or more of the major life activities of such individuals;
(2) Persons who require language translation; or
(3) Persons who may otherwise benefit from auditory assistance communications in places of public gatherings, such as a church, theater, auditorium, or educational institution.

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OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

48 CFR Part 9903

Cost Accounting Standards: Clarification of the Exemption From Cost Accounting Standards for Firm-Fixed-Price Contracts and Subcontracts Awarded Without Submittion of Certified Cost or Pricing Data

AGENCY: Office of Management and Budget (OMB), Office of Federal Procurement Policy, Cost Accounting Standards Board.

ACTION: Proposed rule.

SUMMARY: The Office of Federal Procurement Policy (OFPP), Cost Accounting Standards (CAS) Board, invites public comments concerning this proposed to clarify the application of the exemption from CAS at 48 CFR 9903.201–1(b)(15) for firm-fixed-price (FFP) contracts and subcontracts awarded on the basis of adequate price competition without submission of certified cost or pricing data, as well as to clarify requirements for submission of cost or pricing data, as well as to clarify requirements for submission of cost or pricing data.

DATES: Comment date: Comments must be in writing and must be received by December 5, 2011.

ADDRESSES: All comments to this proposed rule must be in writing. Electronic comments may be submitted in any one of three ways:
1. Federal eRulemaking Portal: Comments may be directly sent via http://www.regulations.gov—a Federal E-Government Web site that allows the public to find, review, and submit comments on documents that agencies have published in the Federal Register and that are open for comment. Simply type “(b)(15) FFP exemption” (without quotation marks) in the Comment or Submission search box, click Go, and follow the instructions for submitting comments;
2. E-mail: Comments may be included in an e-mail message sent to casb2@omb.eop.gov. The comments may be submitted in the text of the e-mail message or as an attachment;
3. Facsimile: Comments may also be submitted via facsimile to (202) 395–5105; or
4. Mail: If you choose to 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. Due to delays caused by the screening and processing of mail, respondents are strongly encouraged to submit responses electronically.

Be sure to include your name, title, organization, postal address, telephone number, and e-mail address in the text of your public comment and reference “(b)(15) FFP exemption” in the subject line irrespective of how you submit your comments. Comments received by the date specified above will be included as part of the official record. Comments delayed due to use of regular mail may not be considered.

Please note that all public comments received will be available in their entirety at http://www.whitehouse.gov/omb/casb_index_public_comments/ and http://www.regulations.gov after the close of the comment period. Do not include any information whose disclosure you would object to.

FOR FURTHER INFORMATION CONTACT: Raymond J.M. Wong, Director, Cost Accounting Standards Board (telephone: 202–395–6805; e-mail: Raymond_wong@omb.eop.gov).

SUPPLEMENTARY INFORMATION:

A. Regulatory Process

Rules, Regulations and Standards issued by the CAS Accounting Standards Board (Board) are codified at 48 CFR Chapter 99. This proposed rule concerns the amendment of a CAS Board regulation other than a Standard, and as such is not subject to the statutorily prescribed rulemaking process for the promulgation of a Standard at 41 U.S.C. 1502(c) (formerly, 41 U.S.C. 422(g)).

B. Background and Summary

Section 802 of the National Defense Authorization Act for Fiscal Year 2000 (Pub. L. 106–65) contained a provision for “Streamlined Applicability of Cost Accounting Standards.” Included in the provision was a revision to paragraph (2)(B) of Section 26(f) of the Office of Federal Procurement Policy Act (41 U.S.C. 1502(b)(1)(C) [formerly, 41 U.S.C. 422(f)(2)(B)]) that exempted from the application of CAS, “Firm-fixed-price contracts or subcontracts awarded on the basis of adequate price competition without submission of certified cost or pricing data.”

Section 802 adopted the recommendation of the Cost Accounting Standards Board Review Panel of the General Accounting Office (GAO) as it was then called—-the name was changed effective July 7, 2004 to the Government Accountability Office) that examined the future role of the CAS Board. In its report of April 2, 1999, the panel observed that a contracting officer is generally not allowed to request certified cost or pricing data where there is adequate price competition, the prices are set by law or regulation, or the acquisition is for commercial items. The panel noted that the risk to the Government in negotiating contract prices in these circumstances is not considered high enough to warrant obtaining certified cost or pricing data. The panel opined that the Government’s risk assessment should be equally applicable to CAS and concluded that when certified cost or pricing data were not obtained for FFP contracts and subcontracts, the safeguards provided by CAS were likewise not necessary.

