-2627). As required, the GDM proposals contained SAIC's calculation of the cost impact of each CAP change on existing contracts (R4, tab 6 at G-187, tab 7 at G-188-93, tab 8).

11. SAIC calculated the cost impact of each CAP change by contract, based on a contract backlog of 793 contracts, $9.2 billion in estimated costs to complete the backlog (as of the end of SAIC's fiscal year 2018), and an average of four fiscal years total remaining period of performance for the backlog (R4, tab 9 at G-200; app. supp. R4, tab S0118 at G-SAIC-2631). SAIC's calculations of the cost impacts showed that nine of the CAP changes resulted in cost increases and two resulted in cost decreases (R4, tab 6 at G-187).

12. Working with a DCMA Cost Monitor and a member of the DCMA Specialty Pricing Team, Ms. Ramos reviewed the detailed files submitted by SAIC on October 21, 2021 (app. supp. R4, tab S0118 at G-SAIC-2633-34; tr. 2/24, 26, 187-88). She did not go through them line by line or contract by contract, but instead focused on the top-level data summarizing the overall impacts (tr. 2/58-59, 63-64, 101). She understood the information presented in SAIC's detailed files. Her hearing testimony demonstrated her familiarity with the files (*e.g.*, tr. 2/27-34). We find the scope of her review to be reasonable.

[3] The parties generally use the term GDM to refer to the submissions SAIC made to the CFAO, although they might actually meet the requirements for detailed cost-impact proposals (DCIs). (*See* FAR 30.604(g); tr. 1/54 (SAIC uses GDM and DCI interchangeably and considers its submissions as meeting the requirements to be DCIs); tr. 1/69). For convenience, we follow suit and refer to the submissions as GDM proposals.

13. Ms. Ramos verified that SAIC's GDMs were calculated using the difference between SAIC's fiscal year 2018 (FY18) and FY19 accounting practices. She also verified the budgetary data, government participation percentages, profit and fee rates, and that the GDMs covered the entire performance period for all affected contracts, as required by FAR 30.604(e) and (h). (R4, tab S0118 at G-SAIC-2633)

14. Ms. Ramos identified and corrected an error in SAIC's calculations, where costs were double-counted across fixed and flexibly-priced contracts for four CAP changes (app. supp. R4, tab S0118 at G-SAIC-2636, 2637, 2639, 2649-51). This correction reduced the estimated cost increase to the government by approximately $80,000. SAIC accepted these changes (tr. 1/153-54).

15. With those double-counting adjustments, Ms. Ramos accepted SAIC's calculations of the increased costs to the government (app. supp. R4, tab S0118 at G-SAIC-2633-34; tr. 2/24, 187-88). The parties were thus in agreement as to the cost increases to the government that would result from the CAP changes. SAIC understood that Ms. Ramos would use those amounts in determining whether the cost impacts were material. (Tr. 1/153-55, 2/189-90, 3/38)

16. SAIC made further submissions arguing that the cost impacts were immaterial (R4, tab 9 at G-195-202; tab 13 at G-279-88). SAIC confirmed that the October 2021 GDMs were current, accurate, and based on actual costs incurred on CAS-covered contracts (R4, tab 13 at G-279). SAIC also took the position that "each practice change should be evaluated individually and not combined" (R4, tab 9 at G-197-98).

## III. *The Unsuccessful Negotiations*

17. In February 2022, Ms. Ramos began negotiating with SAIC to resolve the cost impacts of the CAP changes, as required by FAR 30.606(b) (tr. 2/20-22; app. supp. R4, tab S104 at S-9, tab S120). As a negotiating position, Ms. Ramos offered to consider all cost impacts under $50,000 to be immaterial (tr. 2/20). SAIC did not agree and continued to maintain that the cost impact of every change was immaterial (R4, tab S105 at S-10). Although SAIC desired to have discussions with the CFAO regarding the CAS Materiality Criteria, SAIC did not make a counteroffer to attempt to negotiate a resolution (tr. 1/127-28, 152-53, 161-62, 167-70, 184).

## IV. *The Materiality Determinations*

18. Following the unsuccessful negotiations, Ms. Ramos issued a Memorandum for Record (MFR) on October 18, 2022, detailing her determination of

the cost impacts of SAIC's 11 CAP changes (app. supp. R4, tab S0118 at G-SAIC-2626-54). We find that the MFR accurately describes the events and process leading to her determination.

19. Ms. Ramos concluded that two of the changes resulted in decreased costs to the government. She found that the nine remaining changes resulted in increased costs to the government, that the cost increases of five of them were material, and that the additional costs resulting from the remaining four were immaterial. For two of the changes she found material, she adjusted the recoverable cost impacts downward to avoid "double counting." (*Id.*)

20. The final MFR summarized Ms. Ramos' conclusions as follows:

**SAIC Co 09**
**CFY 2019-Unilateral CAP Changes**

| | SAIC | | | | CACO | |
|---|---|---|---|---|---|---|
| | Cost | Fee | Total Impact | Assessment | Assessment | Recoverable Cost Impact |
| [redacted] | [redacted] | [redacted] | 164,398 | Immaterial | Material | 101,496 |
| | [redacted] | [redacted] | 20,532 | Immaterial | Material | 20,532 |
| | [redacted] | [redacted] | (283,270) | - | No harm | - |
| | [redacted] | [redacted] | 100,422 | Immaterial | Material | 83,073 |
| | [redacted] | [redacted] | 10,723 | Immaterial | Material | 10,723 |
| | [redacted] | [redacted] | (187,465) | - | No harm | - |
| [redacted] | [redacted] | [redacted] | 70,259 | Immaterial | Material | 70,259 |
| | [redacted] | [redacted] | 797 | Immaterial | Immaterial | 797 |
| | [redacted] | [redacted] | 1,383 | Immaterial | Immaterial | 1,383 |
| | [redacted] | [redacted] | 1,424 | Immaterial | Immaterial | 1,421 |
| | [redacted] | [redacted] | 3,102 | Immaterial | Immaterial | 3,100 |

(*Id.* at G-SAIC-2637)

21. For each of the nine CAP changes that resulted in increased costs to the government, the final MFR listed the six CAS Materiality Criteria and Ms. Ramos's findings as to each, followed by a concluding paragraph that stated whether she found the cost impact of the particular change to be material or immaterial (*id.* at G-SAIC-2636-53).

