

**V. Addendum E [Corrected]**

28. In the table of Addendum E, the following HCPCS codes for Radiation Therapy Services and Supplies are added immediately following HCPCS code 92974 and the following HCPCS codes for Preventive Screening Tests, Immunizations and Vaccines are added immediately following HCPCS code 90732:

**RADIATION THERAPY SERVICES AND SUPPLIES**

G0242	Multisource photon stereo plan.
G0243	Multisource photon stereo treat.

**PREVENTIVE SCREENING TESTS, IMMUNIZATIONS AND VACCINES**

90744 ..	Hep b vacc ped/adol 3 dose im.
90746 ..	Hep b vaccine, adult im.
90747 ..	Hep b vacc, ill pat 4 dose im.

29. In the table of Addendum E, the following HCPCS codes are removed:

**RADIOLOGY**

76390 ..	MR spectroscopy.
G0188	Xray lwr extremity-full length.

**PREVENTIVE SCREENING TESTS, IMMUNIZATIONS AND VACCINES**

Q3018	Hepatitis B vaccine.
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**VI. Waiver of Proposed Rulemaking**

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** to provide a period for public comment before the provisions of a Notice take effect. We can waive this procedure, however, if we find good cause that notice and comment procedure is impracticable, unnecessary, or contrary to the public interest and incorporate a statement of the finding and the reasons for it into the notice issued.

We find it unnecessary to undertake notice and comment rulemaking because this document merely provides technical corrections to the regulations. Therefore, we find good cause, we waive notice and comment procedures.

**Authority:** (Catalog of Federal Domestic Assistance Program No. 93.774, Medicare-Supplementary Medical Insurance Program)

Dated: April 11, 2002.

**Ann C. Agnew,**

*Executive Secretary to the Department.*

[FR Doc. 02-9395 Filed 4-25-02; 8:45 am]

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**DEPARTMENT OF DEFENSE****48 CFR Parts 208 and 210**

**[DFARS Case 2002-D003]**

**Defense Federal Acquisition Regulation Supplement; Competition Requirements for Purchases From a Required Source**

**AGENCY:** Department of Defense (DoD).

**ACTION:** Interim rule with request for comments.

**SUMMARY:** DoD has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 811 of the Fiscal Year 2002 National Defense Authorization Act. Section 811 requires DoD to conduct 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 from the private sector.

**DATES:** Effective date: April 26, 2002.

Comment date: Comments on the interim rule should be submitted to the address shown below on or before June 25, 2002, to be considered in the formation of the final rule.

**ADDRESSES:** Respondents may submit comments directly on the World Wide Web at <http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm>. As an alternative, respondents may e-mail comments to: [dfars@acq.osd.mil](mailto:dfars@acq.osd.mil). Please cite DFARS Case 2002-D003 in the subject line of e-mailed comments.

Respondents that cannot submit comments using either of the above methods may submit comments to: Defense Acquisition Regulations Council, Attn: Ms. Susan Schneider, OUSD(AT&L)DP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301-3062; facsimile (703) 602-0350. Please cite DFARS Case 2002-D003.

As a test, public comments will be posted on the World Wide Web as they are received. Interested parties may view the public comments at <http://emissary.acq.osd.mil/dar/dfars.nsf>.

**FOR FURTHER INFORMATION CONTACT:** Ms. Susan Schneider, (703) 602-0326.

**SUPPLEMENTARY INFORMATION:****A. Background**

This interim rule amends the DFARS to implement Section 811 of the Fiscal Year 2002 National Defense Authorization Act (Public Law 107-107). Section 811 requires DoD to conduct market research before purchasing a product listed in the FPI catalog, to determine whether the FPI

product is comparable in price, quality, and time of delivery to products available from the private sector. If the FPI product is not comparable, DoD must use competitive procedures to acquire the product. In conducting such a competition, DoD must consider a timely offer from FPI for award in accordance with the specifications and evaluation factors in the solicitation.

This rule was subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

**B. Regulatory Flexibility Act**

This rule may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., because the rule will permit small entities to compete with FPI for DoD contract awards under certain conditions. An initial regulatory flexibility analysis has been prepared and is summarized as follows: This interim rule amends DoD policy pertaining to the acquisition of products from FPI. The rule implements new statutory requirements. The impact of the rule is unknown at this time. However, the rule could benefit small business concerns that offer products comparable to those listed in the FPI catalog, by permitting those concerns to compete for DoD contract awards.

A copy of the analysis may be obtained from the point of contact specified herein. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2002-D003.

**C. Paperwork Reduction Act**

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, et seq.

**D. Determination To Issue an Interim Rule**

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist to publish an interim rule prior to affording the public an opportunity to comment. This interim rule implements Section 811 of the Fiscal Year 2002 National Defense Authorization Act (Public Law 107-107). Section 811 requires DoD to conduct market research before purchasing a product

listed in the FPI catalog to determine whether the FPI product is comparable to products available from the private sector. If the FPI product is not comparable, DoD must use competitive procedures to acquire the product. Section 811 became effective on October 1, 2001. Comments received in response to this interim rule will be considered in the formation of the final rule.

