THE RENEGOTIATION BOARD

DATE : October 31, 1973

TO : W.S. Whitehead
Chairman

FROM : General Counsel

SUBJECT: Air America - LPI No. 96507
Air Asia - 96508
Pacific Corp. - 96509

Subject companies have failed to file renegotiation reports for fiscal years ended 1966 through 1973. In prior years (1952 - 1966), Air America, Inc., and its predecessor, Civil Air Transport, Inc. (CAT), were granted an exemption under Section 106(d)(1) of the Renegotiation Act of 1951, as amended, and RBR 1455.2(d). The five DOD requests were exempted in whole or in part by the Board, on an after-the-fact basis. See attachment 1. Pacific Corp. has never filed a renegotiation report; nor has Air Asia which is 99 percent owned by Air America, Inc., and is incorporated in Formosa. We are advised that Air Asia performs the major part of Air America's business as a subcontractor.

Section 106(d)(1) of the Act on which these exemptions were requested and granted provides:

> (d) Permissive Exemptions.--The Board is authorized, in its discretion, to exempt from some or all of the provisions of this title--
> (1) any contract or subcontract to be performed outside the territorial limits of the continental United States or Alaska. . . .

RBR 1455.2(d) on which DOD has relied and the exemption was granted prior to 1966 provides:

(d) Specific exemption of prime contracts

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and subcontracts.--The Board has exempted and will in the future exempt individual prime contracts or subcontracts, or the prime contracts or subcontracts related to a particular authorized procurement program, when such prime contracts or subcontracts are to be performed outside the territorial limits of the continental United States or in Alaska, and when the Department responsible for procurement establishes to the satisfaction of the Board that (1) the prime contracts or subcontracts involved in the request are to be placed with foreign nationals or foreign corporations whom it is not practicable to subject to renegotiation; (2) the provisions of the prime contracts or subcontracts are otherwise sufficient to prevent excessive profits; (3) the program is of direct and immediate concern to the defense of the United States and refusal to grant the exemption would jeopardize the success of the program; or (4) the contract or group of contracts should be exempted from any combination of the foregoing reasons or for any other reason. Prime contractors or subcontractors who believe that their prime contracts or subcontracts should be exempted under this provision should address their requests to the Departments entering into the prime contracts involved.

Air America, Inc., Air Asia, Inc. and Pacific Corporation have been formally notified to submit RB-1's for 1966 through 1973. Their time for filing has been extended twice to October 16, 1973 based on the oral requests of Mr. John S. Warner, Acting General Counsel, CIA.

Mr. Warner has addressed a SECRET letter dated 12 September 1973 to the Chairman advising:

1. . . .Air America, Inc. is wholly owned by Pacific Corp. whose stock is entirely owned by the Central Intelligence Agency.

2. . . .the Central Intelligency Agency. . . has decided to divest itself of Air America and its subsidiary, Air Asia. . . .It is anticipated that this sale will be concluded by 31 December 1973.

3. With approximately $23 million in retained earnings, these. . .cash assets will be transferred to the holding company, The Pacific Corporation, and then refunded to the U.S. Government. No money will accrue to the benefit of any individual. The Appropriations Committee of the Senate and House and OMB are aware of the details of the proposed disposition of those funds.

In the letter the CIA makes several arguments against renegotiation stating:

1. Subjecting Air America contracts to renegotiation procedures would be counter productive and not in the best interests of the United States.

2. A company which is wholly owned by an agency of the United States cannot have its excessive profits eliminated and recovered by the United States.

3. There are no excessive profits within the meaning and intent of the Renegotiation Act.

4. The cost of performing the necessary reports for the years 1966 through 1973 would require time-consuming and expensive examination of records. . .with no possible benefit to the Government.

5. Requesting renegotiation at this point ". . .can only complicate the sale of Air America and result in a net loss to the Treasury."

By letter dated 24 September 1973, Terence E. McClary, Assistant Secretary of Defense Comptroller, requested the Chairman to exempt the military departments contracts for the years subsequent to June 30, 1966 under section 106(d)(1) of the Act and section 1455.2(d) of the regulations, stating the following:

1. The conditions under which the contracts were performed remained the same as prior years in which the exemption was granted.

2. The exemption was appropriate for the same reasons on which it was previously granted being performed outside the territorial limits of the continental United States.