22. For each of the five CAP changes that she found resulted in material cost increases, Ms. Ramos's MFR concluded with an essentially identical paragraph explaining her determination. The paragraph explained that it is her "responsibility to be a steward of the taxpayer and protect their interest." She noted that there is no regulatory guidance or DCMA training that provides a "rule of thumb" that only amounts over a certain dollar should be deemed material. Because "the materiality of an absolute dollar amount is subjective," she stated, she "must apply sound business acumen in my determination." Ms. Ramos then made reference to FAR 42.709,

Penalties for Unallowable Costs, which requires contracting officers to waive penalties for including expressly unallowable costs included in incurred cost proposals if the unallowable amount is less than $10,000. FAR 42.709-6(b). She then concluded:

> I find it reasonable to apply the same threshold for penalty assessments ($10,000) to determine if an absolute dollar amount is material. After considering the six factors individually and collectively, with emphasis on factors a. [absolute dollar amount], d. [impact on government funding], and f. [cost of administrative processing], I have determined that the increased cost in [the absolute dollar amount determined for the specific CAP change] material.

(*Id*. at G-SAIC-2638-39, 2640-41, 2642-43, 2644, 2646)

A. Consideration of the CAS Materiality Criteria

23. We find that Ms. Ramos used and considered each of the six CAS Materiality Criteria in reaching her materiality determinations with respect to the five CAP changes in dispute. She took each of the criteria into account when making those determinations. She emphasized three of the criteria over others, while not disregarding any of them.

(1) Criterion A

24. The first of the CAS Materiality Criteria is "[t]he absolute dollar amount involved. The larger the dollar amount, the more likely that it will be material." 48 C.F.R. § 9903.305(a).

25. For each of the nine CAP changes that resulted in increased costs, Ms. Ramos considered the absolute dollar amount of each aggregate cost increase, as calculated by SAIC in its GDM proposal (tr. 2/41). In two instances, however, she reduced the amount to correct for "double-counting" costs shifting from fixed-price to flexibly-priced contracts (app. supp. R4, tab S0118 at G-SAIC-2637, 2639).

(2) Criterion B

26. The second of the CAS Materiality Criteria is "[t]he amount of contract cost compared with the amount under consideration. The larger the proportion of the amount under consideration to contract cost, the more likely it is to be material." 48 C.F.R. § 9903.305(b).

27. In considering Criterion B, Ms. Ramos compared the dollar amount of the cost increase of each CAP change to SAIC's FY19 allocation base for its [redacted] segment's general and administrative (G&A) costs (app. supp. R4, tab S0118 at G-SAIC-2638, 2640-41, 2643, 2645; tr. 2/43, 114) She reasonably considered that G&A base "more relevant" than SAIC's total contract costs because [redacted]s business is almost entirely with the government and is SAIC's largest segment (tr. 2/43, 66-68).

28. The proportion of the increased costs to SAIC's FY19 allocation base for its [redacted] segment's G&A costs was very small for each of the five CAP changes at issue, ranging from 0.00% to .0012% (app. supp. R4, tab S0118 at G-SAIC-2638, 2640-41, 2643, 2645). SAIC contends that, had she used SAIC's total contract cost as the point of comparison, the percentages would have ranged from 0.000% to .0007% (app. br. at 41 (citing R4, tab 9 at G000200; app. supp. R4, tab S0118 at G-SAIC-2638, 2640-41, 2643, 2645, 2647-48, 2650, 2652-53; tab S0114 at A1949 (worksheets K10668, K10407, K11376, K11464)).

29. In her testimony, Ms. Ramos explained why the low percentages under Criterion B did not convince her that the cost impacts were immaterial. She explained that, when a CAP change affects only indirect costs at the "corporate level," the comparison called for by Criterion B is always going to result in a small ratio of increased costs to the overall contract cost (tr. 2/43, 83-84, 196). For a large contractor like SAIC with billions of dollars of government contracts, criterion B will return a number so small that, if it was determinative, the government would never be able to recover a cost increase from such a contractor's unilateral CAP changes (tr. 2/83-84, 129, 197-98). She agreed that, if Criterion B were the only criterion to consider, she would find the cost impacts immaterial (tr. 2/43-44, 114) and that in this case Criterion B weighed in favor of immateriality (tr. 2/129-30).

(3) Criterion C

30. CAS Materiality Criterion C is "[t]he relationship between a cost item and a cost objective. Direct cost items, especially if the amounts are themselves part of a base for allocation of indirect costs, will normally have more impact than the same amount of indirect costs." 48 C.F.R. § 9903.305(c).

31. SAIC's FY19 CAP changes involved "changes to the allocation of indirect costs to final indirect pools or changes to indirect pool base amounts" (R4, tab 9 at G-200).

32. Ms. Ramos considered Criterion C. She calculated the percentage impact to SAIC's indirect rates (Ramos corp. tr. 33-34). The percentages ranged from "less than 0.00%" to "less than 0.07%" (app. supp. R4, tab S0118 at G-SAIC-2638, 2640, 2642-43, 2645, 2647-48, 2650, 2652-53).

33. Ms. Ramos observed that SAIC's "CAP change is not moving [its] indirect rates at all" (tr. 2/44). She recognized that, as with Criterion B, Criterion C, if considered alone, would weigh in favor of a finding immateriality (tr. 2/43-44, 114-15, 130). For the same reasons as with Criterion B, the small percentages for Criterion C did not persuade her that the cost impacts were immaterial.

(4) Criterion D

34. The fourth CAS Materiality Criteria is "[t]he impact on Government funding. Changes in accounting treatment will have more impact if they influence the distribution of costs between Government and non-Government cost objectives than if all cost objectives have Government financial support." 48 C.F.R. § 9903.305(d).

35. Ms. Ramos considered Criterion D. After noting that 98 percent of SAIC's contract portfolio is with the government, the MFR set out Ms. Ramos's analysis of Criterion D with respect to both flexibly-priced contracts and fixed-price contracts. (App. supp. R4, tab S0118 at G-SAIC-2638, 2640, 2642-43, 2645, 2647-48, 2650, 2652)

36. Ms. Ramos concluded that two of SAIC's CAP changes would require buying commands to obtain additional funding to cover the cost increase on flexibly-priced contracts. "As the contracts were priced using the prior [cost accounting] practice, the buying activities may need to obtain additional funding to cover the increase in costs." (*Id.* at G-SAIC-2642, 2645)

37. For the [redacted] CAP change, while the aggregate cost to the government increased $70,259, the Government's costs on flexibly-priced contracts increased $104,284.130 (*id.* at G-SAIC-2641). For the [redacted] CAP change, although the aggregate cost to the government increased $10,723, the government's costs on flexibly-priced contracts increased $17,556 (*id.* at G-SAIC-2644; tr. 2/45).

