

**COUNCIL OF DEFENSE AND SPACE INDUSTRY ASSOCIATIONS**  
**4401 Wilson Boulevard, Suite 1110**  
**Arlington, Virginia 22203**  
**703-875-8059**  
**[codsia@pscouncil.org](mailto:codsia@pscouncil.org)**

September 1, 2009

Ms. Lesley Field  
Acting Administrator  
Office of Federal Procurement Policy  
New Executive Office Building, Room 9013  
Washington, D.C.

Re: FAR Case 2005-036  
CODSIA Case 06-07

Dear Ms. Field:

The Council of Defense and Space Industry Associations (CODSIA)<sup>1</sup> has had a long-standing interest in FAR Case 2005-036, a rulemaking that proposes to change the definition of cost or pricing data. It is our understanding that the final rule is now under review by the Office of Federal Procurement Policy (OFPP). Although we have not had the opportunity to review the rule as currently drafted, we have been led to believe that the final rule does not materially differ from the last version subject to public comment. Because it is our opinion that this rule will have an unintended negative impact on the public and result in inefficiencies in public procurement, we strongly recommend OFPP direct the FAR Council to publish the rule as a proposed rule and provide the opportunity for further public comment.

We also urge OFPP to take advantage of the additional time provided for another round of notice and comment to identify an alternative approach to the challenges presented by the preference for commercial item acquisition in a single bid environment. This rule as well as ongoing studies, other proposals in the regulatory pipeline and recent statements of DoD policy are all intended to address the difficulties government faces when determining price reasonableness for a commercial item in a sole source or single bid situation. To adopt all of the various changes that are in the offing promises to erode the commercial item preference without any assurance that the real problem will be addressed.

In our response to the Proposed Rule<sup>2</sup> we stated our belief that the proposed rule will generate more rather than less confusion on both sides of the contracting community

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<sup>1</sup> CODSIA was formed in 1964 by industry associations with common interests in federal procurement policy issues, at the suggestion of the Department of Defense. CODSIA consists of seven associations -the Aerospace Industries Association (AIA), the American Shipbuilding Association (ASA), the National Defense Industrial Association (NDIA), the Professional Services Council (PSC), the American Council of Engineering Companies (ACEC), TechAmerica, and the U.S. Chamber of Commerce. CODSIA's member associations represent thousands of government contractors nationwide. The Council acts as an institutional focal point for coordination of its members' positions regarding policies, regulations, directives, and procedures that affect them. A decision by any member association to abstain from participation in a particular case is not necessarily an indication of dissent.

<sup>2</sup> CODSIA Letter dated June 22, 2007, CODSIA Case no. 6-07.

when commercial items are being acquired. We believe the result would be to make it more difficult for the Government to procure needed products and services in the commercial marketplace. In addition, we believe the proposed changes conflict with the Truth in Negotiations Act (TINA)<sup>3</sup> in at least two ways: 1) it will result in the submission of cost or pricing data in acquisitions currently exempt from such requirements, i.e., commercial items, and 2) it would add judgmental information to data required to be submitted whereas TINA currently excludes judgmental data from the definition of cost or pricing data.

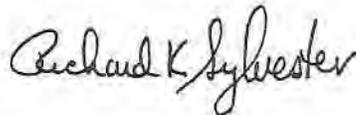
We ask that you review the attached comments to gain a better understanding of our opposition to publication of the rule generated from FAR Case 2005-036 as a final rule and that OFPP take an active role to develop an innovative, workable solution to the Department of Defense's concerns that are apparently the primary driver of this FAR Case.<sup>4</sup>

CODSIA member associations are dedicated to improving the procurement process and stand ready to assist you in better understanding our concerns and working jointly with you and/or the FAR Council to develop responsive regulations.

Sincerely,



A.R. "Trey" Hodgkins, III  
Vice President, National Security and  
Procurement Policy  
TechAmerica



Richard Sylvester  
Vice President, Acquisition Policy  
Aerospace Industries Association



Peter Steffes  
Vice President, Government Policy  
National Defense Industrial Association



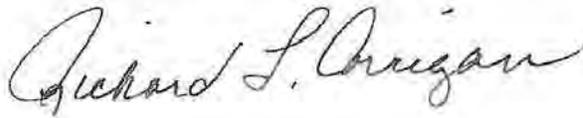
Alan Chvotkin  
Executive Vice President & Counsel  
Professional Services Council

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<sup>3</sup> 10 USC 2306a

<sup>4</sup> Nothing in these comments should be construed as obviating the requirement to preclude pricing information from the selection process for architect/engineering services as prescribed in FAR 36.6. For such services, pricing information can only be requested from the most qualified firm, to support negotiations leading to a fair and reasonable contract price.

CODSIA Letter to OFPP  
September 1, 2009



Richard L. Corrigan  
Policy Committee Representative  
American Council of Engineering Companies



R. Bruce Josten  
Executive Vice President –  
Government Affairs  
U.S. Chamber of Commerce