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February 16, 1979

The Honorable Lawton Chiles
United States Senate

Dear Lawton:

This letter is by way of followup on our recent discussion with respect to the provision included in Section 509(c)(3) of S.5, the proposed "Federal Acquisition Reform Act," and the concerns expressed by the Cost Accounting Standards Board with respect to the inclusion of cost accounting standards in the proposed exemption.

The provision referred to above is substantially the same as the corresponding provision of S.1264 which was introduced in the Senate during the 95th Congress and its predecessor Section 307 of S.3005 of the 94th Congress. As noted in our comments on the prior bills, Section 509(c)(3), if adopted, would result in duplicating responsibilities assigned to the Board by Public Law 91-379, which established it in 1970.

As you know, the Board has granted a number of exemptions and waivers under its authority in this statute. These exemptions, once approved, have the effect of law. Unless certain of these were modified or repealed, the confusion in industry and in the agencies would be very considerable should Section 509(c)(3) be enacted. I believe that you are well aware of other concerns which we have with respect to the provision in S.5.

I continue to believe that Section 509(c)(3) is not a workable approach and would result in a far larger paperwork burden than the exemption provision which has been granted by the Board to take into account the problems of small business and commercial establishments having a small percentage of their total business devoted to contracts coming within the purview of cost accounting standards.

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As agreed in our conversation, I have reviewed the entire matter again at a recent meeting of the Cost Accounting Standards Board in relation to the exemptions which we have promulgated, particularly our exemption regulation 4 CFR 331.30 (2) which exempts from full coverage:

"Any contract or subcontract awarded to a contractor for performance in a business unit which is eligible to use the provisions of Part 332 of the Board's regulations and which elects to use that part."

Part 332 provides:

"Except for the award of a single covered contract of \$10 million or more the provisions of this part may be applied in lieu of Part 331 of this chapter to any covered contract received by a business unit which in its immediately preceding cost accounting period received less than \$10 million in awards of covered contracts: Providing, that the sum of such awards equals less than 10 percent of the business unit's total sales during that period."

A business unit which qualifies for modified coverage under Part 332 is required to comply with Cost Accounting Standards 401 and 402 which require that the contractor follow consistent accounting practices during the life of the contract. If it is part of a company which received more than \$10 million of CAS covered contracts in a cost accounting period, the business unit is also required to file a statement disclosing its current practices. Without this disclosure, it would not be possible to be certain that consistent practices were being followed.

In order to achieve as far as practicable the objective sought in Section 509(c)(3), the Board is now agreeable to changing the 10 percent figure in our regulation to 25 percent if this provision in 8.5 is omitted. This change would generally accommodate the test now provided in Section 509. The effect of this change would be to permit modified coverage of CASB rules, regulations and standards by approximately 175 additional business units with CAS covered contracts totaling approximately \$285 million. This would be in addition to the original exemption promulgated by the Board which permitted modified coverage for about 300 business units with CAS covered awards of about \$405 million.

The Board feels strongly that, should subparagraph (c)(3) be retained, then Section 901 of S.5 should be revised to include a repeal of paragraph (h)(2) of section 103 of the Act of August 15, 1970. (84 Stat. 796, as amended; 50 U.S.C. App. 2168) The repeal of (h)(2) is necessary to avoid conflicts between the exemption authority of that provision and the waiver

authority of Section 509. Any further exemptions would then require specific legislative authority.

If you have any questions concerning the matters discussed above, we would appreciate the opportunity to meet with you to discuss S.5 in detail.

Sincerely,

(Signed) E .

Chairman

cc: Mr. Schoenhaut w/file
Mr. Keller ✓
Mr. Hagenstad

February 17, 1979

Mr. Schoenhaut

**Mr. Staats would like you to send copies of
the attached letter to Board Members.**

P. Gill