3. The program is of direct and immediate concern to the defense of the United States, and

4. . . .Renegotiation would jeopardize secrecy required in the public interest.

Office of General Counsel comments:

There are several aspects of this problem which need identification and consideration.

1. While the prior exemptions made on an after-the-fact basis have created some precedence which the Board may consider as controlling (the Board's records are silent on any rationale for these past actions after-the-fact), this Board is entitled to review the matter in whatever detail they consider necessary to satisfy themselves of the propriety of granting an exemption after-the-fact, or proceeding with the requirement for filing the required reports.

It should be noted that in 1971 the Board under section 106(d)(1) of the Act and RBR 1455.2(d) permitted after-the-fact exemptions to MSC in the case of the Norwegian ships for prior years 1967 and 1968 even after the regional board issued unilateral orders against the four companies.

2. Under the broad language in section 106(d)(1) (cited above) the Board has sufficient authority to exempt the contractors ". . .from some or all of the provisions of this title. . . ." Specifically ". . .any contract or subcontract performed outside the territorial limits of the continental United States. . . ." (But, see paragraph 3 following.) Under the Board's regulation 1455.2(d) this broad authority is detailed for the specific reasons now relied on by CIA and DOD. The section further provides that ". . .(4) the contract, or group of contracts should be exempted for any combination of the foregoing reasons or for any other reason." The above is the basic thrust of

CIA and DOD's legal argument and will be considered by the Justice Department as carrying great weight if we requested them to proceed criminally under section 105(e)(1) of the Act and RBR 1470.2 and 1499.2-20. This presents a practical problem which could affect the success of the Board's action in proceeding against the contracts under those sections of the Act and regulations.

3. We have been orally advised that the performance of all of the contracts during the years in question was outside the territorial limits of the continental United States. Section 1455.2(c-1)(2) provides that the exemption requested by DOD will apply only if the contract and subcontracts are "wholly performed outside the United States by any person who is not engaged in a trade or business in the United States. . . ." Specifically this relates to ". . . air transportation or cargo carriage from any point in the United States to a point outside the United States, or vice versa."

In spite of the written assertions of DOD that all the contracts were performed outside the territorial limits of the United States, a review of the DOD contract tab runs discloses that in GFY 1972, ten contracts were awarded in Washington, D.C. for a total $52,000. If this is true, certainly for the GFY in question (which may include two company fiscal years), the exemption would not be permitted by RBR 1455.2(c-1). This could be explored specifically with DOD in our reply to their requested exemption. The Board has in the past construed the requirement for operating wholly outside the United States as having some significance. However, in the Norwegian shipping cases, decided by the Board in 1971, even though there was actual contact with the territorial United States, MSC was granted the exemption

under RBR 1455.2(d)3. At the time the contracts were being performed (1967 - 1968), the program was considered to be of direct and immediate concern to the defense of the United States and a refusal to grant the exemption alleged by MSC to jeopardize the success of the program. It should be noted that this Board decision was made on August 10, 1971.

Recommendations:

Considering the extreme sensitivity of the situation and the practicability of obtaining Department of Justice support to prosecute Air America as a recalcitrant, particularly when the sale of Air America is in process, another approach is recommended.

1. The Board should enter into detailed discussions with DOD and CIA to assure fully that the contractor is entitled to the exemption under RBR 1455.2(d).

2. The Board should hold the award of the requested exemption until it has been fully satisfied that the sale of Air America's assets was proper and that all the retained earnings and moneys received from the sale were refunded to the United States Government.

[redacted] 25X1

General Counsel

Attachment
As stated

AIR AMERICA INC.'s REQUESTS FOR EXEMPTION

Requested	Granted	Years covered by request
	April 10, 1956	1952, '53, '54, '55 and '56
May 15, 1958	May 11, 1958	1957 and '58
October 20, 1959	October 23, 1959	1959 through June 30, 1962
March 22, 1963	April 3, 1963	June 31, 1962 through June 30, 1964
May 16, 1966	May 24, 1966	July 1, 1964 through June 30, 1966

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6-17-76

WASHINGTON, D.C. 20446

June 16, 1976

X1 [redacted]
Acting General Counsel
Central Intelligence Agency
Washington, D.C. 20505

X1 Dear [redacted]

This letter is with reference to your letter dated May 7, 1976, concerning the renegotiability of contracts held by Air America, Inc.