#### List of Subjects in 48 CFR Parts 208 and 210

Government procurement.

**Michele P. Peterson,**

*Executive Editor, Defense Acquisition Regulations Council.*

Therefore, 48 CFR Parts 208 and 210 are amended as follows:

1. The authority citation for 48 CFR Part 208 continues to read as follows:

**Authority:** 41 U.S.C. 421 and 48 CFR Chapter 1.

#### PART 208—REQUIRED SOURCES OF SUPPLIES AND SERVICES

2. Section 208.602 is added to read as follows:

##### 208.602 Policy.

(a) Before purchasing a product listed in the FPI Schedule, departments and agencies shall conduct market research to determine whether the FPI product is comparable to products available from the private sector that best meet the Government's needs in terms of price, quality, and time of delivery (10 U.S.C. 2410n). This is a unilateral decision made solely at the discretion of the department or agency.

(i) If the FPI product is comparable, follow the policy at FAR 8.602(a).

(ii) If the FPI product is not comparable—

(A) Use competitive procedures to acquire the product; and

(B) Consider a timely offer from FPI for award in accordance with the specifications and evaluation factors in the solicitation.

3. Section 208.606 is revised to read as follows:

##### 208.606 Exceptions.

For DoD, FPI clearances also are not required—

(1) For orders of listed items totaling \$250 or less that require delivery within 10 days; or

(2) If market research shows that the FPI product is not comparable to products available from the private sector that best meet the Government's needs in terms of price, quality, and time of delivery.

4. Part 210 is added to read as follows:

#### PART 210—MARKET RESEARCH

Sec.

210.001 Policy.

**Authority:** 41 U.S.C. 421 and 48 CFR Chapter 1.

##### 210.001 Policy.

(a) Also conduct market research before purchasing a product listed in the Federal Prison Industries (FPI) Schedule. Use the results to determine whether the FPI product is comparable to products available from the private sector that best meet the Government's needs in terms of price, quality, and time of delivery. (See subpart 208.6.)

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#### DEPARTMENT OF DEFENSE

##### 48 CFR Part 215

[DFARS Case 2000-D018]

#### Defense Federal Acquisition Regulation Supplement; Changes to Profit Policy

**AGENCY:** Department of Defense (DoD).

**ACTION:** Final rule.

**SUMMARY:** DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to make changes to profit policy. The changes reduce the emphasis on facilities investment, add general and administrative expense to the cost base used in determining profit objectives, increase emphasis on performance risk, and encourage contractor cost efficiency.

**EFFECTIVE DATE:** April 26, 2002.

**FOR FURTHER INFORMATION CONTACT:** Ms. Sandra Haberlin, OUSD(AT&L)DP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301-3062. Telephone (703) 602-0289; facsimile (703) 602-0350. Please cite DFARS Case 2000-D018.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

This final rule amends the profit policy in DFARS Subpart 215.4. The rule—

- Reduces the value assigned to facilities capital employed for equipment by 50 percent, and eliminates facilities capital employed for buildings in establishing profit objectives on sole source, negotiated contracts;
- Offsets these changes by increasing the values for performance risk by 1 percentage point; and

- Adds a special factor for cost efficiency to encourage cost reduction efforts.

DoD published a proposed rule at 65 FR 45574 on July 24, 2000. Due to the complexity of the issues raised in the comments received, DoD published a notice of public meeting at 65 FR 69895 on November 21, 2000. The public meeting was held on December 12, 2000. After considering written comments received in response to the proposed rule, and verbal comments provided during the public meeting, DoD published a second proposed rule at 66 FR 48649 on September 21, 2001.

DoD received comments from five respondents on the second proposed rule. The comments, grouped into eight major categories, are discussed below:

1. *Use of the Cost Efficiency Factor.* Several respondents expressed concern regarding the measurement and documentation of cost savings. One thought metrics should be developed to aid in assessing cost efficiency gains. Another thought consideration should be expanded beyond “pending contracts” and that its use should be mandatory. Another wanted an element in the cost efficiency factor that would recognize new facilities when they contributed to improved productivity. *DoD Response:* Partially concur. A sentence has been added to DFARS 215.404-71-5(b)(4) to suggest how metrics could be used to demonstrate cost reduction efforts. The policy requires the contractor to demonstrate cost reduction efforts that benefit the pending contract. While we believe in a longer-term focus, we believe that the longer-term payoff will be on those contract actions that actually benefit from the contractor's efforts at cost reduction. Since cost efficiency is being added as a special factor, it already must be considered; however, we do not concur with mandating its use. We have also added a new 215.404-41-5(b)(8) to recognize new facilities when such investments contribute to improved productivity.

2. *Reduction of Facilities Capital Employed as a Factor in Calculating Profit Objectives.* One respondent wanted facilities capital completely restored while another wanted only the equipment portion restored. A number of respondents believed it was a good idea to eliminate facilities capital, while others thought there might be circumstances where it would be desirable to reward facilities investment. *DoD Response:* Partially concur. The equipment portion has been restored by 50 percent from the policy shown in the first proposed rule. DoD remains concerned about overcapacity