



DEFENSE CONTRACT AUDIT AGENCY
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May 26, 2009

Mr. Raymond Wong
Cost Accounting Standards Board
Office of Federal Procurement Policy
725 17th Street, NW, Room 9013
Washington, DC 20503

SUBJECT: Federal Register April 23, 2009, Notice of Request for Information: CAS 2009
Overseas Exemption

Dear Mr. Wong:

The Defense Contract Audit Agency is pleased to have the opportunity to respond to the Notice of Request for Information regarding the retention or elimination or revision to the CAS exemption provided at 48 CFR 9903.201-1(b)(14) for contracts executed and performed entirely outside the United States, its territories, and possessions. The Notice solicits information and comments on the "overseas exemption" from interested parties. We are providing our comments below.

It is our opinion that from the pure accounting perspective, the place of contract execution and performance should not have any bearing on the fundamental principles and methods used to account for costs of contract performance. The primary objective of the Cost Accounting Standards is to achieve increased consistency and uniformity in the cost accounting practices used by Government contractors. Exempting contracts from the CAS solely based on the fact that they are executed and performed outside the United States does not achieve that primary objective. In addition, contract costs and prices, if exempt from the CAS, could be increased due to the contractor's failure to consistently follow its accounting practice and the Government may have no recourse against such increased costs.

While the CAS promote consistency and uniformity and provide certain protection to the Government, there are other issues and concerns that must be considered in evaluating the retention or elimination or revision to the current "overseas exemption" at 48 CFR 9903.201-1(b)(14).

We believe that the current overseas exemption at 48 CFR 9903.201-1(b)(14) would not exempt the vast majority of U.S. firms from the CAS due to the fact that some costs would be incurred within the United States, thereby failing to meet the exemption criterion. Therefore, the


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potential elimination of the "overseas exemption" would not affect the CAS coverage of U.S. firms. However, foreign concerns performing entirely outside the United States as subcontractors to U.S. firms are exempt from the CAS under the (b)(14) exemption. If this exemption is eliminated, these foreign subcontractors will become subject to the "foreign concerns exemption" at 48 CFR 9903.201-(b)(4), i.e., subject to CAS 401 and 402. The applicable CAS clause for contracts and subcontracts with foreign concerns requires contract price adjustments if the contractor's or subcontractor's failure to consistently follow its accounting practice results in increased cost paid by the U.S. Government. However, we are concerned that these foreign subcontractors' accounting practices are not always adequately defined and that the prime contractor's oversight responsibility for ensuring its foreign subcontractors' CAS compliance is not clearly understood and properly executed. In addition, some foreign subcontractors providing support for the ongoing wars would not likely perform work under U.S. Government contracts but for the war. Accordingly, questions will arise, as practical matters, as to whether the benefit of the CAS to the Government would outweigh the cost of requiring and administering CAS requirements to these foreign subcontractors who would not otherwise provide goods or services to the U.S. Government but for the war.

If it is determined that the CAS application to foreign subcontracts is warranted, then we recommend that the CAS clause be strengthened to clearly require the prime contractor to enforce CAS compliance by its foreign subcontractors. Such enforcement could include the requirement for the prime contractor to perform an evaluation of its subcontractor's CAS compliance and provide a copy of the evaluation report to the Contracting Officer. It could also include the Government's right to examine the subcontractor's records relating to compliance with the requirements of the CAS clause if the prime contractor fails to provide its evaluation report of the subcontractor's CAS compliance.

In summary, we believe that elimination of the CAS exemption at 48 CFR 9903.201-1(b)(14) will have little or no impact on U.S. firms. We believe that those most affected by the elimination of the overseas exemption will be foreign concerns that are subcontractors to U.S. prime contractors. If it is decided to eliminate the overseas exemption and continue CAS applicability to foreign subcontractors, we recommend that the applicable CAS clause be strengthened to clarify CAS oversight responsibility.

We appreciate your consideration of our comments. Please direct any questions regarding this memorandum to Ms. Fran Cornett, Chief, Accounting and Cost Principles Division at (703) 767-3250.


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