



ACQUISITION,
TECHNOLOGY
AND LOGISTICS

OFFICE OF THE UNDER SECRETARY OF DEFENSE

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WASHINGTON, DC 20301-3000

DPAP/P

MAR 23 2004

Mr. Robert A. Burton
Associate Administrator
Office of Federal Procurement Policy
725 17th Street, NW, Room 9013
Washington, DC 20503

Dear Mr. Burton:

The purpose of this letter is to request: (a) an amendment to Cost Accounting Standards (CAS) to exempt time-and-materials and labor-hour contracts for commercial services from CAS requirements; and (b) a waiver from all CAS requirements for time-and-materials and labor-hour contracts for commercial services until such time as the CAS is amended.

Section 4205 of Public Law 104-106 provided for an exemption from the CAS for commercial items. As a result of this law, on June 6, 1997, the CAS was amended to provide an exemption from CAS for commercial items entered into under fixed price (FP) and fixed price with economic price adjustment contracts (FP-EPA). At the time the CAS was amended, commercial items could only be procured under FP and FP-EPA contracts. Thus, the CAS amendment was consistent with the provisions in Public Law 104-106.

Section 1432 of the FY 2004 National Defense Authorization Act expands the types of contracts that can be used to procure commercial items. This act authorizes the use of time-and-materials and labor-hour contracts for purchases of certain commercial services. We therefore request that the CAS Board amend 9903.201(b)(6) to provide an exemption for time-and-materials and labor-hour contracts used to procure commercial services.

We recommend that the CAS Board amend 9903.201(b)(6) to provide an exemption for "contracts and subcontracts for commercial items," rather than specifically listing each type of contract that is exempt. This would preclude the need for the CAS Board to amend their regulations each and every time statutory requirements for contracting commercial items are expanded or contracted. Alternatively, and at a minimum, the CAS Board should amend 9903.201(b)(6) to specifically exempt time-and-materials and labor-hour contracts entered into for commercial services.



The amendments to 9903.201(b) (6) will need to be processed through the four-step CAS promulgation process, which historically has taken at least a year to implement. However, we currently have the authority to use time-and-materials and labor-hour contracts for commercial services. We therefore request that the CAS Board grant a waiver from all CAS requirements for any time-and materials and labor-hour contracts for commercial services entered into under the provisions of Section 1432 of the National Defense Authorization Act.

My office would be pleased to work with your staff on this matter in whatever way would be most helpful. If you have any questions or desire our assistance, please contact Mr. David J. Capitano, Senior Procurement Analyst, at 703-847-7486 or via e-mail, david.capitano@osd.mil.

Sincerely,



Deidre A. Lee
Director, Defense Procurement
and Acquisition Policy

cc: Director. DCAA