September 12, 1997

Mr. Rudolph J. Schuhbauer
Project Director
Cost Accounting Standards Board
Office of Federal Procurement Policy
725 17th Street, N.W.
Room 9001
Washington, DC 20503

Attn: CASB Docket No. 93-01N(2)

Re: Cost Accounting Standards Board; Changes In Cost Accounting Practices; Supplemental Notice of Proposed Rulemaking; 62 Fed. Reg. 37654 (July 14, 1997)

Dear Mr. Schuhbauer:

On behalf of the Section of Public Contract Law (the "Section") of the American Bar Association (the "Association"), I am submitting comments on the above-referenced Supplemental Notice of Proposed Rulemaking ("NPRM II"). The Section consists of attorneys and associated professionals in private practice, industry and Government service. The Section's governing Council and substantive committees contain a balance of members representing these three segments to ensure that all points of view are considered. In this manner, the Section seeks to improve the process of public contracting for needed supplies, services and public works.

The Section is authorized to submit comments on acquisition regulations under special authority granted by the Association's Board of Governors. The views expressed herein have not been approved by the House of Delegates or the Board of Governors of the Association, and, therefore, should not be construed as representing the policy of the Association.

I. Introduction
The Section begins by applauding the decision of the Cost Accounting Standards Board to issue a second notice of proposed rulemaking concerning the definition of "cost accounting practices" and the related subject of the administration of changes to cost accounting practices. The changes made in this NPRM II, when compared to NPRM I published on September 18, 1996, were substantial, and warranted the careful review and comment that a second NPRM provided Government and industry.

Due to the length of NPRM II, the Section has limited its comments to those items of greatest interest to the legal profession. Specifically, the Section has focused on issues that concern the clarity of the proposed rule, its consistency with applicable statutes and existing regulations, and potential problems in implementation. The Section also believes, however, that the comment period provided for a proposed rule that fills 38 pages of the Federal Register (including explanatory material) was simply inadequate to permit careful consideration of actual suggested modifications to the proposed rule. Because this type of comment is always the most beneficial, the Section will continue to review NPRM II after the closing date for the submission of comments and may submit additional comments that the CAS Board can consider at its discretion.

II. General Comments

A. The Basic Approach

NPRM II, like the CAS Board's earlier promulgations on the same subject, consolidates the coverage of subjects currently addressed in FAR Part 30.6 ("CAS Administration") and FAR 9903.302 ("Definitions, explanations, and illustrations of the terms, "cost accounting practice" and "change to cost accounting practice."). Although consolidation and clarification of the current definitions and CAS administration process may be useful, the Section believes that NPRM II, like NPRM I and the ANPRM, is too long, too complex and overly detailed.1/ The CAS Board itself recognizes that NPRM II is "detailed and extensive," but considers this "necessary to promote consistency, equity and timeliness in the handling of cost impact proposal actions related to changes in accounting practices and noncompliances." 62 Fed. Reg. 37655.

By contrast, the Section believes that the end result is a proposed regulation whose scope and length make it confusing and a source of practical problems for the average contract administrator. We urge the CAS Board to re-examine the fundamental purpose of the proposed regulation and consider whether a new and more simplified approach would not better serve the interests of Government and industry alike, while accomplishing the goals of consistency, equity and timeliness.

B. The Expanded Definition of "Cost Accounting Practice" is a Key to the Section's Concern Regarding NPRM II as a Whole

All three CAS Board promulgations have included an expanded definition of the term "cost accounting practice." In each proposed regulation, the form of the definition has been different, but the practical effect has been the same: to reverse the decision of the board of contract appeals and the court in Martin Marietta Corp., ASBCA Nos. 38920 and 41565, 92-3 BCA 25,175, aff'd sub nom, Perry v. Martin Marietta Corp., 47 F.3d 1134 (Fed. Cir. 1994).

