

City	Channels	Coordinates	
		Latitude	Longitude
Los Angeles, CA	14, 16, 20	34° 03' 15"	118° 18' 28"
New York, NY	14, 15, 16	40° 45' 06"	073° 59' 39"

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

■ 8. The authority citation for Part 90 continues to read as follows:

Authority: Sections 4(i), 11, 303(g), 303(r), and 332(c)(7) of the Communications Act of

1934, as amended, 47 U.S.C. 154(i), 161, 303(g), 303(r), 332(c)(7).

■ 9. Section 90.303 is amended to read as follows:

§ 90.303 Availability of frequencies.

(a) Frequencies in the band 470–512 MHz are available for assignment as

described below. Note: coordinates are referenced to the North American Datum 1983 (NAD83).

(b) The following table lists frequency bands that are available for assignment in specific urban areas. The available frequencies are listed in § 90.311 of this part.

Urbanized area	Geographic center		Banks (MHz)	TV channels
	North latitude	West longitude		
Boston, MA	42° 21' 24.4"	71° 03' 23.2"	470–476, 482–488	14, 16
Chicago, IL ¹	41° 52' 28.1"	87° 38' 22.2"	470–476, 476–482	14, 15
Cleveland, OH ²	41° 29' 51.2"	81° 49' 49.5"	470–476, 476–482	14, 15
Dallas/Fort Worth, TX	32° 47' 09.5"	96° 47' 38.0"	482–488	16
Detroit, MI ³	42° 19' 48.1"	83° 02' 56.7"	476–482, 482–488	15, 16
Houston, TX	29° 45' 26.8"	95° 21' 37.8"	488–494	17
Los Angeles, CA ⁴	34° 03' 15.0"	118° 14' 31.3"	470–476, 482–488, 506–512	14, 16, 20
Miami, FL	25° 46' 38.4"	80° 11' 31.2"	470–476	14
New York/NE NJ	40° 45' 06.4"	73° 59' 37.5"	470–476, 476–482, 482–488	14, 15, 16
Philadelphia, PA	39° 56' 58.4"	75° 09' 19.6"	500–506, 506–512	19, 20
Pittsburgh, PA	40° 26' 19.2"	79° 59' 59.2"	470–476, 494–500	14, 18
San Francisco/Oakland, CA	37° 46' 38.7"	122° 24' 43.9"	482–488, 488–494	16, 17
Washington, DC/MD/VA	38° 53' 51.4"	77° 00' 31.9"	488–494, 494–500	17, 18

¹ In the Chicago, IL, urbanized area, channel 15 frequencies may be used for paging operations in addition to low power base/mobile usages, where applicable protection requirements for ultrahigh frequency television stations are met.

² Channels 14 and 15 are not available in Cleveland, OH, until further order from the Commission.

³ Channels 15 and 16 are not available in Detroit, MI, until further order from the Commission.

⁴ Channel 16 is available in Los Angeles for use by eligibles in the Public Safety Radio Pool.

(c) The band 482–488 MHz (TV Channel 16) is available for use by eligibles in the Public Safety Radio Pool in the following areas: New York City; Nassau, Suffolk, and Westchester counties in New York State; and Bergen County, New Jersey. All part 90 rules shall apply to said operations, except that:

(1) *Location of stations.* Base stations shall be located in the areas specified in this paragraph (c). Mobile stations may operate throughout the areas specified in this paragraph (c) and may additionally operate in areas not specified in this paragraph (c) provided that the distance from the Empire State Building (40° 44' 54.4" N, 73° 59' 8.4" W) does not exceed 48 kilometers (30 miles).

(2) *Protection criteria.* In order to provide co-channel television protection, the following height and power restrictions are required:

(i) Except as specified in paragraph (c)(2)(ii) of this section, base stations shall be limited to a maximum effective

radiated power (ERP) of 225 watts at an antenna height of 152.5 meters (500 feet) above average terrain (AAT). Adjustment of the permitted power will be allowed provided it is in accordance with the "169 kilometer Distance Separation" entries specified in Table B in 47 CFR 90.309(a) or the "LM/TV Separation 110 miles (177 km)" curve in Figure B in 47 CFR 90.309(b).

(ii) For base stations located west of the Hudson River, Kill Van Kull, and Arthur Kill, the maximum ERP and antenna height shall be limited to the entries specified in Table B in 47 CFR 90.309(a) or in Figure B in 47 CFR 90.309(b) for the actual separation distance between the base station and the transmitter site of WNEP-TV in Scranton, PA (41° 10' 58.0" N, 75° 52' 20.0" W).

(iii) Mobile stations shall be limited to 100 watts ERP in areas of operation extending eastward from the Hudson River and to 10 watts ERP in areas of

operation extending westward from the Hudson River.

