

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

(a)(i)(D), by removing "\$85,000" and adding "\$300,000" in its place.

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DEPARTMENT OF DEFENSE

48 CFR Parts 225 and 252

[DFARS Case 2002-D034]

Defense Federal Acquisition Regulation Supplement; Fish, Shellfish, and Seafood Products

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has adopted as final, with changes, an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement section 8136 of the DoD Appropriations Act for Fiscal Year 2003 and similar sections in subsequent DoD appropriations acts. Section 8136 requires the acquisition of domestic fish, shellfish, and seafood, to include fish, shellfish, and seafood manufactured or processed, or contained in foods manufactured or processed, in the United States.

EFFECTIVE DATE: June 8, 2004.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, Defense Acquisition Regulations Council, OUSD (AT&L) DPAP (DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301-3062. Telephone (703) 602-0328; facsimile (703) 602-0350. Please cite DFARS Case 2002-D034.

SUPPLEMENTARY INFORMATION:

A. Background

DoD published an interim rule at 68 FR 7441 on February 14, 2003, to implement section 8136 of the DoD Appropriations Act for Fiscal Year 2003 (Pub. L. 107-248). Section 8136 relates to application of 10 U.S.C. 2533a (the Berry Amendment), which prohibits DoD from acquiring certain items unless they are grown, reprocessed, reused, or produced in the United States. 10 U.S.C. 2533a(f) provides an exception to this prohibition for foods manufactured or processed in the United States. Section 8136 of Pub. L. 107-248 made the exception at 10 U.S.C. 2533a(f) inapplicable to fish, shellfish, and seafood products. The interim rule published on February 14, 2003, amended DFARS 225.7002-2 and the clause at DFARS 252.225-7012 to add requirements for the acquisition of domestic fish, shellfish, and seafood in accordance with section 8136 of Pub. L. 107-248.

As a result of public comments received on the interim rule, DoD published a proposed rule at 68 FR 53945 on September 15, 2003, to clarify what "produced in the United States" means with regard to fish, shellfish, and seafood. DoD received no comments on the proposed rule. Therefore, DoD has adopted the proposed rule as a final rule, with an update to the statutory reference at DFARS 225.7002-2 to reflect the recurrence of this provision in section 8118 of the DoD Appropriations Act for Fiscal Year 2004 (Pub. L. 108-87).

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

B. Regulatory Flexibility Act

This rule may 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.* DoD has prepared a final regulatory flexibility analysis. A copy of the analysis may be obtained from the point of contact specified herein. The analysis is summarized as follows:

This final rule amends the DFARS to implement section 8136 of the DoD Appropriations Act for Fiscal Year 2003 and similar sections in subsequent DoD appropriations acts. Section 8136 makes 10 U.S.C. 2533a(f) inapplicable to fish, shellfish, and seafood products. 10 U.S.C. 2533a(f) is an exception to domestic source requirements that applies to foods manufactured or processed in the United States. The objective of the rule is to prohibit DoD acquisition of foreign fish, shellfish, and seafood, even if processed or manufactured in the United States. The rule applies to all suppliers, processors, and manufacturers of seafood products sold to DoD. There were no public comments on the initial regulatory flexibility analysis. As a result of public comments received on the interim rule, the final rule clarifies what "produced in the United States" means with regard to fish, shellfish, and seafood. The rule should have a beneficial impact on domestic suppliers of fish, shellfish, and seafood.

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 Parts 225 and 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

■ Therefore, 48 CFR parts 225 and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 225 and 252 continues to read as follows:

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

PART 225—FOREIGN ACQUISITION

■ 2. Section 225.7002-2 is amended by revising paragraph (l) to read as follows:

225.7002-2 Exceptions.

* * * * *

(l) Acquisitions of foods manufactured or processed in the United States, regardless of where the foods (and any component if applicable) were grown or produced. However, in accordance with Section 8136 of the DoD Appropriations Act for Fiscal Year 2003 (Pub. L. 107-248) and similar sections in subsequent DoD appropriations acts, this exception does not apply to fish, shellfish, or seafood manufactured or processed in the United States or fish, shellfish, or seafood contained in foods manufactured or processed in the United States.

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PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.212-7001 [Amended]

■ 3. Section 252.212-7001 is amended as follows:

■ a. By revising the clause date to read "(JUN 2004)"; and

■ b. In paragraph (b), in entry "252.225-7012", by removing "(MAY 2004)" and adding in its place "(JUN 2004)".

■ 4. Section 252.225-7012 is amended as follows:

■ a. By revising the clause date to read "(JUN 2004)";

■ b. By adding paragraphs (a)(3) and (a)(4);

■ c. By revising paragraph (b) introductory text and paragraph (c)(4); and

■ d. By adding paragraph (d) to read as follows:

252.225-7012 Preference for Certain Domestic Commodities.

* * * * *

(a) * * *

(3) *United States* means the 50 States, the District of Columbia, and outlying areas.