

should be changed to "FPI Catalog" to conform to the language in Section 811.

DoD Response: Do not concur. The word "Schedule" has been retained to conform to the terminology used in FAR subpart 8.4.

10. Previous DoD Guidance

Comment: The validity of a policy memorandum from the Office of the Assistant Secretary of Defense, dated October 1988, that directs use of GSA schedules as a "quick and efficient" way to obtain furniture for DoD activities is questionable.

DoD Response: DoD recommends that the respondent not use this memorandum for guidance. The policy has been superceded by 10 U.S.C. 2410n and its implementing regulations.

11. Sole-source Purchases

Comment: Is there a requirement to perform a comparability determination if the need is to be acquired on a sole-source basis?

DoD Response: 10 U.S.C. 2410n does not provide for sole-source purchases. If a product is on the FPI Schedule, the purchaser must follow the DFARS policy implementing 10 U.S.C. 2410n.

12. Architect-engineer Contracts

Comment: There is concern about mandating the use of FPI products for architect-engineer contracts. The rule should state that "FPI may not be specified as a source, nor shall an FPI product be prescribed or recommended in any design or specification prepared by an architect or engineer under contract to the Government. * * *

DoD Response: The requirements of 10 U.S.C. 2410n are imposed on the Government, not on the contractor. Section 819 of Public Law 107-314 added text prohibiting DoD from requiring a contractor or potential contractor to use FPI as a subcontractor or supplier. This prohibition is addressed in the proposed rule at 208.670.

13. Use of the Term "Solicitation".

Comment: Use of the term "solicitation" means one must proceed with issuing a formal solicitation whenever an agency determines that an FPI product is not comparable.

DoD Response: Do not concur. As defined in FAR 2.101, "solicitation" means any request to submit offers or quotations to the Government. For further clarification, the proposed rule separately addresses the use of multiple award schedules at 208.602(a)(iv)(C).

14. Use of the Phrase "That Best Meet the Government's Needs".

Comment: The rule should be revised to conform to the text of Section 811 by deleting the phrase "that best meet the Government's needs" at each of the three locations where it appears. This phrase does not meet the intent of the statute.

DoD Response: DoD used the phrase "that best meet the Government's needs" in the interim rule to provide needed guidance in this area. This phrase was included in Section 819 of Public Law 107-314 and, therefore, has been retained in the proposed rule.

15. Application of Priorities for Use of Government Supply Sources.

Comment: If the FPI item is not comparable, can the Government go directly to JWOD?

DoD Response: No. FPI can still fulfill the requirement, even though it has been determined to be noncomparable. 10 U.S.C. 2410n requires DoD to consider a timely offer from FPI under such circumstances.

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 rule proposes amendments to DoD policy pertaining to the acquisition of products from FPI. The rule implements 10 U.S.C. 2410n. 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 Schedule, 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.*

List of Subjects in 48 CFR Parts 208, 219, and 252

Government procurement.

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Therefore, DoD proposes to amend 48 CFR Parts 208, 219, and 252 as follows:

1. The authority citation for 48 CFR Parts 208, 219, and 252 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 208.601-70 is added to read as follows:

208.601-70 Definitions.

As used in this subpart—

Competitive procedures includes the procedures in FAR 6.102, the set-aside procedures in FAR subpart 19.5, and competition conducted in accordance with FAR part 13.

Market research means obtaining specific information about the price, quality, and time of delivery of products available in the private sector and may include techniques described in FAR 10.002(b)(2).

3. Sections 208.602 and 208.606 are revised to read as follows:

208.602 Policy.

(a)(i) Before purchasing a product listed in the FPI Schedule, 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 determination made at the discretion of the contracting officer. The procedures of FAR 8.605 do not apply.

(ii) Prepare a written determination that includes supporting rationale explaining the assessment of price, quality, and time of delivery, based on the results of market research comparing FPI products to those available from the private sector.

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

(iv) If the FPI product is not comparable in one or more of the areas of price, quality, and time of delivery—