



August 6, 2003

Defense Acquisition Regulations Council  
Attn: Ms. Susan L. Schneider  
OUSD (AT&L) DPAP (DAR)  
IMD 3C132  
3062 Defense Pentagon,  
Washington, DC 20301-3062

Dear Ms. Schneider:

The Aerospace Industries Association appreciates the opportunity to provide comments on the proposal to amend the DFARS to provide an exception from competition requirements to apply to contracts awarded under the authority of Section 822 of the National Defense Authorization Act for Fiscal Year 2002 (DFARS Case 2002-D023). This section provides for award of a follow on production contract, without competition, to participants in an "other transaction (OT)" agreement for a prototype project, if the agreement was entered into through use of a competitive procedure, providing for at least one-third non-Federal cost share, and meets certain other conditions of law.

Under the terms of the new language, if unchanged, DoD can move into a production contract without any checks and balances on the relationship between the prototype and production unit. A case in point is the X45 program. The prototypes, X45 A & B, were conceived as "fighter size and range" products. X45C has the requirement for twice the range and is a totally new configuration. Such a departure from the initial OT concept should be subjected to a new competition for production.

Industry is in general agreement with the spirit of the proposed rule, to the extent that the prototyping effort was successful in terms of system performance, risk mitigation and the achievement of the originally intended Technology Level Readiness (TLR). However, if the prototype does not meet expectations or the effort results in either new requirements and/or significant system configuration changes, then automatically proceeding to a production contract without a competition needs be revisited. Likewise if the prototyping effort results in DOD substantially changing its requirements based on knowledge gained in the prototype phase, competition for the next phase should be reintroduced.

In summary there are several issues that need to be addressed in the proposed rule before it is finalized:

1. If the prototype performs "as advertised", and the requirement for a production article closely approximates the requirement for the prototype, excluding other contractors from competition for follow-on production may be justified as the rule proposes.
2. If a company chooses to risk submitting a below cost proposal during the initial competition for an OT prototype, expecting to recover these costs in the non-competitive production follow-on, the Government should not facilitate recovery of these costs in a sole source environment
3. Whenever, the Government has a significant change in its requirements such that the prototype no longer represents a clear solution to the Government's need, other companies should be afforded the

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opportunity to offer solutions for the production phase. Business conditions or other factors may have prevented an otherwise technically qualified company from participating in the original competition for the initial OT. Competition among all qualified companies, including those not in the original competition may be appropriate.

4. If competition is to be used following the completion of the prototype stage, and to preclude any misunderstanding, it is suggested that guidance be included in the DFARS as to the procedures for competition to be used for production e. g. solicit only original competitors, open solicitation etc.

Thank you for the opportunity to provide our comments on this proposed rule. If there are any questions, or if we can be of further assistance, please contact the undersigned at (703) 358-1045.

Sincerely,

A handwritten signature in black ink that reads "Patrick D. Sullivan". The signature is written in a cursive style with a large initial "P".

Patrick D. Sullivan  
Assistant Vice President  
Procurement and Finance