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December 20, 2010

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

Subject: Cost Accounting Standards: Elimination of the Exemption from Cost Accounting Standards for Contracts Executed and Performed Entirely Outside the United States, its Territories, and Possessions

Dear Mr.Wong:

We appreciate the opportunity to comment on the proposed rule as published in the *Federal Register* on October 20, 2010. As a consulting firm which assists a broad range of government contractors with compliance issues, including those involving various interpretations of CAS including its applicability to foreign contracts and/or contractors, we believe that eliminating the long standing exemption will result in a substantial increase in administrative costs with no corresponding benefits, tangible or intangible. Our opinion is based upon our current experiences as consultants to US and foreign contractors and our experience which includes a combined total of 65 years auditing with the Defense Contract Audit Agency (DCAA) including a combined total of nine years auditing US and foreign contractors and subcontractors while assigned to DCAA's European Branch Office. Neither than nor now are the accounting systems or the underlying accounting principles of foreign contractors designed to readily accommodate US Government Contracts. In providing our comments, we believe that our diverse experience is highly relevant and unique given that we have viewed the issue of CAS regulations and compliance from all perspectives, that of contractors and that of the government.

Beason & Nalley, Inc.

Huntsville, AL
101 Monroe Street
Huntsville, Alabama
35801-4829
T: 256.533.1720
800.416.1946
F: 256.534.8558

Washington DC
11400 Commerce Park Dr.
Suite 220
Reston, Virginia
20191-1528
T: 703.860.8062
800.416.1946
F: 256.534.8558

www.beasonnalley.com

In reviewing the proposed elimination of the foreign exemption, in particular the conclusions, we defer any interpretations of the statutory basis for the rule to the CAS Board. However, with respect to the conclusion that there is "no accounting basis for the (b)(14) overseas exemption", we respectfully disagree. We note that this statement mirrors a statement made by DCAA in its May 26, 2009 comments to the CAS Board (SUBJECT: Federal Register April 23, 2009, Notice of Request for Information: CAS 2009 Overseas Exemption). Further within that letter, DCAA describes the difficulties encountered by foreign contractors (or primarily foreign subcontractors to a government prime contractor) presumably based upon audit experience with FAR compliance independent of CAS compliance. DCAA's solution; "Strengthen the CAS clause requiring prime contractors to enforce CAS compliance by its foreign subcontractors". As will be discussed herein, a solution of assigning a difficult if not unworkable contract administration responsibility to prime contractors which fails to recognize or consider that CAS and its administrative provisions are not written in a manner which is conducive to prime contractor enforcement of CAS compliance by subcontractors. Moreover inaccurately stating the prime contractor responsibilities given the fact that 48 CFR 9903.202-8 Subcontractor Disclosure Statement, recognizes that subcontractors may (will) consider their CAS DS as privileged or confidential in which case the entire adequacy and determination process reverts to the government (the ACO cognizant of the subcontractor). Hence, DCAA's assertion that CAS subcontract administration will reside with the prime contractor is inaccurate and overly simplistic and to some extent pusillanimous (in terms of DCAA's suggestion that CAS be strengthened vis-à-vis the assignment of an impossible task to the prime contractor).

As noted in the history of the overseas exemption, it dates back to 1973; hence, the entirety of the Cost Accounting Standards has been promulgated with absolutely no consideration to or for foreign companies or foreign cost accounting practices. It should be obvious that essentially no aspect of the CAS rulemaking process for the past 37 years has received any attention or any input from any contractor otherwise exempt "from all CAS requirements". Further, there is in fact an obvious "accounting basis" for continuing with the overseas exemption; specifically, the differences between the fundamental accounting principles, GAAP (US) as opposed to the IFRS. If there were no significant accounting differences between the two, the conversion to one standard set of accounting principles should have been an expeditious, routine process (or in basketball terminology, a "slam dunk"). The migration to one set of accounting principles has been anything but a "slam dunk".

