

CAS Board – 65th Meeting
March 24, 2011

Chairman Daniel Gordon, the Administrator of the Office of Federal Procurement Policy (OFPP), convened the 65th meeting of the Cost Accounting Standards (CAS) Board (CASB) on March 24, 2011 at 1:00 pm EST. The meeting was held in the Eisenhower Executive Office Building in Washington, DC. Board Members Patrick Fitzgerald, Kathleen Turco, Bruce Timman and Richard Wall were in attendance. Also attending the meeting were Raymond Wong, CASB Director; and Eric Shipley, CASB Staff.

Agenda Items:

CAS 416, Catastrophic Insurance

Mr. Shipley briefed the CASB on the Staff Discussion Paper (71 FR 4335, January 26, 2006) and the two public comments that responded. After some discussion, the CASB decided to discontinue its review of catastrophic losses, and directed the Staff to draft a *Federal Register* Notice to that effect.

CAS Pension Harmonization

Mr. Shipley briefed the CASB on an issue identified by the Working Group as it edited the working draft which requires input from the CASB. The CASB discussed the options identified by the Working Group, and directed the Working Group to implement the decision made by the CASB. The CASB directed the Staff to consult with select agencies on a minor technical matter. The CASB directed the Working Group to incorporate the CASB's decision on the issue into the final draft of the *Federal Register* Notice.

CAS (b)(14) Overseas Exemption

Mr. Wong briefed the CASB on the draft *Federal Register* Notice which implements the CASB's decision on how to proceed with the CAS (b)(14) overseas exemption, and the responses to the public comments. The CASB will provide any edits or comments within a week.

CAS 403, Allocation Thresholds for Home Office Expenses

Mr. Wong briefed the CASB on the Staff Discussion Paper published in the *Federal Register* (73 FR 8260, February 13, 2008) and the three public comments that responded. After some discussion, the CASB decided to discontinue its review of the CAS 403 allocation thresholds that trigger the use of the three-factor formula for the allocation of home office expenses, and directed the Staff to draft a *Federal Register* Notice to that effect.

CAS (b)(15) Firm-Fixed Price Contract Exemption (Cost or Pricing Data)

Mr. Wong briefed the CASB on the recent FAR amendment which clarified the distinction between “certified cost or pricing data” and “data other than certified cost or pricing data,” and the requirements for the submission of cost or pricing data (75 FR 53135, August 30, 2010). CAS uses the phrase “cost or pricing data” in the CAS exemption at 48 CFR 9903.201-1(b)(15), “firm-fixed-price contracts or subcontracts awarded on the basis of adequate price competition without submission of cost or pricing data,” to mean cost or pricing data that has been certified. The CASB is concerned that the FAR amendment may have the unintended consequence of creating an ambiguity in the usage of the phrase “cost or pricing data” in CAS, and potentially causing a divergence between the CAS and FAR on the usage of the phrase “cost or pricing data.” After some discussion, the CASB directed the Staff to prepare a draft *Federal Register* Notice to consider whether it is necessary to reconcile the CAS usage of the phrase “cost or pricing data” with the FAR amendment which clarified the FAR usage of the various phrases associated with the phrase “cost or pricing data.”

CAS (b)(6) Commercial Item Exemption

Mr. Wong briefed the CASB on the CAS usage of the phrase “commercial item” and the evolution in the FAR of the definition of “commercial item” and the FAR usage of the phrase “commercial item.” CAS uses the phrase “commercial item” in the CAS exemption at 48 CFR 9903.201-1(b)(6), “firm-fixed-priced, fixed-priced with economic price adjustment (provided that price adjustment is not based on actual costs incurred), time-and-materials, and labor-hour contracts and subcontracts for the acquisition of commercial items.” Currently, the FAR definition and usage of the phrase “commercial item” is much broader than the CAS usage of the phrase. After some discussion, the CASB directed the Staff to prepare a draft *Federal Register* Notice to consider whether it is necessary to reconcile the CAS usage of the phrase “commercial item” with the FAR definition and usage of the phrase.

CAS Coverage and Hybrid Contracts

Mr. Wong briefed the CASB on inability of the CAS regulations to adequately address hybrid contracts. The CASB brainstormed the issues and directed that a Discussion Paper on the options be prepared. The Discussion Paper will be circulated internally for the CASB’s consideration.

Pension Segment Closing

Mr. Shipley briefed the CASB on several plan segment closing issues and a draft plan for a Working Group to develop the issues. The CASB discussed the general staffing needs for such a Working Group without making any decision.

Other Issues

EO 13563 (Retrospective Review of Regulations): The CASB discussed briefly the requirements of EO 13563 which requires each agency to develop plans to periodically review its significant regulations to determine whether any such regulations should be modified, streamlined, expanded, or repealed so as to make the agency's regulatory program more effective or less burdensome in achieving the regulatory objectives. Final plans are due to OIRA by May 18, 2011.

Computing a Cost Impact: The CASB discussed briefly some issues related to the computation of a cost impact, including the meaning of "in the aggregate" (i.e., offsets or netting) and multiple accounting changes that are implemented on the same day. The CASB determined that these are complex issues best handled by a Working Group. The CASB discussed the general staffing needs for such a Working Group without making any decision.

ATK Thiokol, Inc. v. U.S. (2009-5036 CAFC, March 19, 2010; and July 13, 2010): Mr. Wong briefed the CASB on the decision of the appellate court in *ATK Thiokol*. The issue before the appellate court was whether research and development (R&D) related to the performance of a contract, but not required by the specific terms of the contract, was independent R&D (IR&D). The court held that the phrase, "required in the performance of a contract," meant "specifically required by the provisions of a contract." Thus, R&D not specifically required by the terms of the contract, although required to complete performance on the contract, is IR&D and treated as indirect costs. The cost of IR&D is subject to CAS 420, Accounting for Independent Research and Development Costs and Bid and Proposal Costs.

Adjournment

The CASB Chair, Mr. Gordon, adjourned the meeting at 3:30 pm.

Minutes submitted by Raymond J. M. Wong, April 1, 2011.