38. With respect to fixed-price contracts, Ms. Ramos found that three of SAIC's CAP changes would "have a significant impact on Government funding as many fixed price contracts were priced using higher indirect rates than what will be realized after the cost accounting practice change" (app. supp. R4, tab S118 at G-SAIC-2638, 2640, 2643).

39. In applying Criterion D to CAP changes that lowered SAIC's cost of performing fixed-price contracts, Ms. Ramos reasoned that, had the CAP change been in place when the fixed-price contracts were negotiated, the price would have been lower by the amount of SAIC's cost savings (tr. 2/84-85, 88-94). In doing so, she adhered to FAR 30.604(h)(3)(ii)(A) (in determining cost impacts of unilateral CAP changes on fixed-price contracts, if "the estimated cost to complete using the changed practice is less than the estimated cost to complete using the current practice, the difference is increased cost to the Government.").

40. For Criterion D, Ms. Ramos did not determine the impact on a contract-by-contract basis because she did not believe it was required and, given the hundreds of affected contracts, doing so would have been very burdensome (tr. 2/47-48, 60, 63-65, 68-69). She acknowledged that, if she were required to determine materiality on a contract-by-contract basis, rather than on SAIC's entire contract portfolio, she would probably view Criterion D as weighing in favor of a finding of immateriality on any given contract (tr. 2/54-55, 57-59). She considered the overall impact, however, to weigh in favor of materiality (tr. 2/61, 70, 86-87).

(5) Criterion E

41. The fifth materiality criterion is: "The cumulative impact of individually immaterial items. It is appropriate to consider whether such impacts: (1) Tend to offset one another, or (2) Tend to be in the same direction and hence to accumulate into a material amount." 48 C.F.R. § 9903.305(e).

42. Ms. Ramos considered Criterion E and found that it was not applicable because she understood she was to consider each CAP change individually, as SAIC itself advocates (app. supp. R4, tab S0118 at G-SAIC-2638-46; R4, tab 9 at G-197-98 (SAIC position paper arguing that "the disclosed changes should be evaluated for materiality individually."); tr. 2/152 (SAIC's former government compliance manager: "The CAS criteria require each change to be evaluated individually relative to the six criteria and for a materiality determination to be made on each change individually")). She also reasoned that Criterion E (1) did not apply because, under Board precedent, no offsetting is allowed between CAP changes (tr. 2/71, 202 (referencing *Raytheon Co., Space & Airborne Sys.*, ASBCA No. 57801 *et al.*, 15-1 BCA ¶ 36,024)). Finally, she found that Criterion E (2) did not apply because SAIC's CAP changes did not

result in cost increases "in the same direction" but rather some decreases and some increases (tr. 2/71-72, 202).

43. Though Ms. Ramos determined that Criterion E was not applicable, she considered it and "did not ignore it" (tr. 2/72).

(6) Criterion F

44. CAS Materiality Criterion F provides that "[t]he cost of administrative processing of the price adjustment modification shall be considered. If the cost to process exceeds the amount to be recovered, it is less likely the amount will be material." 48 C.F.R. § 9903.305(f).

45. Ms. Ramos considered Criterion F. In her MFR, she explained that the government would not incur any additional expense to collect the cost increases because SAIC would remit payment via a check or electronic funds transfer (EFT), rather than through contract modifications (app. supp. R4, tab S0118 at G-SAIC-2638, 2640, 2643-44, 2645-47, 2649-50, 2652).

46. Ms. Ramos' expectation was reasonable given that, in her experience, SAIC preferred making payments via EFT, as it had recently when resolving a similar cost increase resulting from CAP changes for FY18 (tr. 2/23, 51-52, 73, 131-33, 202-03, 3/21-24; R4, tab 12 at G-276). SAIC never requested that the FY19 cost impacts be resolved through contract adjustments rather than an EFT payment. Ms. Ramos believed this was because doing the former would be expensive and time-consuming for SAIC. (Tr. 2/203)

47. There is no evidence that SAIC would have preferred to compensate the government for material cost increases caused by its FY19 CAP changes through one or more contract modifications rather than a lump sum payment as it had in the past.

B. Additional Findings as to Materiality Determinations

48. We find that Ms. Ramos did not make her materiality determinations by simply applying a $10,000 threshold. She recognized that her task included making a "subjective" determination using her "business acumen" and that she was required to use and consider the CAS Materiality Criteria, and she did so.

49. Ms. Ramos reasonably took note of FAR 42.709, which she understood to require waiver of penalties if the amount of unallowable costs a contractor includes in an incurred cost submission is less than $10,000. It was not unreasonable for her to

consider FAR 42.709 to be an indication that the FAR drafters viewed amounts less than $10,000 to be *de minimis*.

50. She recognized, however, that FAR 42.709 addresses a different issue and is not directly analogous to the materiality determination she was making, and accordingly did not adopt $10,000 as a dividing line between material and immaterial amounts. Rather, using $10,000 as a guide, she generally concluded that any absolute dollar amount under $10,000 was not worth pursuing and therefore immaterial. But she nonetheless examined each of the other five CAS Materiality Criteria for each CAP change, whether or not its cost impact exceeded $10,000. (Tr. 2/10, 38-39, 60-61, 77-80, 95, 101-03, 108, 113, 133, 194)

51. We find that Ms. Ramos' decision to emphasize criteria A (absolute dollar amount), D (impact on government funding) and F (administrative cost) was reasonable (*see* tr. 2/61, 78; 3/21). She understood that the purpose of the materiality determination was to assess whether the amount of the cost impact for each CAP change was large enough to be worth pursuing (tr. 2/59-60, 105, 192). She reasonably concluded that the key factors in making that assessment were the dollar amounts of the cost impacts (criteria A), the extent to which the cost impacts would result in increased payments by the government (criteria D), and how much it would cost the government to collect those amounts from SAIC (criteria F) (tr. 2/61, 76-78, 84-85, 95, 3/21-22).[4]

52. Ms. Ramos' MFR set forth enough facts and circumstances to clearly and convincingly justify the materiality determinations that she made. The MFR included findings that detail the particular circumstances, facts, or reasoning essential to support her determination (app. supp. R4, tab S118).