Because of the expanded definition of "cost accounting practice," more changes to contractor accounting systems -- many of which would not have qualified as "changes to cost accounting practice" under the current regulations -- will be treated as "changes to cost accounting practice" under the proposed rule, thereby increasing the effort needed to administer the CAS provisions of CAS-covered contracts (on the part of both Government and industry). The expanded definition has two principal consequences.

First, by increasing the number of change actions to be processed administratively, the cost of contract administration will increase. There is no evidence of which the Section is aware that this increased cost of administration will produce a benefit that is worth the cost. At the same time, any change which increases the cost of administration in an era of procurement streamlining must be carefully evaluated.

Second, NPRM II, as its predecessors, has found it necessary to make other changes within the proposed rule, including proposed exemptions and other adjustments, to avoid certain unintended consequences of
the new definition. The expanded definition of "cost accounting practice" is, in fact, the catalyst for many other changes to the proposed rule as a whole.

Despite these consequences, the Board has never supplied a clear rationale or explanation for the new proposed definition of "cost accounting practice." Because a "cost accounting practice" is not so much an accounting concept as it is a key to the administration of the CAS, a statement of purpose or rationale would not only help to understand the CAS Board's goal, but would make it possible to provide more meaningful suggestions with respect to other changes that are made necessary by the new definition, including the "Options" for revised exemptions at 62 Fed. Reg. 37670-71. For example, if the Board is concerned that pool combinations or split-outs have previously escaped scrutiny despite their potential or actual impact on contract costs, then it might be possible to treat these situations specifically in the context of the current definition without making the sweeping changes to the definition included in the proposed FAR 9903.302-1 and -2.

C. Specific "Exemptions" vs. Clarification of "Desirable" Changes

The expanded definition of "cost accounting practice" primarily affects contractor-initiated, "voluntary" changes. Contractors make such changes for many reasons including the need to reflect changes to the underlying structure of a company or other changes made to achieve business efficiencies. Such changes are made with an eye to a contractor's competitive position, and generally benefit the Government customer directly or indirectly. The benefits may be reaped in the short term, but often a short term cost precedes a long term benefit.

Recognizing that changes enhancing the efficiency of a contractor's performance should not be discouraged, the CAS Board's ANPRM clarified the description of a "desirable" change, for which an "equitable adjustment" is permitted, by including, as "desirable," those changes that benefit the Government in the future even though there might be an increased cost to current contracts. In NPRM I, this approach was abandoned in favor of a series of exceptions/exemptions that were intended to remove changes that occurred in certain circumstances from the cost impact process. Recognizing that there was some question as to the effectiveness of the exceptions/exemptions as written in NPRM I, the Board, in NPRM II, returned to an expanded description of a "desirable" change in the proposed 9903.201-6(c), while supplying two "Options," B and C, for reworded versions of exemptions similar in purpose to those included in NPRM I.

With respect to the two broad approaches the CAS Board has followed in NPRM I, and in the ANPRM and NPRM II, the Section favors the use of a clarified definition of a "desirable" change. When expressed in apparently mandatory terms as contained in NPRM II, that approach permits the parties' representatives the greatest flexibility in addressing the many types of situations that might be considered "desirable." Nevertheless, the Section sees no reason why both a workable exemption, such as Option B, and the clarified definition of a desirable change could not be used together.

III. Comments on Specific Portions of NPRM II

The following comments are offered with respect to specific portions of NPRM II.

A. Special Allocations

It is generally understood that agreement on a special allocation for a contract or segment does not disturb a contractor's existing cost accounting practices, which remain unchanged. However, the proposed definition of cost accounting practice in NPRM II is so far reaching that disagreements could occur over the applicability of the rules surrounding changes to cost accounting practice when a special allocation is agreed upon. The Section suggests that the proposed definitions and illustrations make it clear that a special allocation made pursuant to a Standard (e.g., a special allocation under CAS 410-50(j) and 418-50(f)) does not constitute a change to a cost accounting practice.

