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CAS Board Approves Final Rule on Threshold Adjustments

The Cost Accounting Standards Board convened in early April 2007 and agreed to issue a final rule which would elevate CAS applicability thresholds. The Board, working from a December 2005 proposed rule, agreed to increase those thresholds for inflationary trends over the past several years.

Although the final rule has not been published, we anticipate increases as follows:

- Contract applicability, from \$500,000 to \$550,000;
- Applicability to a business unit, from \$7.5 million to \$8.5 million;
- Waiver authority, from \$15 million to \$17 million;
- Full coverage, from \$50 million to \$56.5 million;
- Disclosure statement submissions by a company (other than educational institutions), from \$50 million to \$56.5 million;
- Disclosure statement submissions by a segment of a company, from \$10 million to \$11.5 million; and
- Disclosure statement submissions by an educational institutions, from \$25 million to \$28.3 million.

The effective date of the final rule is yet to be determined.

Pension Protection Act and Compliance with CAS 412 and 413

The Pension Protection Act of 2006 will mandate increased contributions to defined contribution pension plans beginning in 2008, but government contractors subject to CAS 412 and 413 will not be able claim all of those increases under federal contracts until provisions of these standards are changed.

DCAA has recently issued new guidance to its audit staff advising that regardless of cost increases precipitated by the new legislation, all contractors subject to CAS must still follow the CAS guidelines for measurement, assignment and allocation of pension costs.

The guidance states that DCAA auditors "should question any proposed pension costs in excess of the amounts calculated in compliance with CAS 412 and 413." Further, DCAA guidance states, "pension costs priced into contracts shall continue to comply with CAS 412 and 413 and...contracting officers shall not negotiate any increase in contract price or include a re-opener clause that would allow for a later adjustment for pension costs in anticipation of a revision to CAS 412."

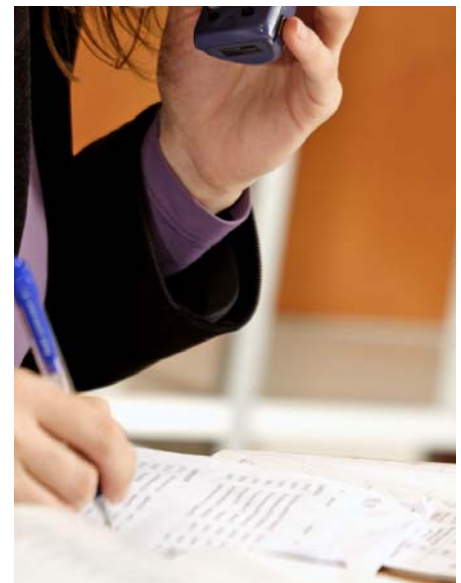
We are told that the CAS Board will undertake the task of "harmonizing" the new legislation with the CAS rules. Until then, however, contractors are stuck with bidding or billing pension costs under government contracts within CAS guidelines, and those rules are

likely to restrict recovery of increased contributions mandated by the new legislation.

FY 2008 Defense Authorization Bill: Changes in Commercial Award Process

The House Armed Services Committee has included within this bill provisions that will narrow the FAR definition of commercial services, and allow procurement to obtain certified cost or pricing data for commercial items in certain situations.

Section 801 of the bill would remove the words "of a type" from the definition of commercial services that may be procured under FAR Part 12. The DOD IG has previously argued that FAR Part 12 only intended the definition of commercial items/services to be those that are actually "sold in the commercial marketplace." The inclusion of the verbiage, "of a type," renders the commercial item definition too broad, the DOD IG argues.



Section 811 of the bill would also modify the current TINA exception for "commercial" items to allow procurement offices to require the submission of certified cost or pricing data, thus subjecting the award to the Truth-in-Negotiations Act (TINA). TINA would apply to a

contract, subcontract, or modification for a commercial item in the following situations:

- Awarded on a non-competitive basis;
- Contracting office deems that the company's commercial sales history is insufficient to determine a fair and reasonable price, and;
- Contractor has previously submitted certified cost or pricing data in connection with at least one contract award or other pricing action.

