

COUNCIL OF DEFENSE AND SPACE INDUSTRY ASSOCIATIONS

2111 Wilson Boulevard, Suite 400

Arlington, VA 22201

(703) 247-9490

September 9, 1999

CODSIA Case No. 17-99

Mr. Robert Donatuti
Deputy Director
Major Policy Initiatives
Room 3E 1344, the Pentagon
Washington, DC 20301-3060

Dear Mr. Donatuti:

The undersigned members of the Council of Defense and Space Industry Associations (CODSIA) appreciate the opportunity to provide comments on the proposed revisions to the DFARS to obtain data to comply with the Chief Financial Officer's Act (DFARS Case 99-D019). While we believe that the \$100,000 threshold for reporting of plant equipment and other real property is reasonable, we are opposed to the inclusion of software in the reporting requirement at any dollar level.

Presently software, and sources for related data collection, is managed outside the normal operating parameters of the government property management system. In FAR Part 27 and DFARS Part 227 software is classified as "intellectual property." The proposed rule imposes a new burden of controlling software, not as intellectual property, but as government property. As you know, industry has long opposed the inclusion of software under the regulations applicable to management of government property. This new requirement is clearly not acquisition reform and does not streamline nor simplify the acquisition process.

The apparent rationale underlying the proposed revision is that "software" is property because it has value and it can be conveyed, "titled," and transferred or licensed for use by others. While these are all attributes of physical property in the conventional sense of the word, they are also attributes of technical data. It seems unlikely that the government would propose that all proprietary technical data, or software, used under a contract, be recorded, inventoried, managed, and accounted for in a hardware sense, as government property. Accordingly, it is questioned why "software" has been singled out for disparate treatment, at potentially substantial additional cost to the government.

Software users, including the government, usually obtain the right to use commercial software based on the terms of license agreements, and they generally don't own the software. Software products they develop are normally a deliverable under the contract. A requirement to

record and control software as government property would add a significant cost burden to contractors and ultimately the government.

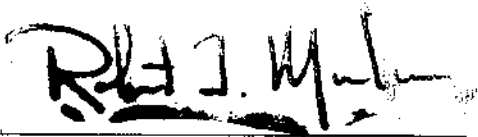
Because of differing accounting practices, not all contractor accounting systems are configured to routinely capture all the costs of developing and producing software. In determining the cost of software, a number of contractors will be faced with either the costly task of modifying systems to capture and report the information or the contractor's personnel will have the labor-intensive task of manually collecting the data for subsequent reporting to the government. This effort could entail, but not be limited to, reviewing purchase orders, extracting data from cost systems, tracking the development of the software through the ERP, MRP, materials, manufacturing or work-in-process systems. This raises the issue of the expected level of accuracy of the source data. Are estimated/allocated/calculated costs acceptable? Extracting "acquisition cost information from the Contractor's financial or cost accounting systems" (Part 252.3 (c)) could result in highly subjective interpretations, depending upon the level of accuracy expected by the government auditor.

Additionally, the proposed rule is unclear and subject to differing interpretations. For instance, components of special test equipment are not separately accounted for nor reported. Software that is an integral part of, or used in conjunction with, special test equipment is not specifically excluded by the rule. The exclusion of special test equipment should include related software but this interpretation is unclear.

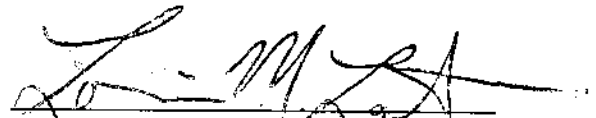
CODSIA members do not support the potential increase in data gathering and software reporting requirements, due to the potential cost impact resulting from our interpretation of the proposed rule. It is our strong recommendation that the software-reporting requirement be removed from the proposed rule.

If there are any questions, or if we can be of further assistance, please do not hesitate to contact the CODSIA Project Officer, Patrick Sullivan, at (202) 371-8522 or sullivan@aia-aerospace.org.

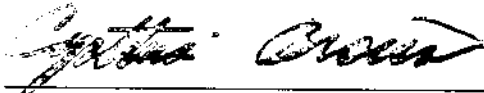
Sincerely,



Robert T. Marlow
Vice President, Government Division
Aerospace Industries Association



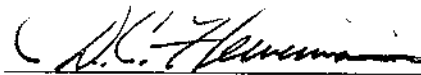
Lorraine M. Lavet
Chief Operating Officer
American Electronics Association



Cynthia Brown
President
American Shipbuilding Association



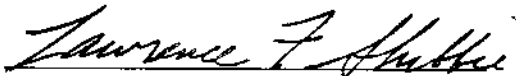
Gary D. Engebretson
President
Contract Services Association



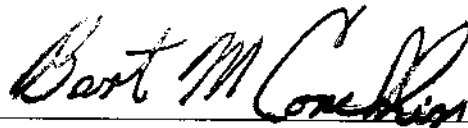
Dan C. Heinemeier
President, GEIA
Electronic Industries Alliance



Kenneth McLennan
President
Manufacturers Alliance/MAPI



Lawrence F. Skibbie
President
National Defense Industrial Association



Bert M. Concklin
President
Professional Services Council