B. Desirable Changes

http://apps.americanbar.org/contract/federal/regscmm/costs_010.html[12/10/2014 4:02:02 PM]
Changes in Cost Accounting Practices

The following suggestions all concern the coverage of "desirable" changes to cost accounting practices.

- The proposed 9903.201-6(b) states that a "determination as to whether or not a change in cost accounting practice is desirable should be made on a case-by-case basis." (Emphasis supplied.) The Section recommends that "should" be changed to "shall" so it is clear that the required analysis and finding will be made.

- Under the proposed 9903.405-3(b), a determination that a change is/is not desirable will not occur until after the change is determined adequate and compliant. A contractor will be required to submit a description of a change to a cost accounting practice and rationale for its desirability at least 60 days in advance of its applicability date. Nevertheless, no specific time frames are established for a contracting officer's desirability determination. Proposed 9903.405-2. In those instances in which a contractor intends to implement a change only if it is determined desirable, it is important to insure timely consideration of the submission. The Section suggests that the proposed rules include a reasonable time period (e.g., 60 days) within which the cognizant Government official would be required to respond to requests that a change be determined desirable.

- The Section believes there is a potential inconsistency created by use of the mandatory form "shall" in the proposed 9903.201-6(c) ("A change in cost accounting practice shall be deemed to be desirable . . .") and use of the word "should" in the proposed 9903.201-6(d) ("The . . . finding should not be made solely because of the financial impact of the proposed change on a contractor's or subcontractor's current CAS-covered contracts."). A cognizant Government official should not be free to use the impact of a change on current Government contracts as a basis for finding that a change is not desirable even if cost savings on future contracts are demonstrable and in excess of the current contract cost impact. The Section suggests that the word "should" in the proposed 9903.201-6(d) be changed to "shall."

C. Changes in Place of Performance

The comments accompanying NPRM II state that changes in the place of work performance, such as the transfer of work between segments of a company, do not constitute a change to a cost accounting practice. See 62 Fed. Reg. 37659-60. Nevertheless, the definitions and illustrations portion of NPRM II do not so make this clear. At the same time, NPRM II indicates that cost accounting practices adopted by a reporting unit after an acquisition may constitute a change to a cost accounting practice. See proposed 9903.302-2(c). In some cases, contract work of an acquired company is transferred to and performed at a different segment of the contractor without involving a change to a cost accounting practice. To avoid confusion or misinterpretation of the CAS Board’s intent, the Section suggests that an illustration be provided to make it clear that changes in the place of work performance do not, in and of themselves, constitute a change to a cost accounting practice.

D. Intermediate Cost Objective

The existing CAS regulations define "final cost objective" and "cost objective." See FAR 9904.402-30. There appears to be little difference between a "cost objective" and "intermediate cost objective" proposed for inclusion in FAR 9903.301(a). The Board should consider whether both definitions are required. If both are to be included in the CAS regulations, the Section suggests that the Board clarify "intermediate cost objective" with one or more examples.
E. Computing Cost Impact Adjustments

Process Complexity and Cost

As described generally above, the Section believes NPRM II, as it concerns the cost impact process, lacks clarity and is too complex, and is likely to increase the amount of administrative effort required to resolve changes to a cost accounting practice. For example, under the current regulations, the cost impact process can be tailored to specific circumstances. In many cases, the parties have been able to settle cost impacts by making only those contract adjustments necessary to reflect the aggregate impact to the Government. In some cases the process has been completed with a cash payment to the Government, eliminating the need to administer contract adjustments.

The Board's position that contract modifications are preferred because they "facilitate contract administration by permitting meaningful comparison of estimated and actual costs" reflects a theoretical possibility that is seldom, if ever, pursued in actual practice. As required by CAS 401, significant comparisons are to be made between estimated and actual costs for the significant elements of cost estimated, accumulated and reported for a contract. Contract adjustments are not made at this level of detail. Therefore, they do little to promote meaningful comparisons of estimated and actual labor, material or other costs. Moreover, the Board appears willing to forego "meaningful" comparison when the inability to obtain necessary funding precludes contract adjustments. Contracting Officers are capable of making judicious use of offsets and selecting a limited number of contracts for adjustment or resolving cost impact by other equitable means. The CAS regulations should not hinder the parties by establishing a preference for contract adjustments. The Section suggests that the Board retain FAR 9903.306(f), which permits cost impact adjustments to be handled as a matter of contract administration.

