

**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—

(A) Acquire the product using—

(1) Competitive procedures; or

(2) The fair opportunity procedures in FAR 16.505, if placing an order under a multiple award task or delivery order contract;

(B) Include FPI in the solicitation process and consider a timely offer from FPI for award in accordance with the requirements and evaluation factors in the solicitation, including solicitations issued using small business set-aside procedures; and

(C) When using a multiple award schedule issued under the procedures of FAR subpart 8.4—

(1) Establish and communicate to FPI the requirements and evaluation factors that will be used as the basis for selecting a source, so that an offer from FPI can be evaluated on the same basis as the schedule holder; and

(2) Consider a timely offer from FPI.

**208.606 Exceptions.**

For DoD, FPI clearances also are not required when—

(1) The contracting officer makes a determination 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; and

(2) The procedures at 208.602(a)(iv) are used.

■ 4. Sections 208.670 and 208.671 are added to read as follows:

**208.670 Performance as a subcontractor.**

Do not require a contractor, or subcontractor at any tier, to use FPI as a subcontractor for performance of a contract by any means, including means such as—

(a) A solicitation provision requiring a potential contractor to offer to make use of FPI products or services;

(b) A contract specification requiring the contractor to use specific products or services (or classes of products or services) offered by FPI; or

(c) Any contract modification directing the use of FPI products or services.

**208.671 Protection of classified and sensitive information.**

Do not enter into any contract with FPI that allows an inmate worker access to any—

(a) Classified data;

(b) Geographic data regarding the location of—

(1) Surface and subsurface infrastructure providing communications or water or electrical power distribution;

(2) Pipelines for the distribution of natural gas, bulk petroleum products, or other commodities; or

(3) Other utilities; or

(c) Personal or financial information about any individual private citizen, including information relating to such person's real property however described, without the prior consent of the individual.

**PART 219—SMALL BUSINESS PROGRAMS**

■ 5. Section 219.502–70 is added to read as follows:

**219.502–70 Inclusion of Federal Prison Industries, Inc.**

When using competitive procedures in accordance with 208.602(a)(iv), include Federal Prison Industries, Inc. (FPI), in the solicitation process and consider a timely offer from FPI.

■ 6. Section 219.508 is added to read as follows:

**219.508 Solicitation provisions and contract clauses.**

(c) Use the clause at FAR 52.219–6, Notice of Total Small Business Set-Aside, with 252.219–7005, Alternate A,

when the procedures of 208.602(a)(iv) apply to the acquisition.

(d) Use the clause at FAR 52.219–7, Notice of Partial Small Business Set-Aside, with 252.219–7006, Alternate A, when the procedures of 208.602(a)(iv) apply to the acquisition.

**PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

■ 7. Sections 252.219–7005 and 252.219–7006 are added to read as follows:

**252.219–7005 Alternate A.**

Alternate A (Dec 2003)

As prescribed in 219.508(c), substitute the following paragraph (b) for paragraph (b) of the clause at FAR 52.219–6:

(b) *General.* (1) Offers are solicited only from small business concerns and Federal Prison Industries, Inc. (FPI). Offers received from concerns that are not small business concerns or FPI shall be considered nonresponsive and will be rejected.

(2) Any award resulting from this solicitation will be made to either a small business concern or FPI.

**252.219–7006 Alternate A.**

Alternate A (Dec 2003)

As prescribed in 219.508(d), add the following paragraph (d) to the clause at FAR 52.219–7:

(d) Notwithstanding paragraph (b) of this clause, offers will be solicited and considered from Federal Prison Industries, Inc., for both the set-aside and non-set-aside portion of this requirement.

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**DEPARTMENT OF DEFENSE****48 CFR Part 216**

[DFARS Case 2001–D013]

**Defense Federal Acquisition Regulation Supplement; Provisional Award Fee Payments**

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

**ACTION:** Final rule.

**SUMMARY:** DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to address the use of provisional award fee payments under cost-plus-award-fee contracts. The rule provides for successfully performing contractors to receive a portion of award fees within an evaluation period prior to a final evaluation for that period.

**DATES:** *Effective date:* January 13, 2004.

*Applicability date:* The DFARS changes in this rule apply to solicitations issued on or after January