This will advise you that pursuant to Section 106(d)(1) of the Renegotiation Act of 1951, as amended, and § 1455.2(d) of the Board's regulations, the Board has exempted from renegotiation all contracts between Air America, Inc., and the Department of Defense and its constituent Military Departments, for the period April 1, 1973 through June 30, 1975, inclusive.

A copy of a letter, dated June 16, 1976, from the Secretary to the Board to Air America, Inc., notifying the contractor of the Board's action is enclosed herewith.

Sincerely yours,

R.C. Holmquist
Chairman

Enclosure
As stated

THE RENEGOTIATION BOARD
UNITED STATES OF AMERICA

WASHINGTON, D.C. 20446

June 16, 1976

Air America, Inc.
1725 K Street, N.W.
Washington, D.C. 20006

Attention: Mr. Clyde S. Carter
Senior Vice President

Gentlemen:

This will advise you that pursuant to Section 106(d)(1) of the Renegotiation Act of 1951, as amended, and § 1455.2(d) of the Board's regulations, the Board has exempted from renegotiation all contracts between Air America, Inc. and the Department of Defense and its constituent Military Departments for the period April 1, 1973 through June 30, 1975, inclusive.

Sincerely yours,

[Signed]

Kelvin H. Dickinson
Secretary to the Board

CENTRAL INTELLIGENCE AGENCY
WASHINGTON, D.C. 20505

OGC 76-2395
7 May 1976

Honorable Richard C. Holmquist
Chairman, Renegotiation Board
2000 "M" Street, N.W.
Washington, D.C. 20446

Dear Mr. Holmquist:

The purpose of this letter is to advise you of our opinion that the receipts and accruals from all contracts between Air America, Inc. and the Department of Defense and its military departments are not subject to the Renegotiation Board. These contracts have previously been exempted by the Board for the period 1 July 1952 through 30 June 1974 pursuant to § 106(d)(1) of the Renegotiation Act of 1951, as amended, and Part 1455.2(d) of the Regulation of the Board.

Air America, Inc. has been a wholly-owned subsidiary of the Pacific Corporation whose shares of stock have been held in trust for this Agency. Air America, Inc. filed for dissolution with the State of Delaware on 1 April 1976. The Pacific Corporation filed for dissolution with the State of Delaware on 15 April 1976. Retained earnings of the corporations have been returned to the Treasury of the United States, as miscellaneous receipts. All further receipts received from the sale of assets and capital will be returned to the Treasury of the United States. Air America, Inc. ceased its flying operations on 28 April 1975.

Please confirm that the receipts and accruals of these contracts are not subject to renegotiation. Therefore, there will be no further renegotiation filings required from Air America, Inc. since their last exemption expired on 30 June 1974. This letter is considered an advisory opinion between our two agencies and should be treated in a confidential manner.

Sincerely,

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Acting General Counsel

cc: Air Advisor/DDA

STAT [redacted]

Distribution:
Orig - Addressee
1 - [redacted] (Renegotiation Board -- [redacted] File No. 2)

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4/28/75

OGC 75-1685

OGC SUBJ: HB/ILKA case filed
Renegotation Board

THE RENEGOTIATION BOARD
UNITED STATES OF AMERICA

WASHINGTON, D.C. 20446

April 28, 1975

John S. Warner
Acting General Counsel
Central Intelligence Agency
Washington, D. C. 20505

Dear Mr. Warner:

I am enclosing three (3) classified documents: (1) your letter to the Board dated 12 September 1973 (Secret), (2) the Board's reply to that letter dated October 9, 1973 (Secret), and (3) Board General Counsel's memorandum to the Chairman dated October 31, 1973 (Secret).

Because of the sensitive nature contained therein, these Board documents are being placed in your custody with the understanding that should the Board in the future have need for any of them, you will make them available to us through appropriate channels. We are not retaining any internal documents on the subject matter which we consider to fall within a sensitive category.

Sincerely,

David M. F. Lambert
General Counsel

Enclosures

SECRET

October 9, 1973

Honorable William E. Colby
Director
Central Intelligence Agency
Washington, D. C. 20505

Dear Mr. Colby:

Receipt is acknowledged of letter of 12 September 1973, from Mr. John S. Warner, your Acting General Counsel, and the additional information he submitted in connection with the proceedings to liquidate the assets of Air America, Inc. In response to Mr. Warner's verbal request, the Board has extended to October 16, 1973, the time for filing RB-1's for Air America, Inc. and Pacific Corporation, for the years subsequent to their fiscal year ending 1966, and each contractor has been advised that, in all likelihood, there will be no further extensions. In addition, we are in receipt of a letter, dated 24 September 1973, from the Department of Defense, Comptroller, requesting exemptions under Section 106 (d) (1) of the Renegotiation Act and Section 1455.2 (d) of the Renegotiation Board Regulations. A copy of our reply is enclosed herewith.

