OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

48 CFR Part 9903

Cost Accounting Standards: Exemption From Cost Accounting Standards for Contracts Executed and Performed Entirely Outside the United States, Its Territories, and Possessions

AGENCY: Office of Management and Budget (OMB), Office of Federal Procurement Policy.

ACTION: Notice of request for information.

SUMMARY: The Office of Federal Procurement Policy (OFPP), Cost Accounting Standards (CAS) Board (CASB), invites public comments and information on a provision that provides an exemption from CAS for contracts and subcontracts that are executed and performed entirely outside the United States, its territories, and possessions (overseas exemption).

DATES: Responses must be in writing and must be received by May 26, 2009.

ADDRESSES: Due to delays in OMB's receipt and processing of mail, respondents are strongly encouraged to submit their responses electronically to ensure timely receipt. Submit your responses, identified by: CAS 2009 Overseas Exemption, by one of the following methods:

—*Federal eRulemaking Portal: http://www.regulations.gov.* Simply type ''CAS 2009 Overseas Exemption'' (without the quotes) in the Comment or Submission search box, click Go, and follow the online instructions for submitting responses.

—*E-mail:* Electronic responses may also be submitted to *casb2@omb.eop.gov.* Be sure to include your identifying information: Your name, title, organization, and reference case ''CAS 2009 Overseas Exemption.''

—*Facsimile:* Responses may also be submitted via facsimile to 202–395–5105. Be sure to include your identifying information.

—*Mail:* If you must submit your responses via regular mail, please mail them to: Office of Federal Procurement Policy, 725 17th Street, NW., Room 9013, Washington, DC 20503, ATTN: Raymond J. M. Wong. Be sure to include your identifying information. Be aware that due to the screening of U.S. mail to this office, there will be several weeks' delay in the receipt of mail. Respondents are strongly encouraged to submit responses electronically to ensure timely receipt.

Please note that all public responses received will be posted in their entirety, including any personal and/or business confidential information provided, after the close of the public comment period at *http://www.whitehouse.gov/omb/procurement_index_casb/* and *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Raymond J. M. Wong, Director, Cost Accounting Standards Board (telephone: 202–395–6805).

SUPPLEMENTARY INFORMATION:

A. Regulatory Process

Rules, Regulations and Standards issued by the Cost Accounting Standards Board (Board, CAS Board, or CASB) are codified at 48 CFR Chapter 99. The OFPP Act, at 41 U.S.C. 422(g), requires that the Board, prior to the establishment of any new or revised Cost Accounting Standards (CAS or Standards), complete a prescribed rulemaking process. The process generally consists of the following four steps:

1. Consult with interested persons concerning the advantages, disadvantages and improvements anticipated in the pricing and administration of Government contracts as a result of the adoption of a proposed Standard (*e.g.,* promulgation of a Staff Discussion Paper (SDP)).
2. Promulgate an Advance Notice of Proposed Rulemaking (ANPRM).
3. Promulgate a Notice of Proposed Rulemaking (NPRM).
4. Promulgate a Final Rule.

The CASB notes that the overseas exemption at 48 CFR 9903.201–1(b)(14) is not subject to the four-step process required by 41 U.S.C. 422(g)(1) because it is not a cost accounting standard. Thus, there is no requirement for the CASB to follow the four-step process for this promulgation. The CASB is soliciting public responses, comments and information in a process that may lead to a change in the CAS regulations with respect to the overseas exemption.

B. Background and Summary

The Office of Federal Procurement Policy (OFPP), Cost Accounting Standards Board, is today publishing a request for information with respect to the exemption from CAS at 48 CFR 9903.201–1(b)(14). That exemption (the overseas exemption) provides that ''contracts and subcontracts to be executed and performed entirely outside the United States, its territories, and possessions'' are exempt from all CAS requirements. The OFPP Act, at 41 U.S.C. 422(g)(1), requires the Board to consult with interested persons concerning the advantages, disadvantages, and improvements anticipated in the pricing and administration of Government contracts as a result of the adoption of a proposed rule prior to the promulgation of any new or revised CAS or rule.

Section 823 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 requires the CASB to: (1) Review the applicability of CAS to contracts and subcontracts which would be subject to CAS, but for the fact that they are executed and performed entirely outside the United States, and (2) determine whether the Government would benefit from the application of CAS to such contracts and subcontracts. A report is due to Congress 270 days (by mid-July 2009) after the date of enactment (October 14, 2008) explaining what, if anything, will be done to revise the overseas exemption.

The purpose of this request for information is to solicit public comments and information with respect to the CASB's review of whether the overseas exemption from CAS at 48 CFR 9903.201–1(b)(14) should be retained, eliminated, or revised, and if revised, how should it be revised. ''Contracts and subcontracts to be executed and performed entirely outside the United States * * *'' can be executed and performed by a variety of entities with different legal statuses including, but not limited to: A U.S. concern, a foreign concern authorized to do business in the United States, a foreign concern (not authorized to do business in the United States) which is a related party to a U.S. concern, and foreign concerns with various other attributes that could affect their legal status. The focus of this request for information is with respect to contracts that would otherwise be subject to CAS, but for the fact that the contract is exempted because it is executed and performed entirely overseas. Thus, the affected contractors are likely to be U.S. concerns and other concerns authorized to do business in the United States.

