

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.

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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. 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

government operations and procedures. The interim 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–D027) in correspondence.

D. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the DFARS do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

E. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary because the statute became effective upon enactment, and it is imperative that DoD contracting officers be aware of the limitations on interagency procurements and the circumstances under which certain programs need not be delayed by such limitations. 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 Part 217

Government procurement.

Ynette R. Shelkin,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR part 217 is amended as follows:

PART 217—SPECIAL CONTRACTING METHODS

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

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

■ 2. Section 217.7800 is amended by revising paragraph (a) to read as follows:

217.7800 Scope of subpart.

* * * * *

(a) Implements section 854 of the National Defense Authorization Act for

Fiscal Year 2005 (Pub. L. 108–375), section 801 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110–181), and section 806 of the National Defense Authorization Act for Fiscal Year 2010 (Pub. L. 111–84); and

* * * * *

■ 3. Section 217.7801 is amended by adding the following definition in appropriate alphabetical order:

217.7801 Definitions.

* * * * *

Non-DoD agency that is an element of the intelligence community means the Office of the Director of National Intelligence; the Central Intelligence Agency; the intelligence elements of the Federal Bureau of Investigation; the intelligence elements of the Department of Energy; the Bureau of Intelligence and Research of the Department of State; the Office of Intelligence and Analysis of the Department of the Treasury; and the elements of the Department of Homeland Security concerned with the analysis of intelligence information, including the Office of Intelligence of the Coast Guard.

■ 4. Section 217.7802 is amended by adding paragraph (a)(3) to read as follows:

217.7802 Policy.

(a) * * *

(3) The limitation in paragraph (a) of this section does not apply to contracts entered into by a non-DoD agency that is an element of the intelligence community for the performance of a joint program conducted to meet the needs of DoD and the non-DoD agency.

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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 225

[DFARS Case 2009–D022]

Defense Federal Acquisition Regulation Supplement; Finland—Public Interest Exception to the Buy American Act

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

ACTION: Final rule.

SUMMARY: DoD is issuing this final rule amending the Defense Federal Acquisition Regulation Supplement

(DFARS) to reflect a determination of the Secretary of Defense that it is inconsistent with the public interest to apply the restrictions of the Buy American Act to the acquisition of articles, materials, and supplies produced or manufactured in Finland.

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

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, 703–602–0328.

SUPPLEMENTARY INFORMATION:

A. Background

A reciprocal defense procurement memorandum of understanding (RDP MOU) between the government of Finland and the Government of the United States has been in effect since 1991. The governments have negotiated and concluded a new RDP MOU to provide an updated basis for continued cooperation in defense procurement. The RDP MOU provides that, in relation to defense procurement, each country will accord to the industries of the other country treatment no less favorable than that accorded to its own industries, to the extent consistent with its laws, regulations, and international obligations.

The reciprocal opportunities that the RDP MOU affords to the governments and their defense industries enhances mutual military readiness and promotes standardization and interoperability of equipment between the armed forces of the two countries. Therefore, DoD has made a blanket determination that it is inconsistent with the public interest to apply the restrictions of the Buy American Act to the acquisition of articles, materials, and supplies produced or manufactured in Finland.

DoD is issuing this rule as a final rule because this rule does not have a significant effect beyond the internal operating procedures of DoD and does not have a significant cost or administrative impact on contractors or offerors. Therefore, public comment is not required in accordance with 41 U.S.C. 418b(a).

“Qualifying country” is defined at 225.003(10). The status as a qualifying country entitles these countries to various benefits, both as a matter of DoD policy and as legislated by Congress. The evaluation procedures at DFARS subpart 225.5 treat all qualifying country end products equally. Finland is a qualifying country, as listed at 225.003(10), entitled to all these benefits. However, at DFARS 225.872–1, the qualifying countries are divided into two lists. Most are listed in paragraph (a), but a few are listed in paragraph (b). For the countries in paragraph (a), DoD has already made a blanket