

COUNCIL OF DEFENSE AND SPACE INDUSTRY ASSOCIATIONS

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September 27, 1999
CODSIA Case No. 13-98

Ms. Laurie Duarte
General Services Administration
FAR Secretariat (MVRS)
1800 F Street, NW, Room 4035
Washington, D.C. 20405

Subj: FAR Case 98-304: FAR, Commercial Items—Non-governmental Purposes

Dear Ms. Duarte:

The undersigned members of the Council of Defense and Space Industry Associations (CODSIA) appreciate the opportunity to offer comments on the proposed rule published in the Federal Register on July 27, 1999 (Volume 64, Number 143). Formed in 1964 by industry associations with common interests in the defense and space fields, CODSIA is currently composed of eight associations representing 4,000 member firms across the nation. Participation in CODSIA projects is strictly voluntary. A decision by any member association to abstain from participating in a particular activity is not necessarily an indication of dissent.

CODSIA members object to the proposed rule as drafted. The proposed rule completely fails to respond to the required action addressed in Section 803 (a)(2)(D) of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999. In short, the legislation requires specific guidance be added to the Federal Acquisition Regulation (FAR) on the meaning and appropriate application of the term "purposes other than governmental purposes" at 41 U.S.C. 403(12)(A).

The proposed rule goes far beyond the scope of the legislative directive by virtually redrafting the commercial item definition established by the Federal Acquisition Streamlining Act (FASA). The FASA commercial item definition was carefully drafted in statutory language. There is no justification for the authors of the proposed rule to recommend amendments to the definition of "commercial item" at FAR 2.101 and the definition in the clause at FAR 52.202-1.

CODSIA members oppose the proposed rule for the following specific reasons:

- Section 803 did not modify the statutory definition of a commercial item, nor did it direct or authorize the FAR council to modify the regulatory definition. Rather, it directed that the FAR be revised to clarify the procedures and methods to be used when applying the existing

commercial item definition. The modification is thus excessive and compromises the policies stated in FASA.

- At the same time, the proposed rule does not provide clear guidance on the meaning or application of the term “purposes other than governmental purposes” and introduces new, ambiguous requirements into the definition. The proposed rule revises the commercial item definition to require, in part, that the item has been sold, leased or licensed to the general public, or has been offered for sale, lease or license to the general public, “with a likelihood that the offer will be accepted within a reasonable time”. This new requirement is vague, subject to interpretation, and itself requires clarification. For example, how does one judge the “likelihood” of acceptance or “within a reasonable time,” and who is to make that judgment? Moreover, what does this have to do with clarifying the term “purposes other than government purposes”?

The commercial item acquisition regulations have been carefully crafted to work together as a whole. Section 803 directed revision of the FAR to clarify the procedures and methods to be employed when making a commercial item determination. It requires, at a minimum, that specific guidance be provided on a number of elements of the existing regulations, only one of which is the interpretation of “non-governmental purposes” and the subject of this proposed rule.

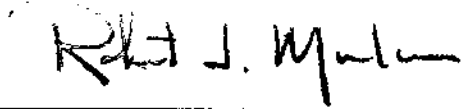
CODSIA recommendation:

The FAR Council and this proposed rule should simply provide a clarification of the term “non-governmental purpose.” Throughout the FASA implementation and subsequent training, the term “non-governmental purposes” has been widely recognized to mean that the commercial item is not unique to the U.S. government. The FAR until recent revision for the purposes of streamlining and simplification, recognized items sold on a direct commercial basis to foreign entities including foreign governments to be non-governmental sales for the purposes of commerciality determination. We believe this distinction should be perpetuated. The FAR Council should use this commonly accepted interpretation of the term “non-governmental purpose” as the basis for providing the required guidance in current regulations.

In closing, CODSIA members wish to underscore the value of the current commercial item definition established by FASA. The language was thoughtfully and carefully drafted to maximize the Federal government’s reliance on the commercial sector for goods and services. The proposed rule would compromise this objective. The CODSIA proposed recommendation would maintain the accuracy of the commercial item definition as well as address the legislative requirement to clarify “non-governmental purposes.”

CODSIA members appreciate the opportunity to comment on the proposed rule and would welcome the opportunity to provide more substantive guidance to the FAR Council through the Commercial Item IPT. Should you have any questions regarding these comments, the CODSIA project officer for this case is Mr. Jim Serafin of GEIA (703) 907-7585.

Sincerely,



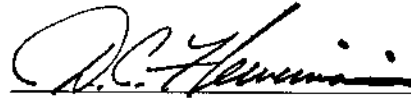
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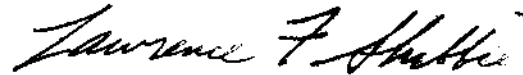
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