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**CODSIA Case – 2023-001**

Submitted electronically through [www.regulations.gov](http://www.regulations.gov)

November 28, 2023

Defense Acquisition Regulations System  
Attn: Ms. Jeanette Snyder  
OUSD(A–S) DPC/DARS, Room 3B941  
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Washington, DC 20301–3060  
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Reference: DFARS Case 2023-D009, Use of Fixed-Price Contracts for Certain Major Defense Acquisition Programs

Dear Ms. Snyder:

On behalf of the members of the Council of Defense and Space Industry Associations (CODSIA)<sup>1</sup>, please accept these comments in response to the proposed rule to implement amendments to the Defense Federal Acquisition Regulation Supplement (DFARS) Use of Fixed-Price Contracts for Certain Major Defense Acquisition Programs (MDAPS), DFARS Case 2023-D009. CODSIA appreciates the intent to add structure to the Department of Defense's (DoD) employment of fixed-price type contracts that include both development and production work and is fully supportive of the proposed rule without modification.

DFARS Case 2023-D009 implements section 808 of Public Law 117-263, the Fiscal Year (FY) 2023 National Defense Authorization Act (NDAA). Section 808 limits the number of Low-Rate Initial Production (LRIP) lots on a single contract for a MDAP under certain circumstances. Specifically, if the Milestone Decision Authority for that MDAP authorizes the use of a fixed-price type contract and the fixed-price type contract

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<sup>1</sup> CODSIA was formed in 1964 by industry associations with common interests in federal procurement policy issues at the suggestion of the Department of Defense. CODSIA consists of six associations—Aerospace Industries Association (AIA), American Council of Engineering Companies (ACEC), Associated General Contractors (AGC), Information Technology Industry Council (ITI), National Defense Industrial Association (NDIA), and Professional Services Council (PSC). CODSIA's member associations represent thousands of government contractors nationwide. The Council acts as an institutional focal point for coordination of its members' positions regarding policies, regulations, directives, and procedures that affect them. A decision by any member association to abstain from participation in a particular case is not necessarily an indication of dissent.

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includes both development and production work, then the contracting officer must limit the number of LRIP lots to not more than one. This requirement may be waived by the applicable Service Acquisition Executive (SAE) or his designee. However, this waiver authority may not be delegated to the level of the contracting officer, and written notification of any waiver must be provided to the congressional defense committees within 30 days.

CODSIA members strongly supported section 808 of the FY23 NDAA and Congress' policy rationale for it. DoD has continued to use fixed price type contracts - particularly fixed price incentive (FPI) type contracts; for both development and initial production on MDAPs. These business arrangements do not adequately recognize the risks inherent in pricing multiple lots of production on a fixed price basis so early in the lifecycle of a MDAP. DoD's requirements almost always change between development and initial production of a MDAP. Neither DoD nor industry can estimate with any degree of certainty how much initial production lots will cost and how long it would take to build them prior to completing development. In our view, Congress intended section 808 as a necessary corrective measure. Congress realized that negotiating production lots after development provides a more realistic estimate of the true costs of the program, allows for more stable, realistic budget forecasts, prevents delays in getting capabilities to the warfighter and prevents costly disputes and potential litigation with the contractor. CODSIA members wholeheartedly agree.

In addition, Congress has removed an unintended barrier to innovation and competition. Contractors may have been more reluctant to submit proposals for the development and initial production of MDAPs on a fixed price basis. Contracting strategies that are more likely to result in "no bid" responses from qualified bidders on competitive procurements are counterproductive to the government and furthermore, could hamper the deployment of the best technologies and negatively impact our strategic competitiveness.

**Conclusion:**

Enhancing the Defense Industrial Base's (DIB's) resilience and the ability to respond to DoD's demand signals requires mutually beneficial partnerships between industry and DoD. The proposed DFARS rule closely conforms to the language and intent of Section 808 and will ultimately advance these relationships. For this reason, CODSIA recommends that this DFARS proposed rule be made final without modification.

Thank you for your attention to these comments. We welcome the opportunity to discuss them with you and the drafting team. If you have any questions or need any additional information, please do not hesitate to contact CODSIA's lead on these

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comments, Lorenzo Williams, Sr. Director of Acquisition Policy, Aerospace Industries Association. He can be reached at [Lorenzo.williams@aia-aerospace.org](mailto:Lorenzo.williams@aia-aerospace.org)

Sincerely,



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