

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 225

RIN 0750-AG59

Defense Federal Acquisition Regulation Supplement; Trade Agreements Thresholds (DFARS Case 2009-D040)

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 incorporate increased thresholds for application of the World Trade Organization Government

Procurement Agreement and the Free Trade Agreements, as determined by the United States Trade Representative.

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 formulation of the final rule.

ADDRESSES: You may submit comments, identified by DFARS Case 2009-D040, 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-D040 in the subject line of the message.

- *Fax:* 703-602-0350.

- *Mail:* Defense Acquisition Regulations System, Attn: Ms. Amy

Williams, 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. Amy Williams, 703-602-0328.

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule amends the clause prescriptions at DFARS 225.1101 and 225.7503 to reflect increased thresholds for application of the trade agreements. Every two years, the trade agreements thresholds are escalated according to a pre-determined formula set forth in the agreements. The United States Trade Representative has specified the following new thresholds (74 FR 68907, December 29, 2009):

	Trade Agreement	Supply contract (equal to or exceeding)	Construction contract (equal to or exceeding)
WTO GPA		\$203,000	\$7,804,000
FTAs:			
Australia FTA		70,079	7,804,000
Bahrain FTA		203,000	9,110,318
CAFTA-DR (Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, and Nicaragua)		70,079	7,804,000
Chile FTA		70,079	7,804,000
Morocco FTA		203,000	7,804,000
NAFTA:			
—Canada		25,000	9,110,318
—Mexico		70,079	9,110,318
Peru FTA		203,000	7,804,000
Singapore FTA		70,079	7,804,000

This rule was subject to Office of Management and Budget review under Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993.

B. 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 the dollar threshold changes are designed to keep pace with inflation and thus maintain the status quo. Therefore, DoD has not performed an initial regulatory flexibility analysis. 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-D040) in correspondence.

C. Paperwork Reduction Act

This interim rule affects the certification and information collection requirements in the provisions at DFARS 252.225-7020 and 252.225-7035, currently approved under Office of Management and Budget Control Number 0704-0229. However, there is no impact on the estimated burden hours. The dollar threshold changes are in line with inflation and maintain the status quo.

D. 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 publish an interim rule prior to affording the public an opportunity to comment. This interim rule incorporates increased dollar

thresholds for application of the World Trade Organization Government Procurement Agreement and the Free Trade Agreements, as determined by the United States Trade Representative. This action is necessary because the increased thresholds were effective January 1, 2010. Comments received in response to this interim rule will be considered in the formation of the final rule.

List of Subjects in 48 CFR Part 225

Government procurement.

Ynette R. Shelkin,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR part 225 is amended as follows:

PART 225—FOREIGN CONTRACTING

■ 1. The authority citation for 48 CFR part 225 continues to read as follows:

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".

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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. 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.