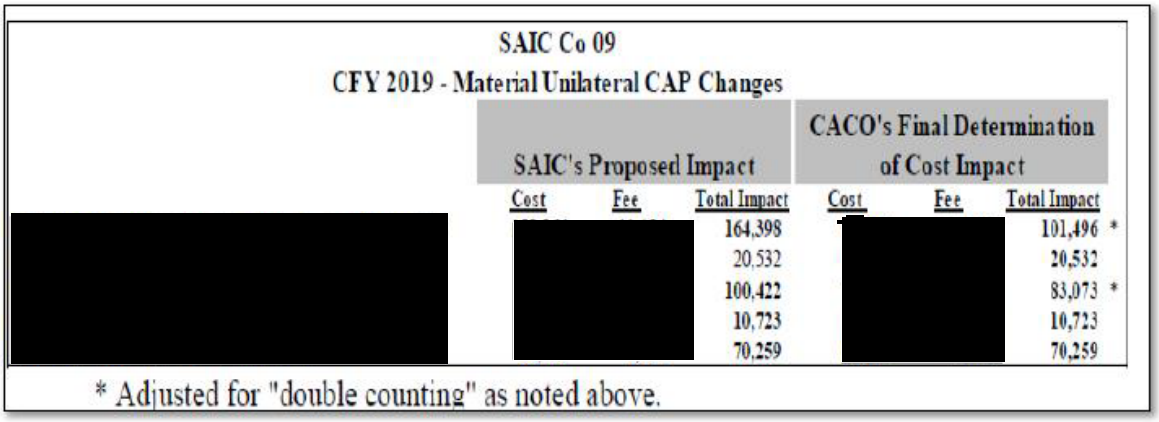
53. We find that Ms. Ramos acted in good faith in making her materiality determinations.

C. The Contracting Officer's Final Decision

54. On the same date as the final MFR, October 18, 2022, Ms. Ramos issued a Final Decision (R4, tab 10 at G-204-10).

[4] The parties stipulated to the admission into evidence of CACO Ramos' personal and Rule 30(b)(6) deposition testimony, as if given at the hearing, and reserved the objections each made during the depositions. The Board admitted CACO Ramos' deposition transcripts (including errata sheets) into the record and accepted the parties' stipulation (tr. 1/16). We considered the deposition testimony in full.

55. The Final Decision summarized Ms. Ramos' conclusions as follows:



SAIC Co 09
CFY 2019 - Material Unilateral CAP Changes

| | SAIC's Proposed Impact | | | CACO's Final Determination of Cost Impact | | |
|---|---|---|---|---|---|---|
| | Cost | Fee | Total Impact | Cost | Fee | Total Impact |
| [redacted] | [redacted] | | 164,398 | [redacted] | | 101,496 * |
| | | | 20,532 | | | 20,532 |
| | | | 100,422 | | | 83,073 * |
| | | | 10,723 | | | 10,723 |
| | | | 70,259 | | | 70,259 |

* Adjusted for "double counting" as noted above.

(*Id.* at G-207)

56. The Final Decision demanded that SAIC pay $341,947 based on $286,083 in increased costs to the government plus $55,864 in compound interest through the date of the Final Decision (*id.* at G-204, 207).

57. The final decision provided instructions for payment electronically or by check and stated that interest would run on payments not made within 30 days pursuant to 41 U.S.C. §7109 (*id.* at G-207-08).

58. SAIC timely appealed to the Board.

## DECISION

### A. Legal Framework Governing Cost Impacts of Unilateral CAP Changes

The issues in this appeal implicate the statutes, regulations, and contract clauses governing how cost impacts from unilateral changes to cost accounting practices are resolved.

We begin with the relevant statutes, 41 U.S.C. §§ 1502 and 1503. On their face, these statutes appear to categorically prohibit contractors from making CAP changes that increase costs to the government without repayment, including interest. Specifically, § 1502 mandates regulations requiring contractors to "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 . . . ." 41 U.S.C. § 1502(f)(2). Section 1503 reinforces this by requiring price adjustments to protect the government from paying these increased costs, "as defined by the Cost Accounting Standards Board." 41 U.S.C. § 1503(b).

Consistent with the statutes, the implementing regulations provide that a contractor may unilaterally change its cost accounting practices, "but the government shall not pay any increased cost, in the aggregate, as a result of the unilateral change." FAR 30.603-2(a).[5] While this language and that of the statutes appear absolute, implementing regulations in FAR Subpart 30.6 introduce an "immateriality" exception. FAR 30.602; 30.603-2(c)(ii); 30.604(b)(2), (f); 30.606(c). This exception, not challenged by either party here as impermissible under the statutes, allows contractors to avoid repayment if the increased costs are deemed immaterial.

SAIC's contracts incorporate FAR clauses FAR 52.230-2, -3, and -6, which obligate it to negotiate adjustments for any CAP changes impacting contract price or cost. These clauses prohibit agreements increasing costs to the government for unilateral changes. If a contractor makes a CAP change that affects the contract price or cost allowance of a contract, "adjustment shall be made." FAR 52.230-2(a)(2). For a unilateral change, the contractor must negotiate with the Contracting Officer, but "no agreement may be made under this provision that will increase cost paid by the United States." FAR 52.230-2(a)(4)(ii); *see also* FAR 52.230-3(a)(3). The contractor agrees to contract adjustments necessary to ensure the government does not pay increased costs caused by unilateral CAP changes and to "[r]epay the Government for any aggregate increased cost paid to the Contractor." FAR 52.230-6(k).

The CFAO has exclusive authority to determine and resolve cost impacts of unilateral CAP changes. FAR 30.601(a)(2); 30.606(a)(1). This process involves the contractor submitting a cost impact proposal in the form of a GDM or detailed cost impact (DCI) proposal. FAR 30.604(b), (d); 52.230-6(c). The contractor is required to calculate the cost impacts on existing contracts using its estimates of the costs to complete the contracts under the old practice and under the new practice. FAR 30.604(e), (h); 52.230-6(d)-(f). The CFAO evaluates the proposal and negotiates a resolution. FAR 30.604(f); 52.230-2(a)(4).

[5] CAP changes can be "required" (i.e., made to comply with CAS), "desirable" (i.e., determined by the contracting officer to be desirable under certain factors and not detrimental to the government), or "unilateral" (i.e., elected by the contractor and not deemed desirable by the contracting officer). FAR 52.230-6(a). All of the CAP changes at issue here were "unilateral."

Contract adjustment must "preclude payment of aggregate increased costs" by reducing the price of fixed-price contracts or disallowing costs on cost-type contracts, or both. FAR 30.606(c)(3). The CFAO may use a method other than adjusting contracts if the alternate method does not result in higher payments and "the contracting parties agree on the use of that alternative method." FAR 30.606(d). Absent agreement on the cost impact resolution, the CFAO issues a final decision. FAR 30.606(c)(6)(ii).

