

January 18, 2013

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

Via Email: casb2@omb.eop.gov

SUBJECT: Comments on CAS Board (b)(6) Commercial Item Exemption

Dear Mr. Wong:

The Project On Government Oversight (POGO) provides the following public comment to the Cost Accounting Standards (CAS) Board (b)(6) commercial item exemption proposed rule. (77 Fed. Reg. 69422, November 19, 2012). As an independent nonprofit organization committed to achieving a more accountable and transparent federal government, POGO has a longstanding interest in federal contracting issues.

POGO is pleased to provide comments on the CAS Board proposed rule exempting contracts and subcontracts for the acquisition of commercial items from the CAS (48 C.F.R. 9903.201-1(b)(6)). We do not agree with the proposed exemption as there is no compelling reason to make the change and it increases the risk of overpayments on contracts and subcontracts for commercial item acquisitions. If the Board decides to implement the exemption, we strongly urge the Board to develop cost accounting standards and disclosure statement requirements for commercial item acquisitions as required by the Conference Report language under the Federal Acquisition Reform Act (FARA) of 1996 (Pub. L. 104-106).

As discussed in the Preamble to the proposed rule, the CAS Board has historically recognized the requirement in the FARA Conference Report to promulgate standards for commercial item acquisitions. The Board had previously decided that there was no need to promulgate standards as long as the CAS Board exemption for commercial item acquisitions did not involve reimbursement based on actual cost such as economic price adjustment based on cost or cost-type contracts (which is currently an inappropriate type of contract for commercial items under the Federal Acquisition Regulation (FAR)). However, in the proposed rule, the Board plans to exempt any and all types of commercial item acquisitions regardless of contract type (or subcontract type) while ignoring the requirement to promulgate cost accounting standards for commercial items. Implementing the blanket exemption for any type of contract or subcontract for the acquisition of commercial items unnecessarily exposes the government to increased risk of overcharges on commercial item contracts as there is no guiding set of accounting principles by which to govern the measurement, assignment, and allocation of costs. Congress was concerned about the lack of cost accounting standards for commercial items when it required the Board to promulgate such standards in the FARA.

Although the current exemption at 9903.201-1(b)(6) may appear lengthy, the Board has previously made a conscious decision to exempt only certain types of contracts and subcontracts for the acquisition of commercial items. However, the current Board has proposed to deviate from past history while offering no substantive justification for the change, and nothing seems to warrant such a change. The Board has historically adopted the practice of modifying CAS Board rules and standards only when there is a compelling reason. The proposed exemption is a deviation from serving as an accounting-standards setting body to one of pure procurement policy-making. The various boards and courts have long held that policy making rests with the Federal Acquisition Regulation issuing agencies, whereas the CAS Board's authority relates to the measurement, assignment, and allocation of costs on government contracts and subcontracts, particularly where contract cost is a factor in determining prices and/or amounts paid by the government.

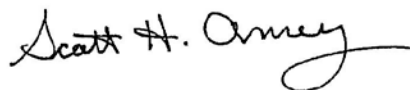
Although the current FAR permits only certain types of contracts and subcontracts to be used for commercial item acquisitions, that policy could change at any time. If the policy was changed to include cost-type contracts where cost reimbursement is dependent on contractors' cost accounting systems and the CAS Board has not promulgated standards governing the measurement, assignment, and allocation of costs, the government will be at mercy of contractors accounting systems when reimbursing costs. Since there is currently no requirement for a cost accounting system for commercial item contracts and subcontracts, the government will be blindly reimbursing and/or paying contractors for "costs." If CAS Board's proposed exemption were in place, it will be too late for the Board to promulgate cost accounting standards for commercial item acquisition at that time. If the Board were to continue its prior practice of exempting only certain types of commercial item contracts and subcontracts from CAS and only those types not involving reimbursement or pricing based on actual costs, the Board will be in a better position to protect taxpayers from overcharges on commercial item contracts when (or if) the FAR revises the type of contracts that may be used for commercial item acquisitions.

POGO urges the Board to further consider the risk of overcharges on subcontracts for commercial item acquisitions. Under the current CAS Board exemptions, subcontracts for commercial item acquisitions may be exempt from CAS under certain circumstances even when the prime contract is not exempt from CAS. Given the lack of visibility afforded the government on subcontract costs absent CAS, the government will be at an even greater risk by exempting all commercial item subcontracts from CAS.

We strongly urge the Board to reject the proposed rule. It appears to be little more than a backdoor attempt to even further widen the already overbroad CAS exemptions that have unwisely been promulgated.

Thank you for your consideration of these comments.

Sincerely,

A handwritten signature in black ink that reads "Scott H. Amey". The signature is written in a cursive, flowing style.

Scott H. Amey
General Counsel