Respondents are encouraged to identify, comment and provide information on any issues that they believe are important to the subject.

C. Public Comments

Interested persons are invited to participate by providing their input, data, views or arguments with respect to this request for information, including, but not limited to, the questions listed in the request for information. All responses must be in writing, and

submitted as instructed in the **ADDRESSES** section.

Lesley A. Field,

Acting Chair, Cost Accounting Standards Board.

Cost Accounting Standards Board Request for Information

48 CFR 9903.201–1(b)(14)

Exemption From Cost Accounting Standards for Contracts Executed and Performed Entirely Outside the United States

Background

Purpose

48 CFR 9903.201–1(b) is a list of categories of contracts and subcontracts that are exempt from CAS requirements (CAS exemptions). Paragraph (14) of this provision provides an exemption for ''[c]ontracts and subcontracts to be executed and performed entirely outside the United States, its territories, and possessions'' (overseas exemption). The purpose of this request for information is to explore whether this CAS exemption should be retained, eliminated or revised.

The History of the Exemption

The original CAS Board (CASB) was established by Section 2168 of the Defense Production Act of 1950 (DPA). Section 2163, ''Territorial application of Act,'' of the DPA provided that Sections 2061 through 2171 (which includes the authority for the CASB) ''shall be applicable to the United States, its Territories and possessions, and the District of Columbia'' (United States). Since the applicable DPA provisions were applicable only within the United States as defined, the CASB's rules, regulations and CAS were only applicable within the United States, as specifically defined, and thus, they were not applicable overseas.

On September 24, 1973, Defense Procurement Circular No. 115 amended ASPR (Armed Services Procurement Regulation) 3–1204 to provide for this CAS exemption in contracts as follows:

3–1204 Contract Clause. The Cost Accounting Standards clause set forth in 7–104.83 shall be inserted in all negotiated contracts exceeding $100,000, except when the price is based on established catalog or market prices of commercial items sold in substantial quantities to the general public or is set by law or regulation. In addition to the foregoing exceptions, the clause shall not be inserted in the following contacts:

* * * * *

(vi) contracts which are executed and performed in their entirety outside the United States, its territories and possessions [(overseas exemption)].

Additional historical background is provided in the SDP published at 70 FR 53977 (September 13, 2005) which previously invited public comments on whether the overseas exemption should be revised or eliminated.

In 1980, the CASB ceased to exist under the DPA. In the absence of the CASB, the Department of Defense (DOD) took over the responsibility for the administration of CAS. DOD administered CAS until the CASB was re-established in 1988 under the authority of the OFPP Act.

In 1991, the re-established CASB reviewed the rules and regulations applicable to the administration of CAS. FAR 30.201–1(14), the exemption from CAS for contracts and subcontracts executed and performed entirely outside the United States, its territories and possessions, was part of that review. The re-established CASB retained the overseas exemption and incorporated it into its current recodified rules and regulations at 48 CFR 9903.201–1 on April 17, 1992 (57 FR 14148.)

More recently, in response to the 2005 SDP regarding the overseas exemption, the CASB received three public comments in response. All the comments offered arguments for why the CASB should retain the exemption; none of the comments supported any revision to, or an elimination of, the overseas exemption. After reviewing and discussing the comments to the SDP, the CASB discontinued its review of the overseas exemption. (73 FR 8259, February 13, 2008.) While the CASB did not agree with all of the views expressed, it did agree with the conclusion not to delete or revise the overseas exemption.

Questions for Consideration

The CASB is soliciting information and comments on the overseas exemption from interested parties. In framing your responses, be aware that contracts and subcontracts that are executed and performed entirely outside of the United States can be executed and performed by entities with a variety of legal statuses. The focus of this request for information is with respect to contracts that would be otherwise subject to CAS, but for the exemption because the contract is executed and performed entirely overseas. Thus, the class of affected contractors is likely to be U.S. concerns and other concerns authorized to do business in the United States.

More specifically, the CASB is particularly interested in information and comments related to the following questions:

1. What is your experience with the overseas exemption:

a. As a procuring entity (*e.g.,* procurement office, higher tier contractor) awarding contracts/subcontracts; or

b. As the contractor/subcontractor claiming the applicability of the overseas exemption?

2. How often (number of actions, dollar amounts, by fiscal year) has the overseas exemption been claimed?

3. If the overseas exemption is eliminated, what problems will that cause you:

a. As a procuring entity (*e.g.,* procurement office, higher tier contractor) awarding contracts/subcontracts; or

b. As the contractor/subcontractor claiming the applicability of the overseas exemption?

4. How does the overseas exemption help, or not help, to implement the CASB's mandate ''to achieve uniformity and consistency in the cost accounting standards governing measurement, assignment, and allocation of costs to contracts with the United States''?

5. What are the arguments for, and against, the requirement in the overseas exemption to require execution of the contract overseas?

6. What are the arguments for, and against, the requirement in the overseas exemption to require performance of the contract overseas?

[FR Doc. E9–9359 Filed 4–22–09; 8:45 am]

BILLING CODE 3110–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 217

[Docket No. 090206146–9332–01]

RIN 0648–AX32

Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to the Port of Anchorage Marine Terminal Redevelopment Project

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS has received an application from the Port of Anchorage