

(3) Contract adjustment boards will render decisions as expeditiously as practicable. The Chair shall sign a memorandum of decision disposing of the case. The decision shall be dated and shall contain the information required by FAR 50.103-6. The memorandum of decision shall not contain any information classified "Confidential" or higher. The board's decision will be sent to the appropriate official for implementation.

#### 250.103-6 Disposition.

For requests denied or approved below the Secretarial level, follow the disposition procedures at PGI 250.103-6.

#### 250.104 Residual powers.

##### 250.104-3 Special procedures for unusually hazardous or nuclear risks.

##### 250.104-3-70 Indemnification under contracts involving both research and development and other work.

When indemnification is to be provided on contracts requiring both research and development work and other work, the contracting officer shall insert an appropriate clause using the authority of both 10 U.S.C. 2354 and Public Law 85-804.

(a) The use of Public Law 85-804 is limited to work which cannot be indemnified under 10 U.S.C. 2354 and is subject to compliance with FAR 50.104.

(b) Indemnification under 10 U.S.C. 2354 is covered by 235.070.

### PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

#### 252.203-7002 [Removed]

■ 5. Section 252.203-7002 is removed.

[FR Doc. E8-18504 Filed 8-11-08; 8:45 am]

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### DEPARTMENT OF DEFENSE

#### Defense Acquisition Regulations System

#### 48 CFR Part 208

RIN 0750-AG03

#### Defense Federal Acquisition Regulation Supplement; Competition Requirements for Purchases From Federal Prison Industries (DFARS Case 2008-D015)

**AGENCY:** Defense Acquisition Regulations System, Department of Defense (DoD).

**ACTION:** Interim rule with request for comments.

**SUMMARY:** DoD has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement to implement Section 827 of the National Defense Authorization Act for Fiscal Year 2008. Section 827 requires the use of competitive procedures in the acquisition of items for which Federal Prison Industries has a significant market share.

**DATES:** *Effective date:* August 12, 2008.

*Comment date:* Comments on the interim rule should be submitted in writing to the address shown below on or before October 14, 2008, to be considered in the formation of the final rule.

**ADDRESSES:** You may submit comments, identified by DFARS Case 2008-D015, using any of the following methods:

○ *Federal eRulemaking Portal:*

<http://www.regulations.gov>. Follow the instructions for submitting comments.

○ *E-mail:* [dfars@osd.mil](mailto:dfars@osd.mil). Include

DFARS Case 2008-D015 in the subject line of the message.

○ *Fax:* 703-602-7887.

○ *Mail:* Defense Acquisition

Regulations System, Attn: Mr. Michael Benavides, OUSD (AT&L) DPAP (DARS), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301-3062.

○ *Hand Delivery/Courier:* Defense Acquisition Regulations System, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202-3402.

Comments received generally will be posted without change to <http://www.regulations.gov>, including any personal information provided.

**FOR FURTHER INFORMATION CONTACT:** Mr. Michael Benavides, 703-602-1302.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

Section 827 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110-181) amended 10 U.S.C. 2410n to require the use of competitive procedures in the acquisition of items for which Federal Prison Industries (FPI) has a significant market share. Section 827 provides that FPI shall be treated as having a significant share of the market for a product if DoD, in consultation with the Office of Federal Procurement Policy, determines that the FPI share of the DoD market for the category of products including that product is greater than 5 percent.

DoD has determined that FPI presently has a significant market share of the items in the following Federal Supply Classes (FSC). DoD will update the following list as necessary.

FSC	Description
3510	Laundry and Dry Cleaning Equipment.
5340	Miscellaneous Hardware.
5935	Connectors, Electrical.
5975	Electrical Hardware and Supplies.
5995	Cable, cord, wire assemblies; communications equipment.
6145	Wire and cable, Electrical.
7110	Office Furniture.
7210	Household Furnishings.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

##### B. Regulatory Flexibility Act

DoD has prepared an initial regulatory flexibility analysis consistent with 5 U.S.C. 603. A copy of the analysis may be obtained from the point of contact specified herein. The analysis is summarized as follows:

The objective of the rule is to provide for competition in the acquisition of items for which FPI has a significant market share. The legal basis for the rule is 10 U.S.C. 2410n, as amended by Section 827 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110-181). The rule is expected to benefit small business concerns that offer items for which FPI has a significant market share, by permitting those concerns to compete for additional DoD contract awards. The rule also could adversely impact small business concerns that provide supplies and services to FPI relative to the affected items. The rule deviates from the policy in Subpart 8.6 of the Federal Acquisition Regulation with regard to the acquisition of items from FPI. This alternate DoD policy is necessary to implement Section 827 of Public Law 110-181.

DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subpart in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2008-D015.

##### C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply, because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, et seq.

##### D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense, that urgent and compelling reasons exist to publish an interim rule

prior to affording the public an opportunity to comment. This interim rule implements Section 827 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110–181). Section 827 requires DoD to use competitive procedures in the acquisition of items for which FPI has a significant share of the DoD market. Comments received in response to this interim rule will be considered in the formation of the final rule.

#### List of Subjects in 48 CFR Part 208

Government procurement.

