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The Voice of the Industrial Base

June 20, 2002

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

Re: DFARS Case 2002-D003
Defense Federal Acquisition Regulation Supplement; Competition Requirements for
Purchases from a Required Source

Dear Ms. Schneider:

The National Defense Industrial Association (NDIA) appreciates the opportunity to comment on the interim DFARS rule implementing Section 811 of the *National Defense Authorization Act for Fiscal Year 2002*, as published in the *Federal Register* on April 26, 2002 (67 Fed. Reg. 20687).

NDIA is a non-partisan, non-profit organization with a membership that includes more than 900 companies and over 24,000 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.

Section 811 requires the Department of Defense (DOD) to conduct a market research before purchasing a product listed in the Federal Prison Industries (FPI) catalog to determine whether the FPI product is comparable in price, quality, and time of delivery to products available in the private sector. If the DOD determines that an FPI product is not comparable in price, quality, and time of delivery, than it must use competitive procedures to purchase the product.

It is clear from the statute and the interim rule that FPI may provide products to the DOD only after DOD determines that such products meet the Department's needs and are comparable to those available in the private sector. The interim rule gives DOD contracting officers flexibility to explore the marketplace to determine whether FPI's pricing is reasonable and whether its products compare in terms of cost and quality to those available commercially. This is a significant departure from FPI's governing statute—still in effect for civilian agencies—

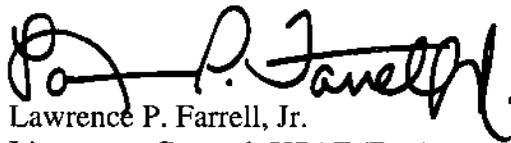
which mandates that agencies purchase FPI products if available and provides FPI with the authority to determine if its products meet an agency's needs.

NDIA agrees that the rule will have a positive impact on small businesses, since it provides small businesses access to a significant number of DOD contracts previously unavailable to them under FPI's mandatory source requirement. In 2001 FPI generated \$583.5 million in revenue, and 60 percent of its sales were to the DOD.

Additionally, NDIA supports the exclusion of any language in the interim or final rule that would provide FPI with the authority to either grant a waiver to conduct or to approve DOD's market research evaluation. The intent of Section 811 is clearly to provide DOD with maximum flexibility to procure quality products in a timely and cost effective manner. The Statement of Managers language accompanying Section 811 supports this position.

In conclusion, NDIA strongly supports the interim rule and recommends that it be made final. If you have questions or need additional information, please contact NDIA government policy analyst Benjamin Stone at (703) 247-2561.

Sincerely,

A handwritten signature in black ink, appearing to read "L. P. Farrell, Jr.", written in a cursive style.

Lawrence P. Farrell, Jr.
Lieutenant General, USAF (Ret.)
President and CEO