Section 802 was implemented by the CAS Board as an interim rule on February 7, 2000 (65 FR 5990), and as a final rule on June 9, 2000 (65 FR 36768). At the time, the CAS Board chose to express the (b)(15) FFP exemption as follows: “Firm-fixed-price contracts or subcontracts awarded on the basis of adequate price competition without submission of certified cost or pricing data.” The term “certified” was not used. The CAS Board explained that it chose this wording in order to conform to the statutory requirements of 10 U.S.C. 2306(h)(1) and 41 U.S.C. 3502(b) [formerly, 41 U.S.C. 254(b)] which defined “cost or pricing data” as data that requires certification. That is, the phrase “cost or pricing data” was understood to mean “certified cost or pricing data.”

On August 30, 2010, the Civilian Agency Acquisition Council and Defense Acquisition Regulations Council (Councils) issued a final rule to clarify the distinction between “certified cost or pricing data” and “data other than certified cost or pricing data,” as well as to clarify requirements for submission of cost or pricing data (75 FR 53135). Among other things, the Councils revised the definitions at...
Executive Order 12866, and that a
the promulgation of an "economically
and that contractors and subcontractors is,
Defense Authorization Act for Fiscal
Standards" at Section 802 of National
Applicability of Cost Accounting
requirements associated with the
elimination of certain administrative
The purpose of this
the implementation of the "Streamlined
proposed rule is to clarify the
requirements were exempt from the
application and administration of the
FAR 2.101 related to cost or pricing data.
Included within the definition of "data
is a statement that such data may
include the identical types of data as
"certified cost or pricing data," but
without the certification. Thus, the
definitions of both "certified cost or
pricing data" and "data other than
certified cost or pricing data" refer to
or pricing data.
C. Conclusion
The CAS Board believes the August
30, 2010 revisions to FAR 2.101 may
cause some confusion over the
applicability of CAS in view of the
current wording of the (b)(15) FFP
exemption. Consistent with Section 802,
it has not been the CAS Board's intent
to apply CAS to FFP contracts or
subcontracts awarded on the basis of
adequate price competition where
certified cost or pricing data was not
obtained. Therefore, the CAS Board is
considering a proposed change to the
wording of the (b)(15) FFP exemption.
D. Paperwork Reduction Act
The Paperwork Reduction Act (44
U.S.C. Chapter 35, Subchapter I) does
not apply to this rulemaking, because
this rule imposes no additional
paperwork burden on offerors, affected
contractors and subcontractors, or
members of the public which requires
the approval of OMB under 44 U.S.C.
3501, et seq. The purpose of this
proposed rule is to clarify the
implementation of the "Streamlined
Applicability of Cost Accounting
Standards" at Section 802 of National
Defense Authorization Act for Fiscal
Year 2000.
E. Executive Order 12866, the
Congressional Review Act, and the
Regulatory Flexibility Act
This rule serves to clarify the
elimination of certain administrative
requirements associated with the
application and administration of the
Cost Accounting Standards by covered
Government contractors and
subcontractors, consistent with the
provisions of "Streamlined
Applicability of Cost Accounting
Standards" at Section 802 of National
Defense Authorization Act for Fiscal
Year 2000. The economic impact on
contractors and subcontractors is,
therefore, expected to be minor. As a
result, the CAS Board has determined
that this proposed rule will not result in
the promulgation of an "economically
significant rule" under the provisions of
Executive Order 12866, and that a
regulatory impact analysis will not be
required. Finally, this rule does not
have a significant effect on a substantial
number of small entities because small
businesses are exempt from the
application of the Cost Accounting
Standards. Therefore, this proposed rule
does not require a regulatory flexibility
analysis under the Regulatory
Flexibility Act of 1980, 5 U.S.C.
Chapter 6.

List of Subjects in 48 CFR Part 9903
Cost accounting standards,
Government procurement.

Daniel I. Gordon,
Chair, Cost Accounting Standards Board.

For the reasons set forth in this
preamble, chapter 99 of Title 48 of the
Code of Federal Regulations is proposed
to be amended as set forth below:

PART 9903—CONTRACT COVERAGE

1. The authority citation for Part 9903
continues to read as follows:

SUBPART 9903.2—CAS PROGRAM
REQUIREMENTS

2. Section 9903.201–1 is amended by
revising paragraph (b)(15) to read as
follows:
9903.201–1 CAS applicability.
* * * * * * * * * * * * * * * * *
(b) * * *
(15) Firm-fixed-price contracts or
subcontracts awarded on the basis of
adequate price competition without
submission of certified cost or pricing
data.
* * * * * * * * * * * * * * *

DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric
Administration
50 CFR Part 648
[Docket No. 110907562–1598–01]
RIN 0648–BB40
Fisheries of the Northeastern United
States; Changes to Vessel Replacement and Upgrade Provisions for Fishing Vessels Issued Limited Access Federal Fishery Permits

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