Michele P. Peterson,

*Editor, Defense Acquisition Regulations System.*

■ Therefore, 48 CFR part 208 is amended as follows:

#### PART 208—REQUIRED SOURCES OF SUPPLIES AND SERVICES

■ 1. The authority citation for 48 CFR part 208 continues to read as follows:

**Authority:** 41 U.S.C. 421 and 48 CFR Chapter 1.

■ 2. Subpart 208.6 is added to read as follows:

##### Subpart 208.6—Acquisition From Federal Prison Industries, Inc.

##### 208.602–70 Acquisition of items for which FPI has a significant market share.

(a) *Scope.* This subsection implements Section 827 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110–181).

(b) *Definition.* Item for which FPI has a significant market share, as used in this subsection, means an item for which FPI's share of the DoD market for the federal supply class including that item is greater than 5 percent, as determined by DoD in consultation with the Office of Federal Procurement Policy. A list of the federal supply classes of items for which FPI has a significant market share is maintained at [http://www.acq.osd.mil/dpap/cpic/cp/specific\\_policy\\_areas.html#federal\\_prison](http://www.acq.osd.mil/dpap/cpic/cp/specific_policy_areas.html#federal_prison).

(c) *Policy.*

(1) When acquiring an item for which FPI has a significant market share—

(i) Acquire the item using—

(A) Competitive procedures (e.g., the procedures in FAR 6.102, the set-aside procedures in FAR Subpart 19.5, or competition conducted in accordance with FAR Part 13); or

(B) The fair opportunity procedures in FAR 16.505, if placing an order under a multiple award delivery-order contract; and

(ii) Include FPI in the solicitation process, consider a timely offer from

FPI, and make an award in accordance with the policy at FAR 8.602(a)(4)(ii) through (v).

(2) When acquiring an item for which FPI does not have a significant market share, acquire the item in accordance with the policy at FAR 8.602.

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#### DEPARTMENT OF DEFENSE

##### Defense Acquisition Regulations System

##### 48 CFR Parts 208, 236, and 252

##### Defense Federal Acquisition Regulation Supplement; Technical Amendments

**AGENCY:** Defense Acquisition Regulations System, Department of Defense (DoD).

**ACTION:** Final rule.

**SUMMARY:** DoD is making technical amendments to the Defense Federal Acquisition Regulation Supplement (DFARS) to update a subpart heading, a cross-reference, and a form title.

**DATES:** *Effective Date:* August 12, 2008.

**FOR FURTHER INFORMATION CONTACT:** Ms. Michele Peterson, Defense Acquisition Regulations System, OUSD (AT&L) DPAP (DARS), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone 703–602–0311; facsimile 703–602–7887.

##### SUPPLEMENTARY INFORMATION:

This final rule amends DFARS text as follows:

○ *Subpart 208.7.* Updates the subpart heading for consistency with the heading of the corresponding Federal Acquisition Regulation subpart.

○ *236.570.* Updates a cross-reference.

○ *252.235–7003.* Updates Alternate I to reflect the current title of DD Form 1494.

##### List of Subjects in 48 CFR Parts 208, 236, and 252

Government procurement.

Michele P. Peterson,

*Editor, Defense Acquisition Regulations System.*

■ Therefore, 48 CFR parts 208, 236, and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 208, 236, and 252 continues to read as follows:

**Authority:** 41 U.S.C. 421 and 48 CFR Chapter 1.

#### PART 208—REQUIRED SOURCES OF SUPPLIES AND SERVICES

■ 2. The heading of Subpart 208.7 is revised to read as follows:

##### Subpart 208.7—Acquisition From Nonprofit Agencies Employing People Who Are Blind or Severely Disabled

#### PART 236—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

##### 236.570 [Amended]

■ 3. Section 236.570 is amended in paragraph (b)(5) by removing “236.213–70” and adding in its place “236.213”.

#### PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

##### 252.235–7003 [Amended]

■ 4. Section 252.235–7003 is amended in Alternate I as follows:

■ a. By revising the Alternate I date to read “(AUG 2008)”; and

■ b. In the introductory text and in paragraph (c) by removing “Application for Frequency Authorization” and adding in its place “Application for Equipment Frequency Allocation”.

[FR Doc. E8–18492 Filed 8–11–08; 8:45 am]

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#### DEPARTMENT OF DEFENSE

##### Defense Acquisition Regulations System

##### 48 CFR Parts 209, 217, and 246

##### RIN 0750–AF86

##### Defense Federal Acquisition Regulation Supplement; Ship Critical Safety Items (DFARS Case 2007–D016)

**AGENCY:** Defense Acquisition Regulations System, Department of Defense (DoD).

**ACTION:** Final rule.

**SUMMARY:** DoD has adopted as final, without change, an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 130 of the National Defense Authorization Act for Fiscal Year 2007. Section 130 requires DoD to establish a quality control policy for the procurement, modification, repair, and overhaul of ship critical safety items.

**DATES:** *Effective Date:* August 12, 2008.

**FOR FURTHER INFORMATION CONTACT:** Mr. Michael Benavides, Defense Acquisition Regulations System, OUSD (AT&L) DPAP (DARS), IMD 3D139, 3062