The Board has carefully reviewed your request for exemption for Air America, Inc. from the formal renegotiation process, as well as the request of the Department of Defense for an exemption under Section 106 (d) (1) of the Renegotiation Act of 1951, as amended. We are also aware of your offer to discuss informally any phase of Air America, Inc.'s and Pacific Corporation's operations in order to provide full assurance that the retained earnings of Air America, Inc. and Pacific Corporation will revert to the United States Government.

With full awareness of the above assurances, the Board has a strong reluctance to grant the requested relief for a number of reasons, all of which appear to it to be sound and determinative. First, the

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practice of subject contractors obtaining one or two year exemptions was discontinued in 1966. The present Board is unaware of any appropriate reason for the subsequent lack of compliance with the Renegotiation Act and its regulations. The Board's files are devoid of any formal or informal communications justifying the absence of compliance since the 1966 year with the filing requirements or the rationale for not making an application for an exemption.

Secondly, the alleged administrative effort and costs required to file annual RB-1's for the years involved, during the period when the sale of Air America, Inc. is being implemented, does not justify providing after-the-fact exemptions for seven years under Section 106 (d) (1) which is neither contemplated by the Act or by our regulations.

Thirdly, the covert character of your agency's operations as they affected Air America, Inc. should not now be the basis for permitting the granting of after-the-fact exemptions. If Air America, Inc.'s operations were in fact conducted as a legitimate business enterprise, then the records of their operations should properly reflect their renegotiable business and permit the formal filing of the RB-1's for the years concerned. The Board finds it difficult to comprehend that the financial data required by the filing is considered of such a classified nature that it cannot be revealed, since these renegotiable sales as reflected by contract numbers, dollar amounts and other data have been made public through the normal procurement information channels.

Fourthly, subject contractors have complied with the Internal Revenue Service requirements and have filed returns for the years in question, copies of which the Board has obtained. Obviously, your argument against the contractors ("wholly owned by an agency of the United States * * *") following renegotiation procedures is without foundation in view of their compliance with the Internal Revenue Code.

Lastly, the filing with the Board of the required information by the contractors will have no adverse effect on the contemplated sale of their physical assets. Any renegotiation liability so determined by the Board for any fiscal year, will not inure to a prospective buyer of such assets. Hence, our requirements will have no effect on the proposed liquidation of the contractors' plant, property and equipment.

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Since the United States has ceased hostilities in the Far East and the issue of National Defense in that area is not now involved, the Board firmly believes that at this time it would not be in the public interest to provide after the fact exemptions to the contractors for their fiscal years 1967 through 1973. On the contrary, the Board believes that it is in the best interests of the Government and the public, that subject contractors file the required RB-1's for their fiscal years noted above. It is very much hoped that your Agency will assure that subject contractors file the required reports with this Board. Your cooperation will be very much appreciated.

Sincerely,

W. S. Whitehead
Chairman

Enclosure

cc: John S. Warner, Esq.

CENTRAL INTELLIGENCE AGENCY
DOCUMENT RECEIPT

NOTICE TO RECIPIENT
Sign and Return as Shown on Reverse Side

COURIER REC. NO.

DATE SENT: 10 Oct 73

SENDER OF DOCUMENT(S): Renegotiation Board

ROOM: 4332 C

BLDG.: 2000 M St. NW.

DATE DOCUMENT(S) SENT: 10 OCT. 73

DESCRIPTION OF DOCUMENT(S) SENT

CIA NO.	DOCUMENT DATE	COPIES	DOCUMENT TITLE	ATTACHMENTS	CLASS
—	—	1	letter to Colby	-	SECRET
—	—	1	letter to Warner	-	SECRET
—	—	1	R. Dixon Speas Report	-	UNCL.

