

November 2 1,200 1

Defense Acquisition Regulations Council  
ATTN: Mr. Rick Layser  
OUSD (AT&L) DP (DAR)  
IMD 3C132  
3062 Defense Pentagon  
Washington, DC 20301-3062

Ref: DFARS Case 2000-D014

Dear Mr. Layser:

The National Defense Industrial Association (NDIA) is pleased to comment on a proposed amendment to the Defense Federal Acquisition Regulation Supplement (DFARS) that would eliminate the existing exemption of DFARS 247.573(b)(1)(ii) for contracts and subcontracts at or below the simplified acquisition threshold from compliance with the Cargo Act of 1904, 10 U.S.C. 2631, and DFARS clause 252.247.7023, TRANSPORTATION OF SUPPLIES BY SEA (MAR.2000). The law and the clause ordinarily require the use of U.S.-flag vessels when transporting supplies by sea under DoD contracts and subcontracts at whatever tier. The commentary states that the proposed rule will accord with that law and regulations of the Maritime Administration at 46 CFR 38 1.

NDIA is a non-partisan, non-profit organization with a membership that includes close to 900 companies and over 22,000 individuals. NDIA has a specific interest in government policies and practices concerning the government's acquisition of goods and services, including research and development, procurement, and logistics support. Our members, who provide a wide variety of goods and services to the government, include some of the nation's largest defense contractors.

We submit that the proposed rule is contrary to section 4101 of FASA, Pub. L. 103-355, 41 U.S.C. 429, which requires the FAR to include 10 U.S.C. 2631 in a list of laws that are inapplicable to contracts and subcontracts at or below the simplified acquisition threshold unless "the Federal Acquisition Regulatory Council makes a written determination that it would not be in the best interests of the Federal Government to exempt" such contracts and subcontracts. We assume the existing exemption that has been in place at least since March 2000 is based on compliance with section 429 and we are unaware of any such determination by the FAR Council

to the contrary. Nor do we believe that regulations of the Maritime Administration or any other considerations would provide a proper basis for such a determination in view of the further policy of section 4201(a) of FASA, 41 U.S.C. 427(a), mandating that the FAR “provide special simplified procedures for purchases of property and services for amounts not greater than the simplified acquisition threshold.” Removal of the exemption would also be contrary to that law because compliance with 10 U.S.C. 263 1 for such purchases of property would impose unreasonable administrative burdens on the affected contractors and subcontractors at whatever tier, most of which would be small business concerns. It would further likely impair the ability of DoD fully to utilize commercial technology, commodities and services, as well as impede the progress to simplified, commercial-like acquisition practices.

For these reasons, NDIA urges the DAR Council to withdraw the proposed rule. If further information is needed, please contact Ruth Franklin, Procurement Director, at 703-247-2598.

Sincerely,

Lawrence P. Farrell, Jr.  
Lt. Gen., USAF (Ret.)  
President & CEO