NPRM II also defines a more complicated process (e.g., two studies may be required for alleged failures to comply with CAS), while suggesting contradictory courses of action. The preamble states that settlement at the highest level (GDM) is preferred, while the regulation itself gives the impression that a contract-by-contract settlement is preferred. Moreover, contracting officer actions may be taken based on materiality thresholds for individual contracts that are established before the aggregate impact to the Government is known. Without cost impact data to consider, there is a risk that materiality thresholds may be set too low.

The likely results of the cost impact portion of NPRM II are a greater number of impact studies, a more complex process than is currently required, and increased costs of administration.

Impacts for Estimating vs. Cost Accumulation Noncompliances

The cost impact for a noncompliance under the current regulations is handled with a single cost impact proposal. Under NPRM II, it appears necessary to process two separate proposals to address the estimating vs. the cost accumulation aspects of a single noncompliance. This distinction appears to create unnecessary work and place artificial barriers to reasonable resolution of noncompliance issues. For example, do separate impact studies imply that offsets will not be allowed in assessing the impact of a noncompliance?

The Section believes the rules should give the contracting officer the latitude to require the form of cost impact studies needed to address a noncompliance based on specific contractor circumstances. If the proposed requirement for separate studies is retained, the Section suggests that the Board should make it clear that offsets will be allowed between the estimating and cost accumulation impact of a noncompliance when the same underlying noncompliance is involved. For example, in some circumstances increased costs allocated to flexibly priced contracts may be offset by understated prices on firm-fixed price contracts based on the same noncompliant practice. The definition of offset at 9903.403 could be interpreted to preclude the above described offset, allowing the Government to make contract adjustments that exceed the aggregate increased costs paid as a result of a noncompliance.

Contract Adjustment Tables

The tables covering voluntary changes and estimating noncompliances included in the proposed Subpart
Changes in Cost Accounting Practices

9903-4 are confusing and the actions illustrated may be misinterpreted as strict requirements. If the tables are retained in a final rule, greater explanation of their purpose, assumptions and limitations is needed.

One example of lack of clarity is in the table included in the proposed FAR 9903.405-5(d)(3) covering voluntary changes. The table states that when lower costs are allocated to firm fixed-price and flexibly priced contracts, the prices should be adjusted downward by "the amount of the net downward practice adjustment." (emphasis added). Does "net" refer to the impact of contract cost incentives on costs paid by the Government. Why is the term "net" used for only one of the situations illustrated?

The tables in some instances illustrate only one of the actions that can be taken to preclude the payment of increased costs. In many cases, however, other options exist. For example, when higher costs are allocated to flexibly priced contracts and lower costs are allocated to firm fixed-price contracts, the table implies that the firm fixed-price contract will always be adjusted. Adjusting the firm fixed-price contract is not necessary, if payment of a higher level of increased costs on flexibly priced contracts is precluded.

Because the tables summarize complex requirements in a very general fashion, the Section suggests that the CAS Board acknowledge in introductory comments that the illustrations have limitations. The word "required" should be removed from the sections immediately preceding the tables. The sections preceding the tables should indicate that the actions illustrated are not the only actions that may be appropriate, and reference the proposed 9903.405-5(a)(2). The introduction to the FAR 9903.405-5(d)(3) table should term it an illustration, in a fashion that is similar to the table for estimating noncompliances.

