

April 1, 2002

VIA FACSIMILE

Ms. Susan Schneider
Defense **Acquisition** Regulations Council
OUSD(AT&L)DP(DAR)
IMD 3C132
3062 Defense Pentagon
Washington, D.C. 20301-3062

**Re: DFARS Case 2000-D023
Proposed Rule on Enterprise Software Agreements
67 Fed. Reg. 4231 (Jan. 29, 2002)**

Dear Ms. Schneider:

NCR Corporation ("NCR") submits the following comments on the above-referenced **Proposed Rule on Enterprise Software Agreements ("ESA")**, designated as **DFARS Case 2000-D023**.

NCR, headquartered at 1700 **South** Patterson Boulevard, Dayton, Ohio 45479, is a solutions technology company engaged in the development, production, marketing and servicing of electronic business **systems**. This includes complete computer systems for **retail**, financial, communication **and** national accounts **markets**. These systems include:

- **Software** solutions
- Electronic data processing systems
- Electronic point of service **terminals**
- Individual free-standing terminals, **and**
- Media **supplies** and related accessories



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NCR is concerned that **the** proposed rule, as written, will lead DOD software purchasers to conclude erroneously **that** they are permitted to purchase only those software brands and products listed on existing **ESAs**. A review of the **ESX** website shows that **existing ESAs** represent **only** a few software manufacturers in each product category. In some categories, only **one** manufacturer's software **is represented** on an ESA.

Although **ESAs** may offer **favorable pricing** for certain **products** and services, they do not provide DOD software **purchasers with** the **full panoply** of software choices available to commercial **and** government customers, **As a result, the proposed rule, as written,** creates a real **danger** that **the** products or **services** of a **few** manufacturers **will be** favored to the **exclusion** of **software products** or **services** not **listed** on existing **ESAs**. This result **would** be contrary to **FAR § 11.105**, which prohibits the writing of agency requirements to **require** a **particular** brand name or **product**.

Thus, NCR recommends **that** the **proposed rule** be clarified to **emphasize** that DOD software purchasers first must **undertake** the **Market Research and Describing Agency Needs** processes contemplated by **FAR** Parts 10 **and** 11 respectively. **FAR § 12.202(a)** expressly recognizes **that** market research **"is** an essential element of building an effective strategy for the acquisition **of** commercial **items** and **establishes the** foundation for agency description **of need."** Thus, after **determining** through market research what software products are **available and meet the** agency's needs, DOD software purchasers should consult **the ESI** website **to** determine whether such products are available on **an** existing **ESA**.

In short, **ESAs** should **not** be a substitute **for** or circumvent the Market Research and Acquisition **Planning** processes. **Instead, ESAs** should be a tool **available** to DOD software purchasers to the **extent that** the required **software** or service is **available** through pre-existing contract vehicles.

NCR specifically recommends the revision of proposed section 208.7402 to read as follows:

After conducting market research and developing requirements in accordance with **FAR parts 10 and 11**, departments and agencies must **fulfill** requirements for commercial software and related services, such as software maintenance, in accordance with the DOD Enterprise



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Software Initiative (ESI) to the extent practicable. ESI promotes the use of enterprise software agreements (**ESA**) with contractors **that** allow DOD to obtain favorable terms **and** pricing for certain commercial software and related services.

Similarly, NCR recommends **the** revision of **proposed** section 208.7403(a) to **read**, in **part, as** follows:

Requiring officials must determine whether required commercial **software rights** or maintenance are available in existing DOD inventories (e.g., Golden **Disk and DOD-wide** software maintenance agreements) before proceeding with an acquisition. . . .

These proposed revisions are consistent **with** the DOD CIO Guidance **and** Policy Memorandum No. 12-8430 dated July 26, 2000 – **Acquiring** Commercially Available Software (“Requiring officials **and software** buyers are still responsible for identifying the software needed and following **existing** acquisition **and** contracting policies.”).

NCR appreciates the **opportunity** to provide these comments. Please contact the undersigned if you have any **questions** or need additional information.

Sincerely,

Allen Shay
President/COO
NCR Government Systems Corp.
Teradata Division