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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

Docket No. DARS-2014-0022

Defense Federal Acquisition Regulation Supplement;

Acquisition of Items for which Federal Prison Industries Has a Significant Market Share

AGENCY: Department of Defense.

ACTION: Notice.

SUMMARY: DoD is publishing the annual list of product categories for which the Federal Prison Industries' share of the DoD Market is greater than five percent.

DATES: *Effective* April 5, 2014.

FOR FURTHER INFORMATION CONTACT: Director, Defense Procurement and Acquisition Policy (DPAP), Contract Policy and International Contracting (CPIC), Room 5E621, 3060 Defense Pentagon, Washington, DC 20301-3060, Attention: Ms. Sheila Harris, telephone 703-614-1333.

SUPPLEMENTARY INFORMATION:

I. Background: On November 19, 2009, a final rule was published at 74 FR 59914 which amended the Defense Federal Acquisition Regulation Supplement (DFARS) subpart 208.6, to implement Section 827 of the National Defense Authorization Act (NDAA) for

Fiscal Year 2008, Public Law 110-181. Section 827 changed DoD competition requirements for purchases from Federal Prison Industries, Inc. (FPI) by requiring DoD to publish an annual list of product categories for which FPI's share of the DoD market was greater than five percent, based on the most recent fiscal year data available. Product categories on the current list, and the products within each identified product category, must be procured using competitive or fair opportunity procedures in accordance with DFARS 208.602-70.

The Director, Defense Procurement and Acquisition Policy (DPAP) issued a memorandum dated February 24, 2014, that provided the current list of product categories for which FPI's share of the DOD market is greater than five percent based on Fiscal Year 2013 data from the Federal Procurement Data System. The product categories to be competed effective April 5, 2014 are as follows:

- 5335 (Metal Screening).
- 7110 (Office Furniture).
- 7125 (Cabinets, Lockers, Bins and Shelving).
- 7230 (Draperies, Awnings, and Shades).
- 7290 (Misc. Household and Commercial Furnishings and Appliances).
- 8405 (Outerwear, Men's).

- 8415 (Clothing, Special Purpose).
- 8420 (Underwear and Nightwear, Men's).
- 8465 (Individual Equipment).
- 9905 (Signs, Advertising Displays and Identification Plates).

The DPAP memorandum with the current list of product categories for which FPI has a significant market share is posted at

http://www.acq.osd.mil/dpap/cpic/cp/specific_policy_areas.html#federal_prison.

The statute, as implemented also requires DoD to—

(1) Include FPI in the solicitation process for these items; a timely offer from FPI must be considered; and award procedures must be followed in accordance with existing policy at Federal Acquisition Regulation (FAR) 8.602(a)(4)(ii) through (v);

(2) Continue to be make acquisitions, in accordance with FAR Subpart 8.6., for items from product categories for which FPI does not have a significant market share. FAR 8.602 requires agencies to conduct market research and make a written comparability determination, at the discretion of the contracting officer. Competitive (or fair opportunity) procedures are appropriate if the FPI product is not comparable

in terms of price, quality, or time of delivery: and

(3) Section 827 allows modification of the published list if DoD subsequently determines that new data requires adding or omitting a product category from the list.

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Editor, Defense Acquisition Regulations System.

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