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Rec'd 05/26/09 3:47 PM

May 26, 2009

Office of Federal Procurement Policy
725 17th Street, N.W., Room 9013
Washington, DC 20503
ATTN: Raymond J. M. Wong

Re: CAS 2009 Overseas Exemption

Subject: Notice of Request for Information – Cost Accounting Standards: Exemption from Cost Accounting Standards for Contracts Executed and Performed Entirely Outside the United States, Its Territories, and Possessions

Dear Mr. Wong:

The Aerospace Industries Association (AIA) is pleased to have the opportunity to respond to the issues raised in the subject Notice published in the April 23, 2009 Federal Register and we offer the following comments and recommendations.

As required by Section 823 of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009, the CAS Board was required to do the following:

- (1) review the inapplicability of the cost accounting standards, in accordance with existing exemptions, to any contract or subcontract that is executed and performed outside the United States when such a contract or subcontract is performed by a contractor that, but for the fact that the contract or subcontract is being executed and performed entirely outside the United States, would be required to comply with such standards; and
- (2) determine whether the application of the standards to such a contract or subcontract (or any category of such contracts and subcontracts) would benefit the Government.

This requirement was based on the language in the House bill that stemmed from a February 19, 2008 letter from the Chairman of the House Committee on Armed Services to the Director, Office of Management and Budget. The letter implies the CAS Board's 2008 decision to leave this CAS exemption in place could have resulted in oversight and accountability being ignored in the contracting process leading to fraud, waste and abuse in Iraq contracting. There is no relationship between the existence of this CAS exemption and the fraud, waste and abuse cited by the Chairman. CAS compliance does not prevent wasteful practices, bribery, or fraudulent activities.

The review being undertaken by the CAS Board, as discussed in the April 23, 2009 Federal Register, is the third time the CAS Board has studied this exemption. The exemption

should remain in place as the CAS Board has concluded in its two prior reviews in 1991 and 2008.

The U.S. Government procurement process and our member companies would be harmed by the elimination of this CAS exemption for the following reasons.

Without the exemption, the ability of our member companies to utilize foreign subcontractors would be curtailed. Such subcontractors would have to develop a CAS-compliant cost accounting system with few, if any, knowledgeable personnel available and at significant cost, if the subcontractors were even willing to do so. Many foreign concerns would simply be unable to comply with CAS at all. Foreign concerns might refuse to compete on U.S. government contracts, thus diminishing the Government's ability to obtain the best equipment and services in the world. In the November 14, 1978 Federal Register, when the exemption was first published for comment, the CASB acknowledged the application of CAS "has become a significant impediment to efficient successful contracting with foreign concerns and foreign governments." That circumstance is of greater importance today with the growth of the global supply chain.

The Government benefits from foreign sales of Defense products to other governments, through mutual security cooperation, quantity discounts on common buys, and the contribution of exports in global trade. Most other countries insist on some level of foreign company participation before agreeing to purchase U.S. Defense products. Currently, foreign companies are covered by the exemption in CAS for contracts executed and performed entirely outside the U.S. Were the exemption eliminated, the opportunities provided through these industrial participation programs would be significantly reduced, which would reduce beneficial foreign military sales.

The Government also benefits from a shared local supply chain, where a foreign contractor's primary customer is the local foreign government. For example, spare parts for aircraft common to both the U.S. military and the local foreign military may share the same local contractor. However, elimination of the CAS exemption may cause the local contractors to cease doing business with the U.S. government rather than incur costs for CAS compliance that increase prices to the primary local foreign government customer.

Given the global economy, the effects of international reciprocity should be considered in avoiding unintended consequences. When U.S. contractors sell to foreign governments, U.S. cost accounting rules are followed. Other countries have large defense industries and prescribed accounting rules. If the U.S. applies CAS to foreign contractors, other countries may extend their rules to U.S. contractors, effectively eliminating U.S. contractors from competing globally for foreign military sales.

The Government benefits from purchasing critical supplies and services from local foreign contractors around the world where the U.S. is based for military and humanitarian purposes. Were CAS to be applied to local foreign contractors, they might cease doing business with the U.S., thus depriving U.S. personnel of needed support. Remote locations and war zones would be especially challenging environments for the U.S. Government to obtain products and services timely. Consider, for example, meeting critical efforts to fight insurgency and stabilize economies in Iraq and Afghanistan without the use of indigenous companies. Before responding to Congress, we strongly recommend the CAS Board confer with those in

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U.S. procurement agencies familiar with negotiated contracts awarded directly to foreign concerns which could be CAS covered if the exemption were removed. As noted above, this information is especially important to obtain when those concerns are located in remote regions and war zones where elimination of critical suppliers could cripple our military.

We strongly urge that the exemption provided by 48 CFR 9903.201-1(b) (14) remain in effect for the national security of the United States. If you have questions on this letter or wish to meet with AIA representatives to discuss this subject, please contact Dick Powers at (703) 358-1042 or dick.powers@aia-aerospace.org.

Sincerely,


Richard J. Powers
Director, Financial Administration