Although Disclosure and Consistency of Cost Accounting Practices-Foreign Concerns appears to limit the CAS impact to CAS 401 and CAS 402, it also potentially invokes the requirements for a CAS Disclosure Statement along with the administrative provisions of CAS. These provisions are anything but innocuous or administratively cost neutral. Preparing a CAS Disclosure Statement, ultimately subjected to DCAA adequacy and compliance audits are time-consuming, iterative and costly processes with absolutely no predictably as to the date that a CAS DS (initial or revised) will be deemed adequate and compliant. There are presently hundreds of CAS Disclosure Statements in the queue awaiting DCAA audits or re-audits as DCAA strives for perfection (the perfect CAS DS including grammar, spelling, subjective preferences for verbiage, etc.) notwithstanding the fact that the CASB-1 is an arcane and outdated template. This very real and overwhelming problem of long delayed adequacy and compliance audits and ultimately the long delayed adequacy and compliance determinations by a CFAO applies almost exclusively to US companies attempting to complete a template ostensibly designed for US government contracts and contractors. It is a colossal miscalculation to assume or believe that this process will be anything but an administrative nightmare when imposed upon foreign contractors, using IFRS accounting principles, mapped to an outdated template designed for US companies using GAAP.

In terms of the potential administrative burden associated with foreign concerns becoming CAS compliant including the potential for a CAS DS, but at the very least to define and monitor established cost accounting practices, we again suggest that you consider the DCAA May 26, 2009 letter (to the CAS Board) in response to the Notice of Request for Information. Therein, DCAA makes note of the fact that the elimination of the exemption would primarily impact foreign concerns which are subcontractors to a US firm (the prime contractor). DCAA further notes that foreign concerns already have difficulty in adequately defining their accounting practices and may (will) have difficulty in understanding the CAS requirements such as the administrative requirements. DCAA accurately notes that "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". What DCAA fails to discuss is that the costs of requiring and administering CAS specific to a subcontract under a government prime contract will be entirely allocable and allowable as a direct cost to the subcontract and ultimately to the government prime contract. These direct costs will include the subcontractor administrative costs, the prime contractor administrative costs inclusive of preparing, revising, and tracking compliance with CAS 401, 402, a CAS DS (if applicable) and the burdensome administrative provisions of FAR Part 30. The subcontractor CAS administrative costs will be included in subcontractor cost proposals as well as subcontractor incurred costs and ultimately allocable to the government prime contract. Additionally, the Government should anticipate the need for government contract consultants (and consulting costs) to assist foreign concerns in preparing the initial CAS DS given that the entire process will be "foreign" to the foreign contractors, previously exempt from "all CAS requirements".

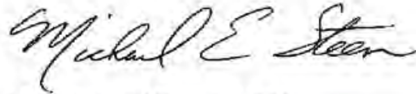
Finally, we acknowledge that in the overall context of government contracting, eliminating the (b)(14) exemption will have a very narrow impact in terms of the number of foreign concerns which are ultimately subject to Disclosure and Consistency of Cost Accounting Practices-Foreign Concerns. In particular, most government prime contractors will attempt to enter into subcontracts which are exempt from all CAS requirements under another 9903.201-1(b) subparagraph (e.g. (b)(15) or (b)(6)). For those subcontracts which are not exempt from CAS, the more "contract savvy" foreign concerns will simply refuse to contract inclusive of the CAS provisions; hence, generating requests for CAS waivers which here-to-fore have been rare (because the waiver was unnecessary). Certainly in any situation where the subcontractor is a sole source, it is unlikely that a knowledgeable foreign concern will willingly enter into a subcontract inclusive of the CAS 401/402 and the more ominous CAS administrative provisions. We believe that if the exemption is removed, the only foreign concerns which will be ensnared by the CAS requirements (enter into a subcontract with the CAS requirements) are those which are not particularly savvy and/or those which will have absolutely no intentions of meaningful compliance with the strange new and foreign requirement. All of this leaving the prime contractor dealing with a predictable if not assured failure to properly administer subcontracts

Conclusion

In summary, we fully understand the reasons why the CAS Board is proposing to eliminate the foreign exemption (b)(14) which is the Duncan Hunter National Defense Authorization Act for FY2009). As the impetus for this change, it is anything but a well-studied evaluation leading to any supportable conclusions of any measurable or meaningful improvement in the procurement process. Similarly, both DCAA and now the CAS Board are espousing nothing more than hypothetical assertions 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. At this point, it appears that those in favor of eliminating the foreign exemption are assuming that contracting

with the United States Government is so lucrative that foreign concerns will simply acquiesce to the strange new and foreign CAS requirements. As anyone who has audited or attempted to administer US government contracts with foreign concerns knows, it is not that simple nor predictable. In that context, we refer back to page two of DCAA's May 26, 2009 letter.

We appreciated your consideration of our comments. If we can be of further assistance on this matter, please contact either one of us.



Michael E Steen, CPA
Senior Managing Consultant
msteen@beasonnalley.com
256-533-1720

Darryl L. Walker, CPA, CFCM, CFA
Technical Director
dwalker@beasonnalley.com
256-533-1720