Voicing Your Concern About State Income Taxes as Unallowable for Subchapter S Corporations

After the Federal Circuit Court's February 6, 2006 decision deeming state income tax expenses as unallowable under FAR 31.205-41(b), considerable debate has arisen among Subchapter S corporations as to the equity of this decision, and how to approach changing the FAR rules to make these costs allowable.

A Government contractor in our area has undertaken a petition process to incorporate within the 2008 Defense Appropriations Act verbiage allowing government contractors who are Subchapter S Corporations to recover their state income taxes under government contracts.

Part of the statement released to the general public by this company is as follows:

"In 2006, the U.S. Court of Appeals for the Federal Circuit struck down the payment of State income taxes incurred by small businesses operating in Subchapter S format as allowable costs under the Federal Acquisition Regulations (FAR). This decision puts thousands of small business government contractors and their employees immediately in a disadvantageous position relative to their larger competitors, and even with regard to their smaller competitors who have not elected to operate under Subchapter S.

The court's decision may actually have a retroactive impact, seriously undermining the viability of thousands of key suppliers to DOD, DHS, CIA, and literally hundreds of other government agencies. It is long-standing federal tax policy that encourages Subchapter S elections by small businesses for sound tax and legal reasons that the court's decision effectively erases. Congress needs to urgently remedy this unwarranted confusion of federal policy by clarifying that state taxes incurred by Subchapter S corporations are the economic equivalent of taxes paid - and allowed - under FAR by businesses operating in other structures.

Language is being worked to go into the 2008 Defense Authorization Bill that will allow Subchapter S Corporations to deduct their State Income Tax as an "Allowable Expense" just as all other non-Subchapter S Corporations are allowed to do.

Senator Jeff Sessions (R), Alabama has agreed to Co-Author (Bipartisan Sponsorship) this language provided support from Alabama companies for this measure can be established.

To voice your support please send the following e-mail to Mr. Rick Dearborn, Senator Sessions' Chief of Staff and designated POC for this effort. Also, it would help to write to your own Congressman.

To: Mr. Rick Dearborn
rick_dearborn@sessions.senate.gov

Subject: Subchapter S Corporation issue for 2008 Defense Authorization Bill

Text: Please let Senator Sessions know that we support language in the 2008 Defense Authorization Bill that allows Subchapter S Corporations to once again deduct State Income Tax as an allowable expense under Federal, state and local government contracts. As a small Subchapter S Corporation, we need the same benefits as the larger corporations.

Signature Block:
Please provide: POC Name, Company Name and contact information.

Please send a copy of your e-mail to:
jdurham@scires.com

Reminder for all Government Contractors with a FYE of December 31 2006

In case it slipped your mind, Incurred Cost Proposals are due to your Contracting Officers, six months after year-end. For all contractors with a December 31, 2006 year-end, the due date for submission is June 30, 2007. If you are unable to meet this deadline, be sure to get written permission from your ACO for an extension. Please let Beason & Nalley, Inc. know if we can help you with your filing requirements.

Government Contract Training

Government Contract Accounting Systems Compliance

Brief Synopsis: This course is designed to detail the components of a government contract accounting system and explain how an accounting system helps to ensure your compliance with government contracting rules and regulations.

Presented by: Federal Publications Seminars

Dates: June 20-21, 2007, Las Vegas, NV

Instructors: Scott Butler and Charlie Broome



Go to www.fedpubseminars.com and click on the Government Contracts tab or call Beason & Nalley at 256.533.1720.

Specialized Training

Beason & Nalley will develop and provide specialized Government contracts compliance training for client/contractor audiences. Topics on which we can provide training include estimating systems, FAR Part 31 Cost Principles, TINA and defective pricing, cost accounting system requirements, and basics of Cost Accounting Standards, just to name a few. If you have an interest in training, with educational needs specific to your company, please contact Ms. Sandra Baker at sbaker@beasonnalley.com, or at 256.533.1720.

Future Newsletters

Please provide any feedback or suggestions via our email address at dwalker@beasonnalley.com.

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