In determining materiality, the CFAO must use and consider the six CAS Materiality Criteria in 48 C.F.R. § 9903.305. FAR 30.602(a).[6] If deemed immaterial, the process concludes without contract adjustments. FAR 30.602(c). If material, the CFAO may resolve the cost impact "by adjusting a single contract, several but not all contracts, all contracts, or any other suitable method." FAR 30.606(a)(2). A finding of materiality must "be based on adequate documentation." FAR 30.602(b)(2).

**B. The Parties' Contentions**

SAIC argues that the CFAO abused her discretion and violated FAR and CAS in determining materiality and demanding payment. Specifically, SAIC challenges the CFAO's consideration of the $10,000 penalty threshold from FAR 42.709 and asserts that she improperly applied or disregarded certain CAS Materiality Criteria. SAIC also argues that the government's claim fails because it failed to prove quantum. Finally, SAIC disputes the government's demand for interest.

The government counters that the CFAO thoroughly considered all six CAS Materiality Criteria and acted within her discretion. It disputes SAIC's characterization of the CFAO's use of the FAR 42.709 threshold, arguing her reference to it was permissible and reasonable. The government also maintains that SAIC's own calculations of the cost impacts demonstrate the recoverable quantum and that it appropriately demanded and calculated interest.

[6] The CAS Materiality Criteria are not tailored specifically for deciding the materiality of CAP changes. They are used for a variety of materiality determinations called for by CAS. *See Raytheon Co., Space & Airborne Sys.*, ASBCA No. 58068, 16-1 BCA 36,484 at 177,772 (*Raytheon 2016*) (identifying other materiality determinations required by CAS); *Pratt & Whitney, a Div. of Raytheon Techs. Co.*, ASBCA No. 59222, 22-1 BCA ¶ 38,104 at 185,077, 185,086-87 (addressing materiality determination under § 9903.305 in context of alleged non-compliance with CAS 418); (*see also* tr. 2/192-93).

### C. Burdens of Proof

We review the contracting officer's final decision *de novo*, without deference. *Wilner v. United States*, 24 F.3d 1397, 1401-02 (Fed. Cir. 1994)), *Harry Pepper & Assoc., Inc.*, ASBCA No. 62038 *et al.*, 21-1 BCA ¶ 37,961 at 184,351. A CFAO's final decision demanding payment of increased costs resulting from unilateral CAP changes is a government claim, on which the government bears the initial burden of proof. *See Pratt & Whitney, a Div. of Raytheon Techs. Co.*, ASBCA No. 59222, 22-1 BCA ¶ 38,104 at 185,085; *Raytheon Co.*, ASBCA No. 57743 *et al.*, 17-1 BCA ¶ 36,724 at 178,846 (*Raytheon 2017*).[7] We hold that, in an appeal challenging a materiality determination regarding a unilateral CAP change, the government satisfies that initial burden by demonstrating (1) the CAP changes at issue resulted in increased costs, (2) the amount of the increased costs with reasonable certainty, and (2) the CFAO found them material.

SAIC's assertion of immateriality is an affirmative defense, placing the burden on SAIC to demonstrate that the CFAO abused her discretion in finding materiality. *Raytheon 2017*, 17-1 BCA ¶ 36,724 at 178,846 (discussing shifting burdens); *Pratt & Whitney*, 22-1 BCA ¶ 38,104 at 185,086-87, *Raytheon 2016*, 16-1 BCA ¶ 36,484 at 177,774.[8]

### D. The Government Satisfied its Initial Burden

The government met its initial burden. To begin with, the third element is satisfied by the CFAO's final MFR finding that the increased costs resulting from the five CAP changes at issue were material.

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[7] We will frequently refer to three different decisions that would typically be cited as "*Raytheon*" after first being cited. To differentiate them, we use "*Raytheon 2015*" to refer to *Raytheon Co., Space & Airborne Sys.*, ASBCA No. 57801 *et al.*, 15-1 BCA ¶ 36,024; "*Raytheon 2016*" to refer to *Raytheon Co., Space & Airborne Sys.*, ASBCA No. 58068, 16-1 BCA ¶ 36,484 and "*Raytheon 2017*" to refer to *Raytheon Co.*, ASBCA No. 57743 *et al.*, 17-1 BCA ¶ 36,724.

[8] At the hearing, SAIC's counsel conceded that SAIC bears the burden of demonstrating that the CACO abused her discretion in making her materiality determinations (tr. 1/23). In its post-hearing brief, however, SAIC asserts that the government bears the burden of demonstrating the "correctness" of the CACO's determinations, but relies on decisions addressing CAS non-compliances (gov't br. at 74-75). Here, the issue is not CAS non-compliance. Indeed, SAIC's CAP changes were found to be CAS compliant (finding 8). We follow our precedent that the contractor bears the burden to demonstrate abuse of discretion.

SAIC's own GDMs satisfy the other two elements. The GDMs acknowledged increased costs from the five CAP changes and calculated their amounts as required by FAR 30.604(e) and (h), 52.230-6(d)-(f) (finding 10). SAIC confirmed the GDMs' accuracy and calculation method (finding 16). The parties ultimately agreed on the increased cost amounts after the CFAO corrected for double-counting (finding 15). SAIC's submissions, therefore, establish that the CAP changes at issue resulted in increased costs (as defined in the regulations) and the amount of those increased costs.

SAIC's argument that the government must prove actual payment of increased costs is incorrect for at least three reasons. First, the relevant regulations and contract clause prescribe calculating increased costs based on estimated costs to complete, not actual payments. FAR 30.604(e), (h); 52.230-6(d)-(f). Specifically, SAIC was to "calculate the cost impact" of its unilateral CAP changes by determining the difference between "the estimated cost to complete" its affected contracts "using the changed practice" and "using the current practice." FAR 30.604(h)(3); 52.230-6(d)-(f). The government is entitled to recover the increased costs calculated in that manner. There is no separate step requiring the government to show actual payments.

Second, the regulations provide for adjustments that "preclude payment" of increased costs resulting from unilateral CAP changes. FAR 30.606(c)(3)(ii). Ms. Ramos effectively precluded payment of the increased costs that SAIC calculated it would incur because of the changes by requiring SAIC to pay that amount. The government cannot be required to prove payments that have already been precluded.

