

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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[FR Doc. 2011-25756 Filed 10-4-11; 8:45 am]

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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 Submission 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 cost or pricing data (hereafter referred to as the “(b)(15) FFP exemption”). The proposed rule will revise the (b)(15) FFP exemption to clarify that the exemption applies to firm-fixed-price contracts and subcontracts awarded on the basis of adequate price competition without submission of certified 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](mailto: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/](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](mailto: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 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

Federal Acquisition Regulation (FAR) 2.101 related to cost or pricing data. Included within the definition of “data other than certified cost or pricing 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 cost 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:

**Authority:** Public Law 111–350, 124 Stat. 3677, 41 U.S.C. 1502.

#### 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.

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[FR Doc. 2011–25623 Filed 10–4–11; 8:45 am]

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### 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), Commerce.

**ACTION:** Advance notice of proposed rulemaking.

**SUMMARY:** NMFS, in consultation with the Atlantic States Marine Fisheries Commission (Commission) and the New England and Mid-Atlantic Fishery Management Councils (Councils), is considering changes to the current system of regulations that limit the potential size of a replacement vessel. This advance notice of proposed rulemaking (ANPR) provides background information and requests public comment on the administrative and financial burdens of the current system, as well as on what type of changes would be appropriate to reduce that burden and the regulatory complexity without adversely affecting the fishery. NMFS will consider all recommendations received in response to this ANPR prior to any proposed rulemaking.

**DATES:** Comments must be received on or before December 5, 2011.

**ADDRESSES:** You may submit comments on this document, identified by NOAA–NMFS–2011–0213, by any of the following methods:

- **Electronic Submission:** Submit all electronic public comments via the Federal e-Rulemaking Portal <http://www.regulations.gov>. To submit comments via the e-Rulemaking Portal, first click the “submit a comment” icon, and then enter NOAA–NMFS–2011–0213 in the keyword search. Locate the document you wish to comment on from the resulting list and click on the “Submit a Comment” icon on the right of that line.

- **Mail and hand delivery:** Submit written comments to Patricia A. Kurkul, Regional Administrator, NMFS, Northeast Regional Office, 55 Great Republic Drive, Gloucester, MA 01930. Mark the outside of the envelope: “Comments on Vessel Upgrade ANPR.”

- **Fax:** (978) 281–9135.

**Instructions:** Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered. All comments received are a part of the public record and will generally be posted for public viewing on <http://www.regulations.gov> without change. All personal identifying information (*e.g.*, name, address, *etc.*) submitted voluntarily by the sender will be publicly accessible. Do not submit confidential business information, or otherwise sensitive or protected