Actions to Preclude Increased Costs

Part of the difficulty with the cost impact tables is that the Board's current proposal does not provide a clear rationale and explanation for the technique used to determine net increased costs and actions needed to preclude payment of increased costs. In some illustrations there are "increased costs" on both fixed price and cost reimbursement type contracts, based on the Board's definitions (e.g., a shift in allocated costs from FFP to CPFF contracts). Yet, the contract cost adjustments are not the sum of the increased costs for the individual contracts. For example, in the proposed 9903.407-1(f)(2), involving one FFP and one CPFF contract, there is an indicated increased cost of $1 million and $2 million respectively for a total of $3 million. The contract adjustment to preclude payment of increased cost is made by decreasing only the FFP contract price by $1 million.

It appears that the illustrations reflect application of the "netting process" referred to in NPRM I.4/ However, no definition corresponding to the netting process is included in NPRM II. The illustrations in NPRM II appear to be based on the correct position that only those adjustments needed to preclude increased costs paid in the aggregate, are permissible. See 41 U.S.C. 422(h)(3)(1988).

Because the process for precluding increased costs is important, the Section believes it should be named and defined in the regulations. The regulations should provide a clear statement of the rationale for the limitation and an explanation of the necessary mechanics/calculations so the required actions, as illustrated, can be fully understood. To allow better understanding of this concept, the Section suggests an illustration that shows (1) total costs to be paid before a change to cost accounting practice; (2) costs that would be paid if no action is taken to preclude increased costs; and (3) the amount of cost adjustment necessary to preclude increased costs. The illustration should involve FFP contracts, flexibly priced contracts and mixed contract types.

Proposed Limitation on Offsets

The benchmark for CAS regulations must be the statute that established the CAS Board. It provides for a contract price or cost adjustment "for any increased costs paid" by the United States due to a contractor's failure to comply with Cost Accounting Standards or to follow consistently disclosed cost accounting practices. 50 App. U.S.C. 2168(h)(1)(1982). The regulations implementing this statute recognize that increased costs under one or more contracts due to a change in cost accounting practice or the failure to follow consistently an accounting practice should be offset by cost decreases under other affected contracts. 4 C.F.R. 331.70(f). This concept of offsets was reaffirmed in the 1988 statute that re-
established the CAS Board and states that contract price adjustments are to be made on relevant contracts "subject to the cost accounting standards so as to protect the United States from payment, in the aggregate, of increased costs." 41 U.S.C. 422(h)(3) (1988).

As pointed out in the Section’s comments on NPRM I, the statutory requirement is to ensure that the United States does not pay increased costs due to a noncompliance or a failure to follow an accounting practice. As with NPRM I, NPRM II is unduly complicated and inconsistent with this objective. NPRM II appears to permit offsets only within the same contract type. Proposed 9903.405-5(b)(2) states:

The offset process shall only be applied to contracts that are of the same contract type, e.g., FFP, T&M, incentive (FPI/CPIF) or other cost reimbursement contracts.

The Section believes that this restriction on offsets will produce contract adjustments that are greater than those necessary to preclude increased costs to the Government as the result of a voluntary change to cost accounting practice. For example, a change to cost accounting practice may result in a $100 decrease in costs allocated to a firm fixed-price (FFP) contract and a $100 decrease to a cost plus fixed fee (CPFF) contract. On these facts, there is "increased cost" to the Government of $100 on the FFP contract and savings to the Government of $100 on the CPFF contract. If no contract adjustments are made, the "cost paid" by the Government on those contracts will not have increased because the decreased costs paid on the CPFF contract offsets the increased cost on the FFP contract. Nevertheless, under NPRM II, the FFP contract price would be reduced by $100. This result exceeds the statutory authorization to make contract price adjustments so as to protect the Government from paying increased costs in the aggregate.

With respect to adjustments for voluntary changes, the CAS Board states "[t]he Government should be left no worse off as a result of a voluntary change than it is for a required or desirable change with regard to contract price adjustment." This position fails to recognize that there is a difference between the underlying basis for equitable adjustments and the statutory requirements that protect the United States from payment, in the aggregate, of increased costs. The Board has provided no analysis or rationale to support the position that the Government, in administering a voluntary change or noncompliance, should reap a greater benefit via contract cost allowance or price adjustments pursuant to "equitable adjustment" procedures than the protection from increased costs provided by the statute.

