

COUNCIL OF DEFENSE AND SPACE INDUSTRY ASSOCIATIONS

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February 1, 2001

CODSIA Case No. 12-99

The Honorable George W. Bush
President of the United States
The White House
1600 Pennsylvania Avenue, NW
Washington, DC 20500

Dear President Bush:

This letter supplements our previous correspondence dated December 19, 2000 (which was directed to your Transition Office, 1800 G Street, NW, Washington DC 20006) concerning the then pending release of the final rules developed under Federal Acquisition Regulation (FAR) case 1999-010 regarding contractor responsibility determinations and cost principles.

On December 20th, in one of its last regulatory actions, the previous Administration issued the final rule (65 Fed. Reg. 80255), which became effective January 19, 2001. The concerns expressed in our December 19th appeal remain. Therefore, we respectfully urge you to take appropriate action to suspend both application and enforcement of this rule until your Administration has had the opportunity to review the implications for the federal procurement system. Ultimately, because of what we consider to be fatally flawed rulemaking, we recommend that the rules issued on December 20, 2000 be rescinded.

The new regulations give federal contracting officers a virtual blank check authority to deny federal contracts to bidders based on, among other things, allegations that are not yet adjudicated administratively or judicially.

Further, the standard for eligibility for award of a federal contract – “satisfactory compliance” – covers an enormously complex matrix of laws and is so broad and vague as to be meaningless. Moreover, even the best-intentioned employer can become enmeshed 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 anti-trust laws is legendary. For the small business this regulatory

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overload may be insurmountable and will certainly have a chilling effect on commercial firms that are already reluctant to do business with the federal government.

As we noted previously, the current regulations effectively circumvent the legislative process by adding, administratively, a major new draconian penalty – disqualification from government contracts – to employment, tax, environmental, anti-trust, and other laws of the land. Any changes to these laws, if needed, should receive full consideration by the Congress, rather than be adopted administratively.

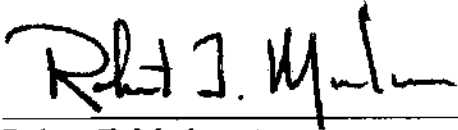
Federal procurement professionals share our concerns with the merits of these rules, and have called for their withdrawal. The General Services Administration and the Environmental Protection Agency characterized the rules as “seriously flawed” and “punitive.” In addition, the Defense Acquisition Regulations Council (comprised of Army, Navy, Air Force, Defense Logistics Agency, Defense Contract Management Agency and the National Aeronautics and Space Administration representatives) expressed its concern when the final regulations were first issued about “the adverse effect of these ...revisions on the ability of contracting officers to meet mission requirements,” and recommended at the time that the previous Administration withdraw them.

In light of the deep concerns shared by both government and industry, we believe the most prudent course of action is to suspend both application and enforcement of the new rules. 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, whether it be to rescind, modify, or implement as promulgated. Furthermore, the lack of sufficient guidance, infrastructure and resources makes it infeasible for contracting officers and other members of the acquisition team to effectively administer or enforce the new regulatory responsibilities required as of January 19, 2001.

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

Sincerely,

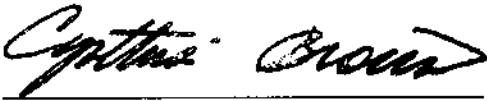
(SEE ATTACHED CODSIA SIGNATORIES)



Robert T. Marlow
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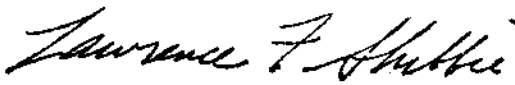
Gary D. Engebretson
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