

Attachment B

Ms. Deidre A. Lee
Director, Defense Procurement and
Acquisition Policy
Department of Defense
Washington, DC 20301

Dear Ms. Lee:

This responds to your December 19, 2003 letter, and the additional information you provided on April 5, 2004, to the Cost Accounting Standards (CAS) Board, requesting a CAS waiver for contracts entered into under the authority of 10 U.S.C. 2686, "Utility Systems, Conveyance Authority."

On September 2, 2004, the CAS Board approved the requested waiver subject to the conditions set forth in the attached "Enclosure."

In granting this waiver, the CAS Board recognizes that the utilities industry has a set of established accounting practices that are used by regulatory authorities to set rates for utility customers (e.g., FERC, NARUC, RUS, or AWWA). The Board believes that the enclosed waiver conditions, which include requirements for contractors to consistently follow these established industry accounting practices, and to disclose in writing the accounting practices used for allocation of indirect costs, provides adequate protection for the Government. If any contractor selected for a contract under the above described authority does not agree to the conditions in this waiver, the contractor will be subject to CAS requirements, provided it otherwise satisfies the appropriate CAS applicability criteria.

Please inform this Office, within ninety days after the close of each fiscal year, of the extent and use of this waiver.

Sincerely,

James P. Bedingfield
Member

Anthony M. DiPasquale
Member

William F. Reed
Member

Eugene L. Waszily
Member

Enclosure

The Cost Accounting Standards are hereby waived for contracts entered into under the authority of 10 U.S.C. 2686, "Utility Systems, Conveyance Authority" that meet all of the following conditions:

1. The contract is one of the following types:
 - a. Firm fixed price contracts (FFP);
 - b. Fixed price contracts with economic price adjustment (where the price adjustment is based on an index or established prices, not based on actual costs incurred) (FPEPA);
or
 - c. Fixed price contracts with prospective price redetermination (where the price adjustment is based on actual costs incurred) (FPPPR).
2. The business segment performing the contract is not, at the time of contract award, currently performing on any other contract that is subject to the Cost Accounting Standards.
3. The contract is awarded without the submission of cost or pricing data.
4. For contracts that are awarded without adequate price competition (regardless of contract type) and for all FPPPR contracts, the contract must include a clause that:
 - a. Requires the contractor to prepare the proposal for the initial contract or for the price redetermination using accounting practices that (i) comply with pronouncements of the Federal Energy Regulatory Commission (FERC), the National Association of Regulatory Utility Commissioners (NARUC), the Rural Utility Service (RUS), or the American Water Works Association (AWWA) and (ii) are consistent with the contractor's written and established practices for measuring, assigning, and allocating costs;
 - b. Requires the contractor to disclose, in writing, its established accounting practices for allocating indirect costs to contracts for which CAS has been waived, and to consistently use those disclosed practices to prepare proposal(s); and
 - c. Provides for an adjustment to the contract price if it is later found that the price was increased because the contractor used accounting practices that were in noncompliance with FERC, NARUC, RUS, or AWWA, or were inconsistent with the contractor's written and established practices. The amount of the adjustment shall be the difference between the contract price that was negotiated and the price that would have been negotiated had the business unit used compliant accounting practices that were in accordance with FERC, NARUC, RUS, or AWWA, and were consistent with the contractor's written and established practices. The Government shall be entitled to a credit or cash recovery (at the Government's option) for the amount of the increased price plus interest. The interest shall be computed from the date the payment by the

Government until the date of repayment by the contractor. The interest rate shall be the rate specified at 26 U.S.C. 6621(a)(2).

5. For FPPPR contracts, the contract includes the clause at FAR 52.215-2, Audit and Records-Negotiation.
6. For FPPPR contracts, the contract includes the following clause

The actual costs used for purposes of establishing any price predetermination under the contract must exclude all statutory and contractually unallowable costs. The actual costs must also exclude the types of costs that are not normally reimbursed by the applicable regulatory body that oversees the utility rate determinations of the business segment performing the contract. Any reasonable method of estimating such costs, including a statistical sample of contractor costs projected to the total cost universe, is sufficient to meet this requirement. Should any unallowable costs be included in the negotiated price predetermination, the Government shall be entitled to recover the amount of those unallowable costs plus interest from the date of the predetermination until the date of repayment, in accordance with 26 U.S. C. 6621(a)(2).

7. For FFP and FPEPA contracts (where the price adjustment is not based on actual costs incurred), the contract includes a clause that provides the Contracting Officer and his authorized representative access to all relevant contractor records, including but not limited to the accounting practices and cost records in use at the time of the contract award and at the time of the price redetermination.