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November 8, 2011

**VIA REGULATORY PORTAL and ELECTRONIC MAIL**

Office of Federal Procurement Policy  
Attn: Raymond J.M. Wong  
725 17<sup>th</sup> Street, NW, Room 9013  
Washington, DC 20503  
Email: casb2@omb.eop.gov

**Re: Clarification of the Exemption From Cost Accounting Standards for Firm-Fixed-Price Contracts and Subcontracts Awarded Without Submission of Certified Cost or Pricing Data, 76 Fed. Reg. 61660 (Oct. 5, 2011)**

Dear Mr. Wong:

On behalf of the Section of Public Contract Law ("Section") of the American Bar Association ("ABA"), I am submitting comments on the above-referenced rulemaking: Clarification of the Exemption From Cost Accounting Standards for Firm-Fixed-Price Contracts and Subcontracts Awarded Without Submission of Certified Cost or Pricing Data, 76 Fed. Reg. 61660 (Oct. 5, 2011) (referred to herein as the "(b)(15) FFP exemption"). The Section consists of attorneys and associated professionals in private practice, industry, and government service. The Section's governing Council and substantive committees have members representing these three segments, to ensure that all points of view are considered. By presenting their consensus view, the Section seeks to improve the process of public contracting for needed supplies, services, and public works.<sup>1</sup>

The Section is authorized to submit comments on acquisition regulations under special authority granted by the ABA's Board of Governors. The views expressed herein have not been approved by the House of Delegates or the Board of

<sup>1</sup> The Honorable Thomas C. Wheeler, a member of the Section's Council, did not participate in the Section's consideration of these comments and abstained from the voting to approve and send this letter.

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Governors of the ABA and, therefore, should not be construed as representing the policy of the ABA.<sup>2</sup>

On October 5, 2011, the Office of Federal Procurement Policy (“OFPP”) issued a proposed rule to amend 48 C.F.R. § 9903 of the Cost Accounting Standards (“CAS”). 76 Fed. Reg. 61660 (Oct. 5, 2011). The proposed rule amends the “(b)(15) FFP exemption,” which currently exempts from CAS “[f]irm-fixed-price contracts and subcontracts awarded on the basis of adequate price competition without submission of *cost or pricing data*.” See 48 C.F.R. § 9903.201-1(b)(15) (emphasis added). The proposed rule amends the “(b)(15) FFP exemption” by inserting the word “certified” before “cost or pricing data.” As explained by the drafters of the proposed rule, recent revisions to FAR 2.101 necessitated a revision to the “(b)(15) FFP exemption” to avoid any confusion relating to “cost or pricing data.” 76 Fed. Reg. at 61661.

The Section supports and appreciates OFPP’s conscientious efforts in amending CAS to clarify the “(b)(15) FFP exemption.” As recognized by the drafters, the proposed rule will clarify the Cost Accounting Standards Board’s original intent to exempt firm-fixed-price contracts and subcontracts from CAS when certified cost or pricing data is not required. The Section encourages OFPP to continue examining areas where CAS can be amended to further clarify its requirements, reduce compliance costs, and more clearly effectuate the Cost Accounting Standards Board’s intent.

The Section is available to provide additional information or assistance as you may require.

Sincerely,



Carol N. Park-Conroy  
Chair, Section of Public Contract Law

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<sup>2</sup> This letter is available in .pdf format at <http://www.abanet.org/contract/regscomm/home.html> under the topic “Cost Allowability and Cost Accounting.”

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November 8, 2011  
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cc:

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David G. Ehrhart  
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Kara M. Sacilotto