

contractor for reimbursement would not constitute actual costs incurred, but could include amounts in excess of actual costs. Such inflated amounts would represent additional profit to the contractor, not reimbursement of a contractor's costs. In the subject example, total profit would be enlarged beyond that contemplated in contract negotiations. This enlargement would be contrary to the intent of the contracting parties and would result in increased costs to the Government in the form of a "windfall" profit to the contractor. Conversely, if McDermott, Will & Emery's example is changed to reflect a *decrease* in the price of a company's stock since the shares were acquired by the ESOP, in accordance with GAAP, the company would be reimbursed only for the decreased value of the shares under Government contracts and would likely not recover its actual costs incurred. In such a situation the contractor would be unfairly penalized by reduced profitability and decreased working capital.

Question 6

Should the form of payment of ESOP benefits to the employee make a difference in measuring the cost allocable to Government contracts? If so, how should the cost be determined?

Comments: All of the fourteen commenters who responded to this question were unanimous in their conclusion that the form of payment of ESOP benefits should make no difference in measuring the cost allocable to Government contracts. This response from DOD is fairly typical:

The form of payment of ESOP benefits to the employee should not make a difference in measuring the cost allocable to Government contracts. The measured cost should be the same whether the benefit is paid in cash, other assets or stock. It should also be the same whether the benefit is paid as a lump sum or over an employee's life. The cost allocable to Government contracts should be based on the cost to the contractor and not on the compensation received by the employee.

Response: The Board agrees with the commenters that the form of payment to employees should not make any difference to the ESOP cost measurement process for government contract costing purposes. The Board notes that neither the value nor form of distribution of ESOP awards to employees determines the contractor's cost of providing the ESOP benefit.

Additional Comments

1. Public Policy Issues

Comments: Several commenters stressed the public policy aspect of ESOPs and, in particular, Congressional support for these plans. These commenters seem to suggest that any Standard on this topic should not interfere with the original Congressional intent of encouraging employee ownership through ESOPs.

Response: The Board believes that the proposed amendments to CAS 9904.415 would not interfere with the intent of Congress.

2. Applicability of the *Ball Corporation* Decision

Comments: Another theme included in the comments was that whatever problems there might have been a few years ago with ESOP cost measurement, these issues have been, in effect, clarified and resolved by the ASBCA in its decision in *Ball Corporation, supra*.

Lockheed Martin Corporation summarized this point of view as follows:

Court actions resulted in decisions such as the *Ball Corporation* ASBCA case which affirmed that the broad conceptual guidance found in CAS Standards were adequate for the measurement and allocation of ESOP costs. The controversies are basically settled and the courts have established that there is adequate guidance on how to account for ESOP costs.

Response: The Board believes that clarification of the measurement and assignment of ESOP costs is needed to promote uniformity and consistency in accounting for ESOP costs, despite the decision in *Ball Corporation, supra*. That decision did not address the contribution method of measuring ESOP costs incorporated into these proposed amendments. The ASBCA's decision in that case was limited to a determination that the fundamental requirements of the measurement criteria in CAS 9904.415–40(b) had been met by the contractor, that neither CAS 9904.415–50(d) or (e) was applicable in that instance, and that the Government had not demonstrated that the contractor's ESOP contributions failed to represent the present value of the future benefits.

F. Additional Public Comments

Interested persons are invited to participate by submitting data, views, or arguments with respect to this ANPRM. All comments must be in writing and submitted in accordance with the instructions indicated in the ADDRESSES section.

List of Subjects in 48 CFR 9904

Government procurement, Cost Accounting Standards.

Angela B. Styles,

Chair, Cost Accounting Standards Board.

Accordingly, for the reasons set forth in the preamble, it is proposed to amend part 9904 as follows:

PART 9904—COST ACCOUNTING STANDARDS

1. The authority citation for part 9904 continues to read as follows:

Authority: Public Law 100–679, 102 Stat 4056, 41 U.S.C. 422

2. Section 9904.412–20 is revised to read as follows:

9904.412–20 Purpose.

(a) The purpose of this Standard 9904.412 is to provide guidance for determining and measuring the components of pension cost. The Standard establishes the basis on which pension costs shall be assigned to cost accounting periods. The provisions of this Cost Accounting Standard should enhance uniformity and consistency in accounting for pension costs and thereby increase the probability that those costs are properly allocated to cost objectives.

(b) This Standard does not cover the cost of Employee Stock Ownership Plan (ESOPs) that meet the definition of a pension plan. Such plans are considered a form of deferred compensation and covered under 9904.415.

3. Section 9904.415–20 is revised to read as follows:

9904.415–20 Purpose.

(a) The purpose of this Standard 9904.415 is to provide criteria for the measurement of the cost of deferred compensation and the assignment of such cost to cost accounting periods. The application of these criteria should increase the probability that the cost of deferred compensation is allocated to cost objectives in a uniform and consistent manner.

(b) This Standard is applicable to the cost of all deferred compensation except the following which are covered in other Cost Accounting Standards:

(1) The cost for compensated personal absence, and

(2) The cost for pension plans that do not meet the definition of an Employee Stock Ownership Plan (ESOP).

4. Section 9904.415–30 is revised to read as follows:

9904.415–30 Definitions.

(a) The following are definitions of terms which are prominent in this