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DEPARTMENT OF DEFENSE

48 CFR Part 206

[DFARS Case 2002–D023]

Defense Federal Acquisition Regulation Supplement; Follow-On Production Contracts for Products Developed Pursuant to Prototype Projects

AGENCY: Department of Defense (DoD).
ACTION: Final rule.

SUMMARY: DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to provide an exception from competition requirements to apply to contracts awarded under the authority of section 822 of the National Defense

Authorization Act for Fiscal Year 2002. Section 822 provides for award of a follow-on production contract, without competition, to participants in an "other transaction" agreement for a prototype project, if the agreement was entered into through use of competitive procedures, provided for at least one-third non-Federal cost share, and meets certain other conditions of law.

EFFECTIVE DATE: June 8, 2004.

FOR FURTHER INFORMATION CONTACT: Mr. Thaddeus Godlewski, Defense Acquisition Regulations Council, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301-3062. Telephone (703) 602-2022; facsimile (703) 602-0350. Please cite DFARS Case 2002-D023.

SUPPLEMENTARY INFORMATION:

A. Background

Section 845 of the National Defense Authorization Act for Fiscal Year 1994 (Pub. L. 103-160; 10 U.S.C. 2371 *note*) provides authority for DoD to enter into transactions other than contracts, grants, or cooperative agreements, in certain situations, for prototype projects that are directly relevant to weapons or weapon systems proposed to be acquired or developed by DoD. Such transactions are commonly referred to as "other transaction" (OT) agreements for prototype projects.

Section 822 of the National Defense Authorization Act for Fiscal Year 2002 (Pub. L. 107-107) permits award of a follow-on production contract, without competition, to participants in an OT agreement for a prototype project if—

(1) The OT agreement provided for a follow-on production contract;

(2) The OT agreement provided for at least one-third non-Federal cost share for the prototype project;

(3) Competitive procedures were used for the selection of parties for participation in the OT agreement;

(4) The participants in the OT agreement successfully completed the prototype project;

(5) The number of units provided for in the follow-on production contract does not exceed the number of units specified in the OT agreement for such a follow-on production contract; and

(6) The prices established in the follow-on production contract do not exceed the target prices specified in the OT agreement for such a follow-on production contract.

DoD published amendments to the "Other Transactions" regulations at 32 CFR part 3 on March 30, 2004 (69 FR 16481), to implement section 822. This DFARS rule provides the corresponding exemption from competition

requirements for follow-on production contracts awarded under the authority of section 822.

DoD published a proposed DFARS rule at 68 FR 33057 on June 3, 2003. Two sources submitted comments on the proposed rule. A discussion of the comments is provided below. The difference between the proposed and final rules is addressed in the discussion of Comment 3 below.

1. *Comment:* A company may submit a proposal below cost for production during the initial competition in hopes of recovering costs in a sole source environment. The Government should not facilitate recovery of these costs, and this should be addressed prior to finalizing the rule.

DoD Response: This concern is not unique to this rule, but exists in any competition where only one offeror is selected for award. The companion rule at 32 CFR 3.9 requires that the offered prices for production be evaluated during the original competition. This, coupled with the inherent responsibility of a contracting officer to ensure that contractors honor their commitments, obviates the need for any special DFARS text regarding this concern.

2. *Comment:* The requirement for production may change such that the prototype no longer represents a clear solution to the Government's needs and, in such a case, other companies should be afforded the opportunity to offer solutions for the production phase. The rule should specify the procedures to be used for such a follow-on competition (*e.g.*, solicit only original competitors, open solicitation).

DoD Response: The companion rule at 32 CFR 3.9 outlines the upfront limitations for use of this authority and specifies in paragraph (c) that the authority should be used only when the risk of the prototype project permits realistic production pricing without placing undue risks on the awardee. This limits use of the authority for higher-risk prototype projects where the production requirement, and thus the pricing, may be less certain. This limitation, coupled with the inherent responsibility of a contracting officer regarding scope determinations, obviates the need to specify any unique scope determination for use of this follow-on authority. Additionally, if the contracting officer determines that the follow-on production is beyond the scope of that originally contemplated, the contracting officer must then develop an acquisition strategy for the new requirement. The contracting officer must determine, in accordance with the FAR and the particulars of the acquisition, the appropriate acquisition

strategy. It is not practicable to stipulate in regulation what constitutes a new requirement, nor the nature of any follow-on competition for such a new requirement.

3. *Comment:* The reference in the parenthetical at 206.001(S-70)(2) should be corrected from "32 CFR 3.9(c)" to "32 CFR 3.9(d)".

DoD Response: Concur. The correction has been incorporated into the final rule.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD certifies that this final rule will not 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 applies only to production contracts for DoD weapons and weapon systems. Such contracts typically are not awarded to small business concerns.

