

## CAS Board Back in Action!

Written by Nick Sanders  
Monday, 05 March 2018 00:00 -

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We've bemoaned the lack of CAS Board activity several times on this site. The most recent bemoanery may be found [here](#) . That article was written in July, 2017—about eight months ago. At that time, we noted that there was no CAS Board website, there was no OFPP website, there was no OFPP Administrator, and therefore there was no CAS Board Chair. There was *nothing*

. We observed—

... it has become clear over the past 10 or so years that the CAS regime is also unworkable. It's overly complex. It's ambiguous. It's burdensome. It's grounded in a viewpoint that's more than 40 years old, where DOD acquired more goods than services. But in the past 40 years many things have changed and the CAS regulations and Standards have not kept up with the changes. As we've noted from time to time, the CAS Board almost never met even when there was an OFPP Administrator to chair it. The published minutes reflected a situation where literally years would pass between meetings. The published list of CAS Board members included people who had left government service literally years before.

Meanwhile, in the intervening eight months, not very much has changed. We still cannot find a current OFPP website. We still cannot find a current CAS Board website. There is no confirmed OFPP Administrator and, therefore, there is no CAS Board Chair.

However, some things have changed. First, [rumors](#) are beginning to swirl that there may, in fact, be a nominee for the OFPP Administrator sometime in the near future. In the interim, it appears that Ms. Lesley Field has been acting as both OFPP Administrator and as CAS Board Chair. Thus, the CAS Board was able to actually hold a meeting and make a decision!

That relative flurry of CAS Board activity led to a Federal Register [notice](#) and a final rule, "clarifying" one of the existing exemptions from CAS coverage by adding a single word. As the Federal Register notice states—

... final rule revis[es] the exemption from CAS for firm-fixed-price (FFP) contracts and

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subcontracts awarded on the basis of adequate price competition without submission of cost or pricing data. This final rule clarifies that the exemption applies to FFP contracts and subcontracts awarded on the basis of adequate price competition without submission of *certified* cost or pricing data.

(Emphasis added.)

That single word we italicized in the quote above – *certified* – is the clarification.

This codifies the clarification as a final rule. The proposed rule, which was published for comment and input in 2011, received two comments. Both comments, according to the CAS Board, supported “the proposed change.” ( *Wait*—we thought it was a clarification? Which is it?)

The reason for the change and/or clarification, as explained by the CAS Board, was documented in the proposed rule. “... the Board explained [in 2011] that at the time the CAS rule was promulgated in 2000, the term cost or pricing data was understood to mean certified cost or pricing data. However, as a result of changes made to the Federal Acquisition Regulation in 2010 ... the term could also be read to mean cost or pricing data without the certification.”

In other words, it was the FAR Councils mucking about with FAR Part 15 cost or pricing data requirements that necessitated the present seven-year-long rule-making activity by the CAS Board.

We discussed the “mucking about” in [this article](#) . We said at the time—

We notice that the prohibition on obtaining cost or pricing data when certain conditions (e.g., adequate competition) are found has been de-emphasized in favor of a more detailed discussion of the types of data the contracting officer should obtain. This appears to represent a return to a pre-Federal Acquisition Streamlining Act (FASA) pricing environment, which may add to contractors’ proposal costs— meaning that, ultimately, the Government may end up paying

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more for the goods and services it acquires.

With nearly eight years of hindsight to guide us, it seems that the 2010 changes to cost and pricing data requirements were part of a multi-pronged approach by certain interest groups to ensure that the government paid as low as price as possible, by pushing contractors to provide more and more detailed information. That push ignored the cost that contractors were going to incur in order to provide that information. That push ignored the additional barriers to market entry that were being created—barriers that, today, the government is working hard to remove. Further, that push ignored the impact on subcontractors, many of whom are small businesses, who were going to have to deal with these new requirements.

In the past eight years, prime contractors have seen their purchasing systems put in jeopardy because they failed to adequately comply with the 2010 FAR Part 15 rule changes. As a result, they have pressured their subcontractors to comply, so that cost and price analyses can be performed on subcontractor proposals. That's been great news for Apogee Consulting, Inc., who has made nice bank by helping those small business subcontractors navigate the cost or pricing data requirements. But it's been bad news for taxpayers, who have had to pay the bill for the resulting increased costs.

In hindsight, the 2010 FAR Part 15 revisions were ill-advised. They added little except cost. Moreover, those changes led to a seven-year-long rule-making effort by a CAS Board that—*trust us*—had far better things to do with its limited time and staff.

But the CAS Board is now back, led by Acting Chair Field. We expect to be reporting on more activity in the near future.