The Section believes that any analysis or rationale for the proposed limitations on offsets should be reconciled with the CAS Board’s authorizing statute and presented for public comment.

Firm Fixed Price (FFP) Impact Measurement

The NPRM mandates use of estimates at completion ("EACs") for the measurement of the cost impact of a voluntary change on FFP contracts. See proposed 9903.403 definition, Increased cost to the Government due to a change in compliant cost accounting practices. The regulatory basis for adjusting firm fixed-price contracts, currently reflected in FAR 9903.306(b) and (c), is that the parties would have negotiated a lower contract price had a noncompliance or change to a cost accounting practice been known when the price was negotiated. The CAS Board stated that FFP adjustments embody the same measurement principles as Truth-in-Negotiations Act price adjustments. Mandating the use of actual costs (EACs) as the only measure of impact for FFP contracts is not consistent with the underlying basis for adjusting the contract and can lead to distorted results. For example, differences between the planned and actual costs of performance for a contract can result from many variables having nothing to do with cost accounting and significantly alter the amount of impact calculated.

The Section suggests that the Board revise its proposal to allow the parties the flexibility to select impact measurements that fairly reflect the impact of a change or non-compliance on the negotiated price of a contract.

The proposed 9903.406-3(c) and the table that follow appear to require that cost estimating noncompliances be measured strictly based on differences in estimated costs. The ultimate impact on contract prices is not addressed. In many cases a change in the amount of cost estimated for a contract will
Changes in Cost Accounting Practices

not affect the negotiated contract price by that same amount. For example, where a not-to-exceed agreement limits the price of a contract to $100, the difference between subsequent cost proposals of $125 and $130 would not result in a different price for the contract. FAR 9903.306(b) currently provides that increased costs for fixed price contracts are measured by the difference in the contract price agreed to and the contract price that would have been agreed to had the contractor proposed in accordance with the practices used during contract performance. That measurement of impact allows the parties to appropriately consider what impact a change in estimated costs would have had on the agreed upon contract price. The Section suggests that the CAS Board revise the proposal so the measurement of impact on fixed price contracts is defined in terms of the impact that a change in estimated costs would have had on the agreed upon contract prices.

\textbf{Profit Impact}

NPRM II does not address whether profit or fee is required to be included in cost impact proposals for voluntary changes. We believe that the cost information required by the NPRM is generally sufficient to allow the parties to appropriately consider whether profit or fee needs to be addressed. The NPRM should make clear that it does not require proposed profit or fee adjustments and that profit or fee may be addressed by the parties on a case-by-case basis.

\textbf{Static or Dynamic Measurement of Cost Impact for Voluntary Cost Accounting Practice Changes}

Proposed 9903.403 defines cost impact to mean '. . . increase or decrease in estimated or actual costs allocable to a CAS covered contract . . . Increased cost paid is defined as '. . . the amount the Government actually pays in the aggregate, for increased costs resulting from noncompliant cost accounting practices used to estimate or accumulate costs.'

Under the first definition, cost impact is not dependent on whether the Government will actually pay an increased cost allocable to a flexibly priced contract. For example, increased cost allocable to a fixed price incentive contract presently estimated to be in an overceiling condition will have increased cost allocated to the contract but no increased cost paid by the Government. Similarly, contract ceilings on indirect cost pools or rates, e.g., IR&D/B&P and G&A are not unusual. None of the proposed 9903.405 applicable to voluntary changes is sensitive to the distinction. Increased cost allocations are automatically assumed to result in increased cost paid unless there is corrective action. The Section suggests that the Board clarify the proposed regulation to make it clear that cost adjustments may be limited by other contract provisions or agreements.

