



November 29, 2010

Ms. Hada Flowers  
General Services Administration, Regulatory Secretariat  
1800 F Street, NW  
Room 4041  
Washington, DC 20405

Subject: FAR Case 2009-028, "Encouraging Contactor Policies to Ban Text Messaging While Driving"

Dear Ms. Flowers:

The Aerospace Industries Association (AIA) appreciates the opportunity to provide comments and recommendations on the interim rule "Encouraging Contractor Policies to Ban Text Messaging While Driving," published in the *Federal Register* on September 29, 2010. The interim rule (FAR Case 2009-028) will implement Executive Order 13513, issued on October 1, 2009, entitled "Federal Leadership on Reducing Text Messaging while Driving." The purpose of the policy in the Executive Order is to prevent the unsafe practice of text messaging by Federal contractors while driving in connection with Government business and to promote economy and efficiency by prohibiting the disruption of Government business as a result of unsafe text messaging practices.

AIA and its member companies support safe driving practices. However, we believe that the interim rule goes beyond the policy of the Executive Order and has been inappropriately made applicable to contractors that sell commercial items and to certain subcontractors.

#### Application Beyond the Scope of the Executive Order

The title of the clause 52.223-18 does not align with either Executive Order (EO) 13513 or with the FAR subpart 23.11. Both the EO and the subpart are titled, "Encouraging Contractor Policies to Ban Text Messaging While Driving." However, the title of the clause is more directive in nature, "Contractor Policy to Ban Text Messaging While Driving." The title of the clause should be more in line with the intent of the policy to encourage contactor behavior. Further, FAR 52.223-18(c) should be changed from "The Contractor should ..." to "The contractor is encouraged to ...." This formulation better aligns with similar clauses such as clause 52.226-6, "Promoting Excess Food Donation to Nonprofit Organizations."

#### Inappropriate Application of the Clause

41 U.S.C. 430 and 431 are intended to limit the clauses that are to be applied to contractors that sell commercial items to the government so that commercial item contracts reflect customary commercial terms and conditions to the extent practicable. This limitation recognizes that Government-unique requirements dissuade commercial item and commercial-

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off-the-shelf (COTS) item manufacturers from participating in the Federal marketplace. While the FAR Council has the authority to apply terms and conditions to commercial type contracts, the interim rule provides no rationale for why the Council took this action in opposition. Further, unlike the clause at 52.226-6 cited above, this clause applies to subcontracts below \$25,000 but above the micro-purchase threshold. Again, there is no rationale provided for why the FAR Council took this action.

Based on the above, AIA recommends that the FAR Council make changes in the final rule to conform it with the EO on which it is based, to exempt commercial and COTS contracts, and to limit application of the rule to subcontracts above \$25,000. AIA would welcome an opportunity to discuss our comments further with you. If you have any questions or need any additional information, please contact me at (703) 358-1045 or [richard.sylvester@aia-aerospace.org](mailto:richard.sylvester@aia-aerospace.org).

Sincerely,



Richard K. Sylvester  
Vice President, Acquisition Policy