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ADDRESS OF RECIPIENT
General Counsel
CIA

SIGI

OFFICE: General Counsel

DATE OF RECEIPT: 10 Oct 73

FORM 12-61 615 USE PREVIOUS EDITIONS

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CENTRAL INTELLIGENCE AGENCY
WASHINGTON, D.C. 20505

12 September 1973

The Honorable William S. Whitehead
Chairman
Renegotiation Board
Washington, D. C. 20446

Dear Mr. Whitehead:

As you have been advised orally, this is to confirm that Air America, Inc. is wholly owned by the Pacific Corporation whose stock is entirely owned by the Central Intelligence Agency. While there has been considerable press speculation about the relationship between the Agency and Air America, there has never been official public confirmation of the ownership, and this fact is classified SECRET.

In 1950 the Central Intelligence Agency was directed to acquire the assets of Civil Air Transport, a partnership doing business on the China mainland. It had been determined that it would be in the interest of the United States to deprive the Chinese Communists of these assets. Subsequent to their acquisition, a Delaware corporation was formed called Civil Air Transport, Inc. (CAT), which was a predecessor to Air America, Inc. CAT performed many operational assignments during the Korean War and subsequently in Southeast Asia, both in Vietnam and Laos.

In view of the cease fire in South Vietnam and the pending negotiations in Laos, the Central Intelligence Agency no longer requires ownership of these air assets to meet its operational requirements and, therefore, has decided to divest itself of Air America and its subsidiary, Air Asia. In order to proceed with this divestiture, Dixon-Speas Aviation Consultants was hired to assess the value of Air America as a going concern. Upon completion of its assessment, a bidders' conference was conducted with those corporations

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interested in purchasing Air America at which time the interested purchasers were invited to participate in an inspection tour of the Air America facilities in the Far East. It is anticipated that this sale will be concluded by 31 December 1973.

At the present time there is approximately $23,000,000 in retained earnings listed as an asset of Air America. Upon sale of the corporation, its cash assets will be transferred to the holding company, the Pacific Corporation, and then returned to the U.S. Government. No money will accrue to the benefit of any individual. The Central Intelligence Agency has discussed this disposition of these funds with the Appropriations Committees of the Senate and House and with the Office of Management and Budget.

We believe that subjecting Air America contracts to renegotiation procedures would be counter-productive and not in the best interests of the United States. Renegotiation of contracts with a company wholly owned by an agency of the United States can in no way help to carry out the declared policy of Congress in enacting the Renegotiation Act, that excessive profits in defense contracts be eliminated and recovered by the United States. Any profits resulting from defense contracts performed by Air America accrue, in any case, to the benefit of the United States. Accordingly, there are no excess profits within the meaning and intent of the Renegotiation Act.

To require Air America to make the normal filings for review and renegotiation of profits on its defense contracts would require time-consuming and expensive examination of records by both the Board and Air America with no possible benefit to the Government. There may prove to be no excess profits. Even if there should be, the amount recovered would only reduce the cash assets to be returned to the Treasury upon liquidation. However, in either case, the cost to Air America of preparing the renegotiation filings would further reduce the amount to be returned upon liquidation. It seems to us that to require renegotiation can only complicate the sale of Air America and result in a net loss to the Treasury.

As you know, CAT and its successor, Air America, have previously been exempted from the requirement of renegotiation upon successive requests of the Department of Defense. Air America has continued to perform contractual agreements with the military departments under the same conditions as before, and we suggest that a waiver similar to those of the past be granted upon a request by the Department of Defense, which it is anticipated, you will receive at an early date.