\textbf{F. The Cost Accounting Standards Clause}

NPRM II includes a new contract clause entitled "Cost Accounting Standards -- Full Coverage." See proposed 9903.201-4. The Section offers the following comments regarding the proposed new clause:

\textbullet{} In \textbf{(a)(4)(i)} of the current CAS clause (FAR 52.230-2), there is a reference to the Changes clause when discussing changes resulting from required changes. The reference is removed from the proposed CAS clause. Was this intentional, and, if so, why?

\textbullet{} In \textbf{(a)(4)} of the proposed clause, it states that the "Contractor, in connection with this contract, shall -- . . . Agree to an equitable adjustment." Although similar language appears in the current FAR 52.230-2(a)(4)(1), it is technically inappropriate to say that a contractor shall agree to an equitable adjustment. Instead, the provision could be revised to state: "There shall be an equitable adjustment in the contract price."

\textbullet{} In \textbf{(b)} of the proposed clause a disagreement between the
contractor and the "cognizant Federal agency official" is to be treated as a dispute under the Contract Disputes Act. The reference to a "cognizant Federal agency official," rather than a Contracting Officer may lead to confusion when dealing with the subject of disputes. Disputes involve "claims" that can be Government or contractor initiated and can be monetary or nonmonetary in form. CAS compliance disputes, specifically, have been characterized by the boards of contract appeals as Government claims. Under the FAR, it is the "Contracting Officer" who is to initiate a Government claim (or issue a final decision regarding a contractor claim), not a "cognizant Federal agency official." See FAR 33.206(b). The Section suggests that the CAS Board use the term "Contracting Officer" or provide some explanation for the use of an alternative term.

G. Other Comments

◆ The Section suggests that the proposed 9903.201-6(c)(2) concerning desirable changes should be modified to reflect that subparagraphs (i) through (ii) are examples only. Otherwise, contracting officers may limit desirable changes to these two circumstances.

◆ The Section believes the proposed 9903.201-6(d) improperly limits "desirability" to situations where there is a financial benefit to the Government, either now or in the future. There may be other changes that do not provide an apparent financial benefit, but may, nonetheless, be "desirable" because they are "appropriate, warranted, fair, and reasonable."

◆ The Section believes the proposed 9903.302-1(c)(3) on selection of an allocation base is unnecessarily complex.

◆ The definition of "required change" in 9903.403 refers to a "CAS-covered contractor." Only contracts are covered by CAS, not contractors. The reference should be restated.

IV. Conclusion

The Section appreciates the opportunity to provide these comments and is available to provide additional information or assistance as you may require.

FOOTNOTES

1/ The Section submitted comments to the ANPRM on July 10, 1995 and to NPRM I on December 2, 1996. The same general comment was made in each case.

2/ For example, the comments accompanying NPRM II make it clear that the Board intends by the new definition to make it "explicit that the combination of existing pools, the split-out of an existing pool, or the transfer of an existing function from one pool to one or more different cost pools constitutes a change in cost accounting practice. 62 Fed. Reg. 37655. This statement does not explain why such actions should be treated as changes to practice triggering the administrative requirements associated with such changes.

3/ See ANPRM proposed FAR 9903.201-6(b).

4/ The ANPRM definition stated "Netting process means the technique used to determine if action needs to be taken to preclude the payment of increased costs for voluntary accounting changes not deemed desirable, by comparing the net higher allocation of costs by contract type to the net lower allocation of costs to other contract types for contract subject to adjustment."
Sincerely,

Marcia G. Madsen
Chair
Section of Public Contract Law

cc:  David A. Churchill  
Rand L. Allen  
Gregory A. Smith  
Patricia A. Meagher  
Marshall J. Doke, Jr.  
John T. Kuelbs  
Michael K. Love  
Council Members  
Chair and Vice Chair(s), Accounting, Cost and Pricing Committee  
Alexander J. Brittin

Return to Regulatory Coordinating Committee Home Page