

The Defense Logistics Agency submits the following public comments on DFARS CASE 2002-D003:

1. **Applicability of the interim rule to micropurchases.** DFARS Part 208.6 should be revised to exclude micropurchases from the requirement for a comparability determination. FAR 13.106-1 specifies that micropurchases may be awarded without soliciting competition if the contracting officer determines the price to be reasonable. The requirement to perform comparability determination below this threshold is inconsistent with the spirit of FASA that requires streamlining such small purchases. Additionally, certain activities have been given a \$2500 waiver threshold by FPI as part of a pilot program. If micropurchases remain subject to the comparability determination requirement, the pilot program appears to be nullified. This seems counter to the intent of Sec. 811 to expand competition for these items.
2. **Priorities for use of government supply sources - JWOD.** The interim rule is silent on how the requirements of DFARS 208.602 comply with FAR Part 8.002 when satisfying requirements in descending order of priority. Previously, if FPI could not fulfill our requirements, we would have gone to FPI. Now, if FPI is found not to be comparable to private sources for these items, they must be made available for competition. But if FPI is found not to be comparable, going directly to JWOD for those items also available from them frustrates the Congressional intent to provide for more competition. Recommend the final rule clarify the requirements when FPI is found not to be comparable to private sources and the product is also available from the Committee for Purchase.
3. **Small Business Set-Asides.** It is unclear how FPI would be able to compete under a small business set aside given the current regulatory clauses that apply to small business set asides without new DFARS clause language or a deviation from the current FAR clauses. FAR set aside clauses include very specific definitions of the parties permitted to participate in the set aside. The use of partial set-asides should also be addressed; it may be that the process is simply too cumbersome to be implemented.
4. **Department of Justice/GAO protests.** When FPI is determined to be non comparable and competition procedures are applied, what forum will a protest be decided under?
5. **FPI as a subcontractor.** The final rule should address whether FPI can be used as a subcontractor (voluntarily) by primes. Since FPI could lose business by the change in the way the mandatory preference is administered, they may be more active about approaching primes and offering to be subcontractors to them for sales to the government. It is not clear that this is allowed, either from a legal or policy perspective. Addressing it in the DFARS will avoid later difficulties.
6. **Notice.** What kind of notice (if any) is necessary to provide to private entities

during the competitive process? If FPI is not found comparable, it may be willing to make an offer at a substantially lower price during the competitive phase. If, during the market research phase, only a proportion of the total potential pool of eligible contractors is contacted, are those who have not been contacted put at a competitive disadvantage? Don't we need a solicitation provision or other notice to advise them of the fact that they may be competing against FPI, as well as against other contractors?

We appreciate the opportunity to provide comments on this interim rule. Our point of contact for additional information is Ms. Mary Massaro; she can be reached at (703) 767-1393 or via email at [mary\\_massaro@hq.dla.mil](mailto:mary_massaro@hq.dla.mil).

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