

## CAS Board to Contingency Contractors: We Don't Care

Written by Nick Sanders  
Monday, 22 August 2011 00:00

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On August 10, 2011, the CAS Board [published](#) a final rule that eliminated the “(b)(14) overseas exemption” from the list of CAS exemptions. Formerly, there were ten (10) CAS exemptions found at 48 C.F.R. 9903.201-1. Effective October 11, 2011, there will be only nine.

Here's the deal:

1. Your contract is subject to Cost Accounting Standards (CAS) unless it is exempted by one of the 10 (now 9) exemptions.
2. The eliminated exemption addressed “Contracts and subcontracts to be executed and performed entirely outside the United States, its territories, and possessions.” In other words, such contracts and subcontracts were not subject to any of the CAS regulations or Standards (other than those found in the FAR Part 31 Cost Principles)—but now they will be.
3. Another CAS exemption—the (b)(4) exemption—may still apply. But that exemption is not a blanket exemption and subjects contractors to compliance requirements associated with CAS 401 and 402.

Is this a big deal? Maybe not for you or even for most Government contractors. But there are many contractors—prominent amongst them the LOGCAP and other “contingency contractors”—who issue quite a few subcontracts to foreign entities that have absolutely no clue about CAS or FAR or even U.S. GAAP. Those contractors are now going to have to explain about consistency in cost accounting practices, and while we don't know for sure, we think that's going to be problematic for them.

Since these contractors are going to face new compliance requirements, we worry that it's going to take longer to put them onto contract. We think it's going to be harder for the prime contractors to conduct cost and/or price analysis. We think DCAA is going to have even more workload than it currently does. We wonder what these foreign businesses will think about CAS, and the concepts of cost accounting practices and consistency. In a nutshell, we think the elimination is ill-advised.

The CAS Board cited three fundamental reasons for eliminating the (b)(14) exemption. They were—

1. The statutory basis for the exemption no longer exists.
2. There is no accounting basis for the exemption since geographic location is “not germane” to CAS.
3. The CAS Board felt the availability of the (b)(4) exemption would mitigate any hardships.

The CAS Board received a paltry five (5) public comments on its proposed rule. Some of the comments raised concerns similar to those noted above. But the CAS Board appeared to

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cavalierly dismiss those concerns.

For example—

Comment: One respondent noted that there is an obvious accounting basis for retaining the (b)(14) overseas exemption, specifically, the differences between the fundamental accounting principles between U.S. GAAP (Generally Accepted Accounting Principles) and IFRS (International Financial Reporting Standards).

Response: The CAS Board does not believe differences between GAAP and IFRS are relevant to the question of extending the (b)(14) overseas exemption.

Here's another—

Comment: A respondent observed that the (b)(14) overseas exemption has not been identified as a cause for overseas subcontracting challenges in recent testimonies. On June 29, 2010, Stuart W. Bowen, Jr., Special Inspector General for Iraq Reconstruction, testified before the House Subcommittee on National Security and Foreign Affairs, and identified many subcontracting issues. However, he did not mention the (b)(14) overseas exemption from CAS as a cause for any of the issues, nor did he recommend the imposition of CAS coverage on foreign concern subcontracts as a potential solution. In the July 26, 2010 hearing on war zone subcontracting before the Commission on Wartime Contracting (CWC), none of the witnesses cited the (b)(14) overseas exemption from CAS as contributing to the subcontracting challenges identified during the hearings, nor did any witness recommend the imposition of CAS coverage as a solution to overseas subcontracting problems. None of the CWC commissioners spoke of, or inquired about, subcontractor CAS coverage or CAS compliance during opening statements or witness testimony.

Response: The CAS Board does not accept this reasoning for retaining the (b)(14) overseas exemption.

When we look at the CAS Board's responses to the few comments it received, our impression is that they are telling the contractors, "We hear you. We just don't care."