Third, requiring proof of actual increased payments as a result of a CAP change would be unworkable for both fixed-price and flexibly-priced contracts. For fixed-price contracts, "increased costs" represent contractor savings achieved through CAP changes, not additional payment from the government. *See* FAR 30.604(h)(3)(ii)(A). Requiring proof of payment would thus prevent recovery on these contracts, contrary to the obvious regulatory intent. For flexibly-priced contracts, a proof of payment requirement would necessitate burdensome and impractical tracking of actual costs under both the old and new practices so that the difference could be calculated. This would largely, if not entirely, negate the benefit of making the CAP change. (*See also* tr. 3/28 (CFAO: trying to determine actual payments "will be a wrong calculation."))

For these reasons, we conclude that the government's burden does not include introducing evidence of payments of increased costs beyond the contractor's own calculation of those costs in the prescribed manner.[9]

[9] We need not address whether the contractor may attempt to demonstrate that its calculation of the increased costs proved inaccurate. Even if it were permissible to contest the amount of the government's recovery in that way, SAIC has not done so here. While an SAIC witness speculated that a "rate cap"

### E. SAIC Failed to Demonstrate the CFAO Abused Her Discretion

To prevail on its immateriality defense, SAIC must demonstrate that the CFAO abused her discretion in finding the cost impacts material. *Pratt & Whitney*, 22-1 BCA ¶ 38,104 at 185,086; *Raytheon 2017*, 17-1 BCA ¶ 36,724 at 178,846; *Raytheon 2016*, 16-1 BCA ¶ 36,484 at 177,774. This requires showing that the CFAO's decision was arbitrary, capricious, or unreasonable. *27-35 Jackson Ave LLC*, 127 F.4th 1314, 1319 (Fed. Cir. 2025).

We consider the following factors: (1) subjective bad faith, (2) a reasonable, contract-related basis for the decision, (3) the scope of discretion granted, and (4) compliance with statutes and regulations. *Campbell Plastics Eng'g & Mfg., Inc. v. Brownlee*, 389 F.3d 1243, 1250 (Fed. Cir. 2004); *U.S Fidelity & Guaranty v. United States*, 676 F.2d 622 at 630-31; *Raytheon 2016*, 16-1 BCA ¶ 36,484 at 177,774. Not all factors need to be present to establish an abuse of discretion. *Raytheon 2017*, 17-1 BCA ¶ 36,724 at 178,846 (citing *Prineville Sawmill Co. v. United States*, 859 F.2d 905, 911 (Fed. Cir. 1988). While our review is narrow, the CFAO must have examined relevant data and articulated a satisfactory explanation for her action. *Left Hand Design Corp.*, ASBCA No. 62458, 24-1 BCA ¶ 38,698 at 188,141; *Raytheon 2017*, 17-1 BCA ¶ 36,724 at 178,854.

SAIC does not allege subjective bad faith, and the record supports this (finding 53). Therefore, our analysis focuses on the remaining factors.

#### a. *The CFAO's Considerable Discretion*

The degree of proof required to demonstrate an abuse of discretion is related to the amount of discretion afforded to the contracting officer by statute and regulation. *Raytheon 2017*, 17-1 BCA ¶ 36,724 at 178,846 (citing *Keco Indus. v. United States*, 492 F.2d 1200, 1204 (Ct. Cl. 1974)). This Board has consistently recognized the CFAO's considerable discretion in making materiality determinations regarding cost increases from unilateral CAP changes. *Raytheon 2016*, 16-1 BCA ¶ 36,484 at 177,773 (CFAO has a "great deal of discretion" in making these determinations).

The CFAO's discretion is constrained primarily by the requirement to consider the six CAS Materiality Criteria. However, even this requirement allows for flexibility. Indeed, in promulgating § 9903.305, the CAS Board stated "the essence of

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on one flexibly-priced NASA contract might have limited the government's recovery of increased costs on that contract (tr. 1/99-100), that speculation is insufficient to undermine the accuracy of SAIC's calculations of the increased costs.

materiality is to allow for the exercise of judgment." 45 Fed. Reg. 8678 (Feb. 8, 1980); 42 Fed. Reg. 54254 (Oct. 5, 1977) ("The essence of materiality criteria is to allow for the [exercise] of judgment . . . ."). This is reflected by the express qualifications that each criterion applies only "where appropriate" and no single criterion is determinative. 48 C.F.R. § 9903.305. Thus, the regulation allows the CFAO to weigh the criteria as she deems appropriate. As we have said, "[b]ecause 'no one criterion is necessarily determinative' it follows that one criterion could, in fact, be determinative. Thus, a contracting officer presumably could consider all of these factors and determine that the amount of the cost impact so outweighs all the other factors that it alone is determinative." *Raytheon 2016*, 16-1 BCA ¶ 36,484 at 177,773-74 (quoting 48 C.F.R. § 9903.305).

Recognizing that the CFAO has broad discretion aligns with the regulatory scheme. As we have explained, "the CAS Board's materiality regulation should be understood as an attempt to identify factors that assist in determining whether the amount of money at issue is significant enough for it to be worthwhile to recover." *Raytheon 2015*, 15-1 BCA ¶ 36,024 at 175,958; *see also id.* ("the goal of the cost accounting standards is to be 'reasonable and not seek to deal with insignificant amounts of cost'") (quoting Cost Accounting Standards Board, Statement of Operating Policies, Procedures, and Objectives, 38 Fed. Reg. 6122 (Mar. 6, 1973)). The CFAO, who is most familiar with the contractor's portfolio and the competing management priorities, is best positioned to determine whether a given amount is worth pursuing, justifying broad discretion.

b. *The CFAO's Decision Had a Reasonable, Contract-Related Basis.*

SAIC has not demonstrated that Ms. Ramos's materiality determinations lacked a reasonable, contract-related basis. As detailed above, by statute, regulation and contract clause, SAIC is not entitled to make unilateral cost accounting practice changes that increase the costs to the government unless those amounts are deemed immaterial. The materiality regulation aims to identify whether the amounts at issue are significant enough to warrant recovery. *Raytheon 2015*, 15-1 BCA ¶ 36,024 at 175,958; *see also Sikorsky Aircraft Corp. v. United States*, 773 F.3d 1315, 1324 (Fed. Cir. 2014) ("'material' refers to a significant amount").

Given this framework, the CFAO's materiality determination was reasonable. SAIC offers no evidence demonstrating otherwise. The CFAO based her decision on her understanding of her role as a "steward of the taxpayer" and her "business acumen" (*see* finding 22). Overturning her determination would require substituting this Board's judgment for hers, which is impermissible. *Raytheon 2017*, 17-1 BCA ¶ 36,724 at 178,854.