C. Paperwork Reduction Act

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

List of Subjects in 48 CFR Part 206

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

■ Therefore, 48 CFR part 206 is amended as follows:

■ 1. The authority citation for 48 CFR part 206 continues to read as follows:

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

PART 206—COMPETITION REQUIREMENTS

■ 2. Section 206.001 is amended by adding, after paragraph (b), a new paragraph (S-70) to read as follows:

206.001 Applicability.

* * * * *

(S-70) Also excepted from this part are follow-on production contracts for products developed pursuant to the "other transactions" authority of 10 U.S.C. 2371 for prototype projects when—

(1) The other transaction agreement includes provisions for a follow-on production contract;

(2) The contracting officer receives sufficient information from the

agreements officer and the project manager for the prototype other transaction agreement, which documents that the conditions set forth in 10 U.S.C. 2371 *note*, subsections (f)(2) (A) and (B) (see 32 CFR 3.9(d)), have been met; and

(3) The contracting officer establishes quantities and prices for the follow-on production contract that do not exceed the quantities and target prices established in the other transaction agreement.

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DEPARTMENT OF DEFENSE

48 CFR Part 219

[DFARS Case 2003-D105]

Defense Federal Acquisition Regulation Supplement; Contracting for Architect-Engineer Services

AGENCY: Department of Defense (DoD).

ACTION: Interim rule with request for comments.

SUMMARY: DoD has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 1427 of the National Defense Authorization Act for Fiscal Year 2004. Section 1427 increases, from \$85,000 to \$300,000, the threshold below which acquisitions for architect-engineer services for military construction or family housing projects are set aside for small business concerns.

DATES: Effective Date: June 8, 2004. Comments on the interim rule should be submitted in writing to the address shown below on or before August 9, 2004, to be considered in the formation of the final rule.

ADDRESSES: You may submit comments, identified by DFARS Case 2003-D105, using any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Defense Acquisition Regulations Web Site: <http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm>. Follow the instructions for submitting comments.
- E-mail: dfars@osd.mil. Include DFARS Case 2003-D105 in the subject line of the message.
- Fax: (703) 602-0350.
- Mail: Defense Acquisition Regulations Council, Attn: Mr. Euclides Barrera, OUSD (AT&L) DPAP (DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301-3062.
- Hand Delivery/Courier: Defense Acquisition Regulations Council,

Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202-3402.

All comments received will be posted to <http://emissary.acq.osd.mil/dar/dfars.nsf>.

FOR FURTHER INFORMATION CONTACT: Mr. Euclides Barrera, (703) 602-0296.

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule amends DFARS part 219 to implement section 1427 of the National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108-136). Section 1427 amends 10 U.S.C. 2855 to increase, from \$85,000 to \$300,000, the threshold below which acquisitions for architect-engineer services for military construction or family housing projects are set aside for small business concerns.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD has prepared an initial regulatory flexibility analysis, which is summarized as follows:

The objective of the rule is to establish a new dollar threshold of \$300,000 for use in determining whether DoD acquisitions for architect-engineer services for military construction or family housing projects will be set aside for small business concerns. The legal basis for the rule is 10 U.S.C. 2855, as amended by section 1427 of Pub. L. 108-136. In accordance with 10 U.S.C. 2855, acquisitions below the stated threshold must be set aside for small business concerns, and acquisitions at or above the threshold may not be set aside for small business concerns. The rule will apply to small entities that perform architect-engineer services. The rule will increase opportunities for these entities to receive DoD contract awards. 10 U.S.C. 2855 permits the Secretary of Defense to revise the dollar threshold specified within the statute, to ensure that small business concerns receive a reasonable share of contracts for architect-engineer services for military construction or family housing projects. The new statutory threshold of \$300,000 is considered to be appropriate at this time.

A copy of the analysis may be obtained from the point of contact specified herein. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such

comments should be submitted separately and should cite DFARS Case 2003-D105.

C. Paperwork Reduction Act

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

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 implements section 1427 of the National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108-136). Section 1427 amends 10 U.S.C. 2855 to increase, from \$85,000 to \$300,000, the threshold below which acquisitions for architect-engineer services for military construction or family housing projects are set aside for small business concerns. Section 1427 became effective upon enactment on November 24, 2003. 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 219

Government procurement.

Michele P. Peterson,
Executive Editor, Defense Acquisition Regulations Council.

■ Therefore, 48 CFR Part 219 is amended as follows:

■ 1. The authority citation for 48 CFR Part 219 continues to read as follows:

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

PART 219—SMALL BUSINESS PROGRAMS

219.502-1 [Amended]

■ 2. Section 219.502-1 is amended in paragraph (2) by removing “\$85,000” both places it appears and adding “\$300,000” in its place.

219.502-2 [Amended]

■ 3. Section 219.502-2 is amended in paragraph (a)(iii) by removing “\$85,000” and adding “\$300,000” in its place.

219.1005 [Amended]

■ 4. Section 219.1005 is amended in paragraph (a)(i)(B) two times, in paragraph (a)(i)(C), and in paragraph