

**Authority:** 41 U.S.C. 421 and 48 CFR chapter 1.

#### 225.1101 [Amended]

■ 2. Section 225.1101 is amended in paragraph (11)(i) introductory text by removing “\$194,000” and adding in its place “\$203,000”; and in paragraphs (11)(i)(A) and (11)(i)(B) by removing “\$67,826” and adding in its place “\$70,079”.

#### 225.7503 [Amended]

■ 3. Section 225.7503 is amended in paragraph (a) by removing “\$7,443,000” and adding in its place “\$7,804,000”; and in paragraph (b) by removing “\$7,443,000” and adding in its place “\$7,804,000”, and by removing “\$8,817,449” and adding in its place “\$9,110,318”.

[FR Doc. 2010-13523 Filed 6-7-10; 8:45 am]

BILLING CODE 5001-08-P

## DEPARTMENT OF DEFENSE

### Defense Acquisition Regulations System

#### 48 CFR Parts 217 and 234

#### Defense Federal Acquisition Regulation Supplement; Contract Authority for Advanced Component Development or Prototype Units (DFARS Case 2009-D034)

**AGENCY:** Defense Acquisition Regulations System, Department of Defense (DoD).

**ACTION:** Interim rule with request for comments.

**SUMMARY:** DoD is issuing an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement section 819 of the National Defense Authorization Act for Fiscal Year 2010. Section 819 places limitations on certain types of line items and contract options that may be included in contracts initially awarded pursuant to competitive solicitations. When the prohibition applies, it limits the dollar value, period of performance, and time for exercise of such contract line items or contract options.

**DATES:** *Effective Date:* June 8, 2010.

*Comment Date:* Comments on the interim rule should be submitted in writing to the address shown below on or before August 9, 2010, to be considered in the formation of the final rule.

**ADDRESSES:** Submit comments identified by DFARS Case 2009-D034, using any of the following methods:

○ *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

○ *E-mail:* [dfars@osd.mil](mailto:dfars@osd.mil). Include DFARS Case 2009-D034 in the subject line of the message.

○ *Fax:* 703-602-0350.

○ *Mail:* Defense Acquisition Regulations System, Attn: Ms. Meredith Murphy, OUSD(AT&L)DPAP(DARS), Room 3B855, 3060 Defense Pentagon, Washington, DC 20301-3060.

Comments received generally will be posted without change to <http://www.regulations.gov>, including any personal information provided.

**FOR FURTHER INFORMATION CONTACT:** Ms. Meredith Murphy, 703-602-1302.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

This DFARS case implements section 819 of the National Defense Authorization Act for Fiscal Year 2010 (Pub. L. 111-84, enacted October 28, 2009). Section 819 is entitled “Contract Authority for Advanced Component Development or Prototype Units.”

Section 819 is intended to prevent a contract for new technology that is initially awarded as a result of competition from becoming a noncompetitive effort for the development of advanced components or the procurement of prototype units. To do so, section 819 places limitations on the (a) Dollar value, (b) period of performance, and (c) time for exercise of contract line items or contract options for advanced component development or procurement of prototype items. Specifically, the contract line item or contract option must be limited to the minimal amount of initial or additional prototype items that will allow for timely competitive solicitation and award of a follow-on development or production contract for those items. The term of the contract line item or contract option cannot be for a period longer than 12 months, and the dollar value of the work to be performed pursuant to the contract line item or contract option may not exceed the lesser of the amount that is three times the dollar value of the work previously performed under the contract or \$20 million.

Because the coverage is most likely to apply to major systems acquisitions, it has been added as a new DFARS subsection 234.005-1, entitled “Competition.” However, because the language applies to the exercise and content of certain contract options, a reference to 234.005-1 has been added to DFARS 217.202, entitled “Use of Options.”

This is not a significant regulatory action and, therefore, is not subject to

review under section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

##### B. Regulatory Flexibility Act

DoD does not expect that this interim rule will have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule does not impose any additional requirements on small businesses. Therefore, an Initial Regulatory Flexibility Analysis has not been performed. DoD invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (DFARS Case 2009-D034) in correspondence.

##### C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the interim rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C., *et seq.*

##### D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DoD) that urgent and compelling circumstances exist to promulgate this interim rule without prior opportunity for public comments. This action is necessary because section 819 of the National Defense Authorization Act for Fiscal Year 2010 became effective upon enactment on October 28, 2009. Section 819 places limitations on certain types of line items and contract options that may be included in contracts initially awarded pursuant to competitive solicitations. In order to prevent a contract for new technology that is initially awarded as a result of competition from becoming a noncompetitive effort for the development of advanced components or procurement of prototype units, it is necessary to publish this rule as an interim rule prior to affording the public an opportunity to comment. However, pursuant to 41 U.S.C. 418b and FAR 1.501-3, DoD will consider public comments received in response to this interim rule in the formation of the final rule.

**List of Subjects in 48 CFR Parts 217 and 234**

Government procurement.