While SAIC conducted its own immateriality analysis, which it unsurprisingly prefers over the CFAO's, the Board's role is not to choose between competing analyses but to assess the reasonableness of the CFAO's approach. While other CFAO's might have reached different conclusions, the question is whether *this* CFAO's decision was reasonable under the circumstances. We conclude that it was.

c. *The CFAO Did Not Violate a Statute or Regulation*

i. Ms. Ramos Used and Considered the CAS Materiality Criteria

SAIC contends that Ms. Ramos violated the regulatory requirement that she consider the CAS Materiality Factors and instead simply relied on an inapplicable $10,000 threshold. Our factual findings are to the contrary (*see generally* finding 12).

"Consider" means to carefully think about something, especially regarding a course of action. Merriam-Webster, https://www.merriam-webster.com/dictionary/consider; *see also* BLACK'S LAW DICTIONARY, 306 (6th ed. 1990) ("To fix the mind on, with a view to careful examination, to examine, to inspect. To deliberate and ponder over. To entertain or give heed to."). The CFAO's final MFR and testimony confirm she carefully considered each of the six criteria in her materiality determinations. Unlike *Raytheon 2016*, where the CFAO "simply disregard[ed]" the criteria, 16-1 BCA ¶ 36,484 at 177,774, here, the CFAO demonstrably considered them (findings 12, 14, 16, 20-21, 23, 25).

We view SAIC's arguments as essentially objecting to *the way* in which Ms. Ramos considered the CAS Materiality Criteria and contending that Ms. Ramos did not "properly" consider them. The regulations do not prescribe the specific manner of consideration, granting the CFAO latitude to apply them "where appropriate." 48 C.F.R. § 9903.305. Accordingly, the CFAO's approach did not violate her obligation to consider the criteria.

SAIC argues that the CFAO essentially disregarded criteria B (amount of cost compared to amount under consideration) and C (relationship between a cost item and cost objective). The CFAO acknowledged the very small impacts relative to SAIC's portfolio and the changes' effect on indirect costs. She reasonably explained, however, why she found these criteria were not particularly probative of materiality in this instance, given SAIC's size and the nature of the CAP changes (findings 27, 29, 32-33).[10] Her reasoning, focusing on whether recovery was worthwhile, did not

[10] To be sure, a CFAO could find that criteria B and C are significant in determining materiality in connection with a particular CAP change. SAIC has not demonstrated, however, that Ms. Ramos was required to find the CAP changes at issue here to be immaterial based on criteria B and C.

constitute disregarding these criteria but rather weighing them appropriately within her discretion.

SAIC also faults Ms. Ramos's conclusion as to Criterion B because she compared the amount of increased costs to the G&A base for [redacted] rather than to SAIC's entire contract backlog. Ms. Ramos's explanation that she considered the former more relevant than the latter, was not unreasonable (finding 27). In any event, to the extent this was an error, it was not prejudicial to SAIC because there is no reason to believe doing it SAIC's way would have changed the outcome in any way. *See Raytheon 2015*, 15-1 BCA ¶ 36,024 at 175,957 (failure to consider all factors for determining "desirability" of a CAP change not an abuse of discretion where contractor did not contend failure made a difference in the outcome). *See also DCX, Inc. v. Perry*, 79 F.3d 132, 135 (Fed. Cir. 1996) (failure to consider factors required before termination for default does not require a finding of abuse of discretion).

SAIC also criticizes the CFAO's conclusion that Criterion E is inapplicable. Criterion E calls for consideration of the "cumulative impact of individually immaterial items" and whether the impacts tend to offset one another or tend to be in the same direction. 48 C.F.R. § 9903.305(e). The CFAO considered but did not apply this criterion because she analyzed each CAP change individually, as SAIC itself advocated, and because the changes involved both cost increases and decreases (finding 42). SAIC's argument that she should have considered the net effect of all eleven CAP changes is contrary to FAR 30.606(a)(3)(ii), which prohibits offsetting the cost impacts of one or more unilateral changes unless all impacts are cost increases. *See Raytheon 2015*, 15-1 BCA ¶ 36,024 at 175,954-55 (rejecting contractor's challenge to validity of FAR 30.606(a)(3)(ii)). Here, the cost impacts were both increases and decreases (finding 42).

ii. The Materiality Determinations Were Not Based on an Arbitrary $10,000 Threshold

SAIC contends that the CFAO improperly used a $10,000 threshold instead of the CAS Materiality Criteria. While applying a fixed monetary threshold in place of the CAS Materiality Criteria would likely contravene the CFAO's obligations, that is not what happened here (findings 48-50).

The CFAO referenced the $10,000 penalty waiver provision in FAR 42.709-6(b), which requires contracting officers to waive penalties for the inclusion of unallowable costs in incurred cost submissions if the "amount of the unallowable costs . . . is $10,000 or less . . . ." It was not unreasonable to consider that provision to be an indication that the FAR drafters viewed amounts less than $10,000 to be *de minimis* in a somewhat analogous situation—contractor actions potentially increasing government

costs. The CFAO acknowledged the lack of direct analogy and used the $10,000 figure merely as a starting point to guide her application of her "business acumen" after considering the criteria (findings 48-50).

Considering the record as a whole, including Ms. Ramos's MFR and her extensive live and deposition testimony and her demeanor during the hearing, Ms. Ramos' explanation as to how she considered the criteria and used the $10,000 figure merely as a guide was entirely credible.[11] SAIC has not shown that the manner in which she did so violated any law or contract provision.

iii. The Materiality Determinations Were Adequately Documented

SAIC contends that Ms. Ramos' materiality determinations were not based on "adequate documentation," as required by FAR 30.602(b)(2) (app. br. at 86). SAIC claims that Ms. Ramos "did not obtain sufficient information to determine materiality under the CAS Materiality Criteria . . ." (*id.* at 91). But SAIC itself admits that its submissions provided the government with all necessary data and documentation for assessing materiality (*id.*) ("SAIC provided the Government with all data and documentation needed for the CACO to assess materiality based on the CAS Materiality Criteria . . ."). We agree that this information was adequate and find that the CFAO conducted a reasonable review of it (finding 12). SAIC's contentions that she was required to take additional steps (e.g., reviewing individual contracts, consulting with the contracting officers on the individual contracts, holding additional meetings with SAIC) are not supported by the regulations or contract clauses and were reasonably deemed unnecessary.