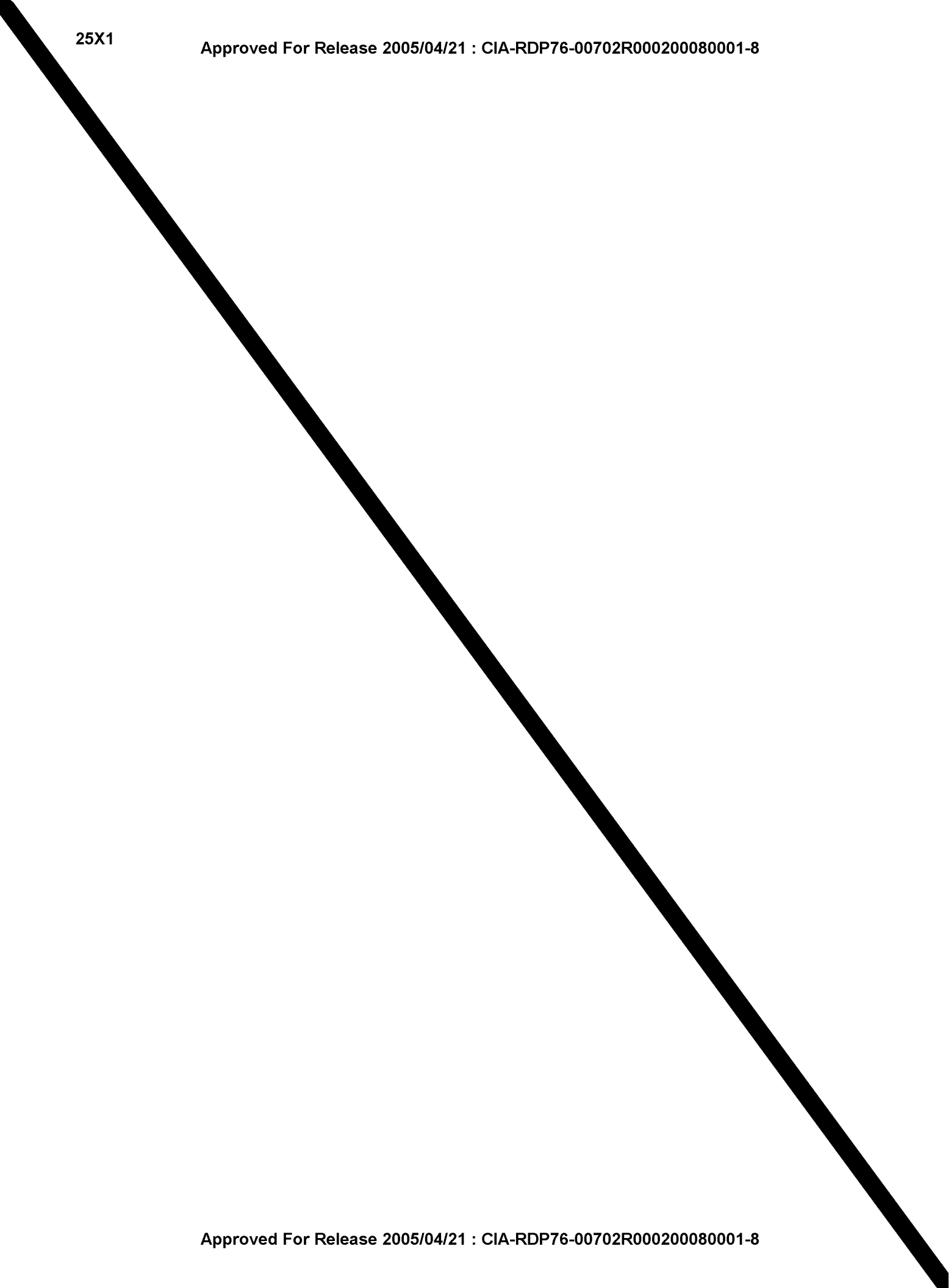
In view of the circumstances described above, it is requested that Air America contracts not be subject to renegotiation. We would appreciate the Board's approving an exemption from filing for Air America as authorized by statute and implementing regulations.

Very truly yours,

[redacted] 25X

John S. Warner
Acting General Counsel

Approved For Release 2005/04/21 : CIA-RDP76-00702R000200080001-8



Approved For Release 2005/04/21 : CIA-RDP76-00702R000200080001-8

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CENTRAL INTELLIGENCE AGENCY **DOCUMENT RECEIPT**	**NOTICE TO RECIPIENT** Sign and Return as Shown on Reverse Side	COURIER REC. NO. L114034	DATE SENT 12 Sept 73
SENDER OF DOCUMENT(S) Acting General Counsel			DATE DOCUMENT(S) SENT 12 September 1973

DESCRIPTION OF DOCUMENT(S) SENT

CIA NO.	DOCUMENT DATE	COPIES	DOCUMENT TITLE	ATTACHMENTS	CLASS
	9/12/73	Orig.	73-1713	None	S

RECIPIENT

ADDRESS OF RECIPIENT	SIGNATURE (ACKNOWLEDGING RECEIPT OF ABOVE DOCUMENT(S))	
Renegotiation Board 2000 "M" Street, N.W. Washington, D.C. 20446	OFFICE	DATE OF RECEIPT

FORM 12-61 615 USE PREVIOUS EDITIONS

(33)