

COUNCIL OF DEFENSE AND SPACE INDUSTRY ASSOCIATIONS

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December 19, 2000

CODSIA Case 12-99

The Honorable George W. Bush
President-Elect of the United States
Presidential Transition Office
1800 G Street, NW
Washington, DC 20006

Dear President-Elect Bush:

The undersigned members of the Council of Defense and Space Industry Associations (CODSIA) respectfully recommend that the Administration stop the release of a final rule for Federal Acquisition Regulation (FAR) case 1999-010 regarding contractor responsibility ("blacklisting") for which a revised proposed rule was published at 65 Fed. Reg. 40829 on June 30, 2000. The regulation would give federal government contracting officers virtual blank check authority to deny federal contracts to bidders based on, among other things, decisions that are not yet finally adjudicated administratively or judicially.

Formed in 1964 by industry associations with common interests in the defense and space fields, CODSIA is currently composed of eight associations representing over 4,000 member firms across the nation who employ the preponderance of the two million men and women in the defense industry. Participation in CODSIA projects is strictly voluntary. A decision by any member association to abstain from participating in a particular activity is not necessarily an indication of dissent.

This issue is of great concern to the employer community for many reasons, but particularly because the regulation's standard for eligibility for award of a federal contract – "satisfactory compliance" – covering an enormously complex matrix of laws – is so broad and vague as to be meaningless. Furthermore, even the best-intentioned employer can get caught in the vast maze of confusing and often conflicting federal, state and local laws and regulations. For example, regulations relating just to employment laws cover over 4,000 pages of fine print, environmental regulations cover over 14,000 pages, and the complexity of tax and antitrust laws is legendary.

It should be emphasized that the proposed regulation is an attempt to circumvent the legislative process by adding, through the administrative process, a major new draconian penalty – disqualification from government contracts – to employment, tax,

environmental, antitrust, and other laws of the land. Any changes to these laws should receive full consideration by the Congress, rather than be adopted through the back door of the administrative agencies.

The current Administration's own procurement professionals have called for the regulation's withdrawal. The General Services Administration and the Environmental Protection Agency characterized the rule as "seriously flawed" and "punitive." In addition, the Defense Acquisition Regulation Council, comprised of the Army, Air Force, Defense Logistics Agency, Defense Contract Management Agency, and NASA, expressed concern about "the adverse effect of these proposed revisions on the ability of contracting officers to meet mission requirements," and recommended that the Administration withdraw the regulation.

In our judgment the far-reaching implications of this rule argue strongly that the most prudent course of action is to stop its publication and implementation. Your Administration should have the opportunity to fully review this matter, the Congress should be able to conduct the necessary legislative oversight and the current General Accounting Office audit of contractor compliance with federal contract law should be completed before final action is taken.

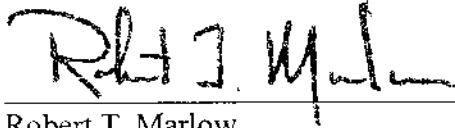
Moreover, the Congress addressed this matter in the last session. Language to postpone the issuance of this regulation, introduced by Reps. Davis (R-VA) and Moran (D-VA) as an amendment to the Fiscal year 2001 Treasury-Postal Appropriations bill, passed the House of Representatives on July 20, 2000 by a strong bipartisan vote of 224-190. Support for language to postpone this vague, unfair, and costly regulation remains strong in both the House and the Senate.

We appreciate your consideration of our request and look forward to working with you on this and other matters.

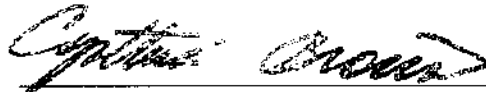
Sincerely,

(SEE ATTACHED CODSIA SIGNATORIES)

cc: Mr. Andrew H. Card, Jr.
Mr. Clay Johnson, III
The Honorable Tom Davis
The Honorable Jim Moran



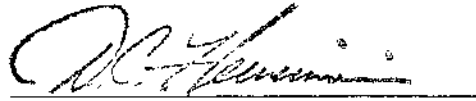
Robert T. Marlow
Vice President, Government Division
Aerospace Industries Association



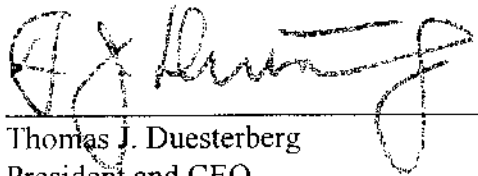
Cynthia Brown
President
American Shipbuilding Association



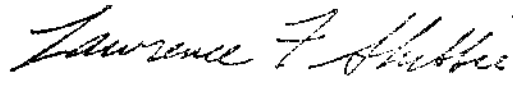
Gary D. Engebretson
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Dan C. Heinemeier
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Thomas J. Duesterberg
President and CEO
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Association



Charles H. Cantus
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