SAIC also challenges the adequacy of the CFAO's written analysis, citing the requirements for a "determination and findings." FAR 30.601(a)(2) (referencing FAR 1.704). We find the CFAO's MFR satisfies these requirements, providing

[11] SAIC's post-hearing brief suggests that Ms. Ramos' testimony should be rejected because it is "*post hoc*" (app. br. at 88 n.9). It relies on decisions involving bid protests, where the deciding tribunal's review is generally limited to the administrative record as of the time of the decision. *See id.*, citing, *e.g.*, *CRAssociates, Inc. v. United States*, 95 Fed. Cl. 357, 376 (2010) ("Other courts conducting APA reviews have limited their consideration of an agency's decision to the analysis and rationale appearing in the administrative record as of the time of the decision, holding that '[a]ny *post hoc* rationales an agency provides for its decision are not to be considered.'"). This appeal, in contrast, is a *de novo* proceeding, albeit one where we apply an abuse of discretion standard. In any event, the CFAO's testimony did not offer new, *post hoc* rationales for her materiality determinations, but rather elaborated on the rationales set forth in her MFR.

sufficient facts and reasoning to clearly and convincingly justify the materiality determinations (finding 52).

iv. Other Alleged Procedural Violations Were Not Prejudicial

Only procedural violations that prejudiced SAIC can amount to an abuse of discretion. *Todd Constr., L.P. v. United States*, 656 F.3d 1306, 1315-16 (Fed. Cir. 2011) (where "alleged procedural violations" do not violate "fundamental procedural rights," contractor is required to show harm); *see also Raytheon 2017*, 17-1 BCA ¶ 36,724 at 178,846; *Raytheon 2015*, 15-1 BCA ¶ 36,024 at 175,957-59.

SAIC argues that the CFAO's requirement that SAIC pay the increased costs via a single payment rather than by adjusting specific contracts was improper because she did not secure SAIC's consent. The CFAO may resolve a cost impact resulting from a unilateral CAP change by "adjusting a single contract, several but not all contracts, all contracts, or any other suitable method." FAR 30.606(a)(2). The CFAO may only use a method other than contract adjustment if "the contracting parties agree on the use of that alternate method." FAR 30.606(d)(1). Ms. Ramos did not seek or obtain SAIC's agreement to pay by EFT rather than contract modifications, on the assumption that SAIC would prefer to pay by EFT because it is less burdensome and SAIC had done so in the recent past in a similar situation (findings 45-46). To the extent this was a regulatory violation, it did not prejudice SAIC. SAIC introduced no evidence that, if asked, it would have declined to again pay by EFT, nor has it offered any reason why it would have preferred to compensate the government through the contract modification process (potentially requiring dozens or hundreds of contract modifications) rather than a single payment. (*See* R4, tab 9 at G-201-02 (SAIC arguing that "[t]he cost to adjust the price of all 793 CAS-covered contracts is immeasurable."); finding 47)

SAIC also contends that the CFAO violated a requirement that she coordinate with contracting officers whose CAS-covered contracts were affected by a CAP change by $100,000 or more. FAR 30.606(a)(1). Again, SAIC has failed to show prejudice. SAIC identifies one contract affected by more than $100,000, but offers only speculation that a rate cap on that contract would have limited the extent to which the government ultimately paid SAIC for the estimated increased costs.

## F. The CFAO Properly Required SAIC to Pay Compound Interest But Used an Incorrect Accrual Date

SAIC challenges the government's imposition of interest. By statute and contract clause, a contractor must pay interest on increased costs resulting from its unilateral CAP changes. 41 U.S.C. § 1502(f)(2) (contractor must "agree to a contract price adjustment, with interest, for any increased costs paid . . . because of a [CAP]

change . . ."); FAR 52.230-2(a)(5) (contractor must agree to contract adjustments which "shall provide for recovery of the increased costs to the United States, together with interest thereon . . . ."). The applicable interest rate is the annual rate established by 26 U.S.C. § 6621(a)(2). 41 U.S.C. § 1503(c); FAR 52.230-2(a)(5). Such interest is "compounded daily." 26 U.S.C. § 6622(a). *See Gates v. Raytheon Co.*, 584 F.3d 1062, 1070 (Fed. Cir. 2009), *rehearing and rehearing en banc denied*, 636 F.3d 1363 (Fed. Cir. 2011); *Raytheon 2015*, 15-1 BCA ¶ 36,024 at 175,960. Interest accrues "from the time payments of the increased costs were made" until "the Federal Government received full compensation for the price adjustment." 41 U.S.C. § 1503(c); *see also* FAR 52.230-2(a)(5) (interest runs "from the time the payment by the United States was made to the time the adjustment is effected.").

SAIC correctly observes that there is no evidence establishing when the government paid any of the increased costs resulting from the CAP changes. As we discussed above, identifying specific payments that included any of the increased costs is impossible for fixed-price contracts and impracticable for flexibly-priced contracts. SAIC argues that the government's failure to establish the time of any such payment precludes it from recovering any interest. We disagree, because the CAP changes certainly resulted in increased costs within the meaning of the regulations, and interest on those amounts is required.

The government argues that interest should begin accruing at the mid-point of the fiscal year in which SAIC's CAP changes became effective, which was FY19 (gov't br. at 46-47). This likely overstates interest, as it assumes all increased costs were paid in FY19, despite SAIC's calculation of the cost impact over four years. This approach would unfairly charge interest on amounts SAIC had not yet received. *See Raytheon 2015*, 15-1 BCA ¶ 36,024 at 175,960.

A fairer approach is to accrue interest on one-fourth of the total increased costs at the midpoint of each of the four fiscal years following the changes' effective date. This fulfills the interest requirement, avoids the unfairness of the government's approach, and satisfies the requirement that damages be established with reasonable certainty. *Precision Pine & Timber, Inc. v. United States*, 596 F.3d 817, 833 (Fed. Cir. 2010).[12]

[12] The government, however, cannot also recover Contract Disputes Act interest, as demanded in the contracting officer's final decision.

## CONCLUSION

We have considered all of the parties' arguments, even if not specifically addressed herein. The appeal is denied, except that interest on the amount SAIC owes to the government shall be calculated in the manner described above.

Dated: May 27, 2025

THOMAS P. McLISH
Administrative Judge
Armed Services Board
of Contract Appeals

I concur

OWEN C. WILSON
Administrative Judge
Acting Chairman
Armed Services Board
of Contract Appeals

I concur

MICHAEL N. O'CONNELL
Administrative Judge
Vice Chairman
Armed Services Board
of Contract Appeals

I certify that the foregoing is a true copy of the Opinion and Decision of the Armed Services Board of Contract Appeals in ASBCA No. 63509, Appeal of Science Applications International Corporation, rendered in conformance with the Board's Charter.

Dated:

PAULLA K. GATES-LEWIS
Recorder, Armed Services
Board of Contract Appeals