Roughly four months ago, we **noted** that the CAS Board had jumped back into action by adding a single word ("certified") to the 48 CFR 9903-201-1(b)(15) list of CAS exemptions. It took the CAS Board a full seven years to make that one-word change.

Seven years.

Still, we were happy to see evidence—any evidence—that the CAS Board was moving forward. Even if the speed at which the Board was moving resembled molasses flowing over ice at the North Pole.

Now comes additional evidence that the CAS Board is continuing to move forward. Forgive us if you've already seen this, but we don't think many people have.

On July 17, 2018, the CAS Board **published** a Federal Register notice announcing a final rule that revised the CAS exemption for contracts and subcontracts for the acquisition of commercial items. Previously, the exemption at 48 CFR 9903-201(b)(6) exempted "firm fixed-price contracts and subcontractors for the acquisition of commercial items." The problem with that language was that government acquisition folks were awarding commercial item contracts that were other than firm fixed-price. Read literally, it was only a subset of commercial item contracts (and subcontracts) that were exempt from CAS; however, as the Board explained, that was never the intent. The Board stated—

An inconsistency has developed between the list of contract types recognized for use in acquiring commercial items set forth in paragraph (b)(6) and that commercial item exemption and contract types reflected in FAR 12.207. For example, FAR 12.207 allows the use of firmed fixed price contracts in conjunction with award fee incentives or performance or delivery incentives, known as fixed-price incentive (FPI) contracts, when the award fee or incentive is based solely on factors other than cost. However, the (b)(6) exemption does not expressly recognize FPI contracts on the enumerated list of exempt contracts. Because of this discrepancy, some commenters on a prior CAS Board rulemaking expressed concern that these types of FPI contracts might be excluded under a literal reading of the (b)(6) exemption. *See* 72 FR 36367.

The Board went on to state that, when read in proper context—i.e., by reading the CAS Board's "authorizing statute at 41 U.S.C. 1502(b)(1)(C)(i) as well as the language in section 4205 of the Clinger-Cohen Act"—a reasonable person wouldn't reach the conclusion that only a subset of commercial item awards were exempt from CAS. But some people might not be reasonable, and therefore the Board acted to clarify the (b)(6) CAS exemption.

To keep things simple, the Board decided to stop listing contract types and just refer to FAR Part 12 (Acquisition of Commercial Items). In the Board's words: "… this final rule amends the language at 9903.201–1(b)(6) to exempt contracts and subcontracts authorized in 48 CFR 12.207 for the acquisition of commercial items."

In other words, if the contract or subcontract is a commercial item contract as authorized by FAR 12.207, then it is exempt from CAS.

Period.

Seems pretty simple, right?

It took the CAS Board nearly six years to go from proposed rule to final rule.

Six years.

Still, it was faster than the prior regulatory action.

Perhaps that molasses is flowing a bit more quickly these days.