The Association of the Wall and Ceiling Industries—International has jumped into the fray against the Department of Defense on their new “interim” regulations which will radically change the way military construction projects are now being bid.

The new procedures outlined in the “Department of Defense Federal Acquisition Regulation Supplement,” stipulates that once a contracting officer determines that two “disadvantaged” firms reside in the area and/or one such company has previously bid DoD work, the entire project must be set-aside for disadvantaged firms only.

AWCI reacted quickly to this new ruling, joining with other construction specialty associations in the National Construction Industry Council. Many of these other construction groups have varying opinions on set-aside provisions, but there is a unanimity of opinion in opposition.

To the extent that this “rule of two” will be met in virtually every region of the country, the revised procedures will effectively rule out bid submittals from the 90 percent of the construction companies which are considered small business, but are not disadvantaged.

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The primary purpose of these meetings has been to elicit clarification on the DoD rule and then disseminate this information.

The most recent meetings and subsequent correspondence has produced this sequence of questioning:

1. Is DoD aware that its “rule of two” effectively eliminates all bidding opportunities from firms which are not disadvantaged?

2. Does not the “rule of two” in the construction industry become an exclusionary 100 percent rule for disadvantaged firms over the next three fiscal years?

3. Has not the construction industry exceeded the 5 percent threshold, cited in the regulation as the goal to be achieved, for years?

4. Is the construction industry—currently the only industry in compliance—the only industry impacted by the interim rule? Is aerospace affected? Research and development? High technology contractors? If not, why not?

5. Was an economic impact statement conducted? If not, why not? If one was compiled, what was the projected impact on small business organizations in the construction industry?

6. Why were no public comments received prior to the implementation of the interim rule? Why an interim rule in the first instance? Has the Administrative Procedures Act been violated?

7. Did the DoD acquisition regulation get OMB clearance? If not, why not?

These questions, have been sent to approximately 200 members of the United States Senate and House of Representatives. A substantial proportion of them are now seeking further clarification from the Department of Defense.