**Ynette R. Shelkin,**

*Editor, Defense Acquisition Regulations System.*

■ Therefore, 48 CFR parts 217 and 234 are amended as follows:

■ 1. The authority citation for 48 CFR parts 217 and 234 continues to read as follows:

**Authority:** 41 U.S.C. 421 and 48 CFR chapter 1.

**PART 217—SPECIAL CONTRACTING METHODS**

■ 2. Section 217.202 is revised as follows:

**217.202 Use of options.**

(1) See PGI 217.202 for guidance on the use of options.

(2) See 234.005–1 for limitations on the use of contract options for the provision of advanced component development or prototype of technology developed under the contract or the delivery of initial or additional prototype items.

**PART 234—MAJOR SYSTEM ACQUISITION**

■ 3. Section 234.005–1 is added to read as follows:

**234.005–1 Competition.**

(1) A contract that is initially awarded from the competitive selection of a proposal resulting from a general solicitation may contain a contract line item or contract option for the provision of advanced component development or prototype of technology developed under the contract or the delivery of initial or additional prototype items if the item or a prototype thereof is created as the result of work performed under the contract only when it adheres to the following limitations:

(i) The contract line item or contract option shall be limited to the minimal amount of initial or additional prototype items that will allow for timely competitive solicitation and award of a follow-on development or production contract for those items.

(ii) The term of the contract line item or contract option shall be for not more than 12 months.

(iii) The dollar value of the work to be performed pursuant to the contract line item or contract option shall not exceed the lesser of—

(A) The amount that is three times the dollar value of the work previously performed under the contract; or

(B) \$20 million.

(2) A contract line item or contract option may not be exercised under this authority after September 30, 2014.

[FR Doc. 2010–13524 Filed 6–7–10; 8:45 am]

**BILLING CODE 5001–08–P**

**DEPARTMENT OF DEFENSE****Defense Acquisition Regulations System****48 CFR Part 217**

**RIN 0750–AG67**

**Defense Federal Acquisition Regulation Supplement; Limitations on Procurements With Non-Defense Agencies (DFARS Case 2009–D027)**

**AGENCY:** Defense Acquisition Regulations System, Department of Defense (DoD).

**ACTION:** Interim rule with request for comments.

**SUMMARY:** DoD is issuing an interim rule to implement section 806 of the National Defense Authorization Act for Fiscal Year 2010 authorizing the placing of contracts for property and services in excess of the simplified acquisition threshold by certain non-DoD agencies for the performance of a joint program conducted to meet the needs of DoD and the non-DoD agency.

**DATES:** *Effective Date:* June 8, 2010.

*Comment Date:* Comments on the interim rule should be submitted in writing to the address shown below on or before August 9, 2010, to be considered in the formation of the final rule.

**ADDRESSES:** Submit comments identified by DFARS Case 2009–D027, using any of the following methods:

○ *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.

○ *E-mail:* [dfars@osd.mil](mailto:dfars@osd.mil). Include DFARS Case 2009–D027 in the subject line of the message.

○ *Fax:* (703) 602–0350.

○ *Mail:* Defense Acquisition Regulations System, Attn: Meredith Murphy, OUSD(AT&L)DPAP(DARS), 3060 Defense Pentagon, Room 3B855, Washington, DC 20301–3060.

Comments received generally will be posted without change to <http://www.regulations.gov>, including any personal information provided.

**FOR FURTHER INFORMATION CONTACT:** Ms. Meredith Murphy, Telephone 703–602–1302.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

Section 854 of the National Defense Authorization Act for Fiscal Year 2005 (Pub. L. 108–375) prescribed policy for the acquisition of supplies and services through the use of contracts or orders issued by non-DoD agencies. Section 801(b) of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110–181) authorized a DoD acquisition official to procure property and services in excess of the simplified acquisition threshold through a non-DoD agency only if: (1) The non-DoD agency agreed to adhere to defense procurement requirements; or (2) the Under Secretary of Defense (AT&L) certified that the procurement is in the best interest of DoD.

Section 806 of the National Defense Authorization Act for Fiscal Year 2010 (Pub. L. 111–84) amended the limitations placed on procurements by non-DoD agencies by exempting such procurements that are (a) entered into by a non-DoD agency that is an element of the intelligence community and (b) when the procurement is for the performance of a joint program conducted to meet the needs of DoD and the non-DoD agency. Section 806 referred to section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)) to identify non-DoD agencies that are an element of the intelligence community.

**B. Discussion**

The National Security Act of 1947 defines the term “intelligence community” to include a number of defense and non-defense agencies and portions of such agencies. The definition of “non-DoD agency that is an element of the intelligence community” replicates the statutory list, absent the DoD agencies.

DFARS subpart 217.78 is amended by adding the definition at 217.7801 and excluding such agencies from the requirements of 217.7802(a) when the procurement is for performance of a joint program conducted to meet the needs of DoD and the non-DoD agency.

This is not a significant regulatory action, and, therefore, was not subject to review under section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 604.

**C. Regulatory Flexibility Act**

DoD does not expect this interim rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because section 806 affects only internal