

CAS Board Moves Forward on Applicability Threshold and PPA Harmonization

Written by Nick Sanders

Tuesday, 10 January 2012 00:00

We have a couple of updates for our readers regarding Cost Accounting Standards (CAS). Perhaps somebody at OFPP read [our gentle chiding](#) of the CAS Board for leaving so much business unfinished. (As we write this entry, that article has recorded nearly 700 hits, so perhaps we may be forgiven for thinking it's been passed around.) In any case, Christmas brought us all some CAS presents.

The first item under the Christmas tree was the issuance, on December 22, 2011, of [a final rule](#) implementing a new CAS applicability threshold. In July, 2011, the CAS Board issued an interim rule on this topic, and the final rule was adopted without change. The simple description of the revision is that it raised the CAS applicability threshold from \$650,000 to \$700,000, to make it consistent with the current Truth-in-Negotiations Act (TINA) applicability threshold. Essentially, this rule change means that contracts valued at less than \$700,000 are exempt from CAS. But there's more to be said.

The rule change not only raises the CAS applicability threshold, it also changes it from a fixed dollar amount to being whatever the TINA applicability threshold is on a go-forward basis. In the words of the CAS Board—

This wording change ... will cause future changes to the CAS applicability threshold to self-execute upon any changes to the TINA threshold as they are implemented in the FAR. ... By revising the CAS applicability threshold so that it directly referenced the FAR TINA threshold for the submission of cost or pricing data (rather than referencing a stated dollar amount), any future changes to the FAR TINA threshold will automatically apply to the CAS applicability threshold (thereby eliminating the need to revise this regulation to specify a different dollar amount).

One issue with this rule change is how to apply it to subcontracts under existing prime contracts. Although the CAS regulations have been revised, no similar revision has been made (yet) to the CAS Administration rules in FAR Part 30, nor have any revisions been made to the 52.230 series of CAS-related contract clauses. At the moment, the FAR language continues to use the now outdated \$650,000 CAS applicability threshold.

It is well settled that the regulations in effect on the effective date of the contract control. So it would seem that subcontracts issued under prime contracts awarded prior to December 22, 2011 would be evaluated for CAS applicability under the old threshold. That would be the safe, conservative, course of action.

But it's also well settled that in any conflict between CAS and FAR, CAS trumps FAR. So we think that the CAS applicability threshold found 48 CFR 9903.201-1(2) supersedes any CAS

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applicability thresholds found in the FAR. Accordingly, we would be prepared to argue that any subcontract administrator who used the current \$700,000 CAS applicability threshold (and who continuously updated that threshold based on published changes to the TINA applicability threshold) is on solid ground and was absolutely correct.

In fact, one commenter brought this potential quandary up to the CAS Board. Their response?

The changes to the FAR to reflect the CAS Board's interim and final rules are beyond the authority of the CAS Board as acknowledged by the respondent. The comments have been sent to the OFPP Administrator, the Chair of the FAR Council, for implementation in the FAR.

No further comment.

The second issue concerns CAS harmonization with the Pension Protection Act (PPA) of 2006. We wrote about this issue [right here](#). Well, on December 27, 2011, the CAS Board issued its [long-awaited final rule](#), revising Standards 412 and 413 to conform CAS to the PPA. As the CAS Board reported—

This revision will harmonize the measurement and period assignment of the pension cost allocable to Government contracts, and the minimum required contribution under the Employee Retirement Income Security Act of 1974 (ERISA), as amended, as required by the Pension Protection Act (PPA) of 2006. The PPA amended the minimum funding requirements for qualified defined benefit pension plans.

Our intent here is not to delve into the intricacies of defined-benefit pension plan accounting. We'll spare you that headache. You're welcome.

But we will note some "highlights" of the final rule.

- One of the big concerns with the prior Notice of Proposed Rule Making (NPRM) concerned the "triggers" that implemented the CAS accounting. The three proposed triggers have been reduced to one in the final rule.
- We reported the universal concern with the cost impact of these revisions on existing CAS-covered contracts. The CAS Board addressed that concern by mandating a five-year transition period.
- The NPRM contained controversial revisions to the segment closing pension plan adjustment calculations at 413-50(c)(12), and many commenters objected to the NPRM in that

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area. In the final rule, the CAS Board eliminated proposed revisions to 413-50(c)(12), and stated, “The Board believes that the issues and problems with the current segment closing and benefit curtailment provisions are beyond the scope of pension harmonization required under section 106, and should be addressed in a separate case, which the Board is considering.”

- Another controversial aspect was the effectivity date of the new rules. As the CAS Board stated—

The Board decided to delay the effective date for 60 days after publication to permit time for contractors to make the necessary changes to the actuarial valuation and cost projection systems. Furthermore, to ensure that no contractor becomes immediately applicable to the final rule, the implementation date is the first cost accounting period after June 30, 2012. The Board agrees that such a delay will eliminate a portion of the equitable adjustment claims for contractors that report on a calendar year basis.

To sum up, if you are a fully CAS-covered contractor with defined-benefit pension plans, then this final rule is a big deal. The first thing you would want to do is to update your Forward Pricing Rates to reflect the increased/accelerated pension costs under the revised rule. You would want to do that in order to price the pension costs into your proposals for new work.

The second thing you would want to do is to figure out which existing CAS-covered contract is going to be impacted by these revisions, given the effectivity date and five-year transition period. Once you’ve figure out the cost impact, then it’s time to submit your requests for equitable adjustment on all affected CAS-covered contracts (of all types, including FFP types).

For most government contractors, the revisions to CAS 412 and 413 won’t matter much. But for those few big contractors for whom this is a big deal ... it’s going to be a time-consuming and potentially expensive deal as well.