

(c) Reviewing funding to ensure that it is used in accordance with appropriation limitations;

(d) Providing unique terms, conditions, and requirements to the assisting agency for incorporation into the order or contract as appropriate to comply with all applicable DoD-unique statutes, regulations, directives, and other requirements; and

(e) Collecting data on the use of assisted acquisition for analysis.

PART 237—SERVICE CONTRACTING

■ 6. Section 237.170-2 is revised to read as follows:

237.170-2 Approval requirements.

(a) *Acquisition of services through a contract or task order that is not performance based.*

(1) For acquisitions at or below \$50,000,000, obtain the approval of the official designated by the department or agency.

(2) For acquisitions exceeding \$50,000,000, obtain the approval of the senior procurement executive.

(b) *Acquisition of services through use of a contract or task order issued by a non-DoD agency.* Comply with the review and approval requirements established in accordance with Subpart 217.78 when acquiring services through use of a contract or task order issued by a non-DoD agency.

237.170-3 [Removed]

■ 7. Section 237.170-3 is removed.

[FR Doc. 05-10225 Filed 5-23-05; 8:45 am]

BILLING CODE 5001-08-P

DEPARTMENT OF DEFENSE

48 CFR Parts 215 and 216

[DFARS Case 2005-D003]

Defense Federal Acquisition Regulation Supplement; Incentive Program for Purchase of Capital Assets Manufactured in the United States

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 822 of the National Defense Authorization Act for Fiscal Year 2004. Section 822 requires the Secretary of Defense to establish an incentive program for contractors to purchase capital assets manufactured in the United States, and

to provide consideration for offerors with eligible capital assets in source selections for major defense acquisition programs.

DATES: *Effective Date:* May 24, 2005.

Comment date: Comments on the interim rule should be submitted to the address shown below on or before July 25, 2005, to be considered in the formation of the final rule.

ADDRESSES: You may submit comments, identified by DFARS Case 2005-D003, 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 2005-D003 in the subject line of the message.

◦ *Fax:* (703) 602-0350.

◦ *Mail:* Defense Acquisition Regulations Council, Attn: Ms. Amy Williams, 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: Ms. Amy Williams, (703) 602-0328.

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule amends DFARS 215.304 and 216.470 to implement Section 822 of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108-136). Section 822 added 10 U.S.C. 2436, which requires the Secretary of Defense to (1) establish an incentive program for contractors to purchase capital assets manufactured in the United States under contracts for major defense acquisition programs; and (2) provide consideration for offerors with eligible capital assets in source selections for major defense acquisition programs.

In addition, 10 U.S.C. 2436 authorizes the Secretary of Defense to use the Defense Industrial Capabilities Fund, established under Section 814 of the National Defense Authorization Act for Fiscal Year 2004, for incentive payments under the program. However, no funds have been appropriated for the Industrial Capabilities Fund.

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 consistent with 5 U.S.C. 603. The analysis is summarized as follows:

The objective of the rule is to increase the use of capital assets manufactured in the United States under DoD contracts for major defense acquisition programs. The rule implements 10 U.S.C. 2436, as added by Section 822 of the National Defense Authorization Act for Fiscal Year 2004. Most prime contractors for major defense acquisition programs are large business concerns. However, the rule is expected to have a positive impact on U.S. small business manufacturers of machine tools and other capital assets used in major defense acquisition programs, as their sales to DoD prime contractors should increase.

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 2005-D003.

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 822 of the National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108-136). Section 822 requires DoD to establish an incentive program for contractors to purchase capital assets manufactured in the United States under contracts for major defense acquisition programs. In addition, Section 822 authorizes DoD to prescribe interim regulations as necessary to carry out the requirements of Section 822 and exempts DoD from compliance with the notice and comment requirements of 5 U.S.C. 553 for those regulations. Section 822 applies with respect to contracts entered into on or after May 24, 2005. Comments received in response to this interim rule will be considered in the formation of the final rule.

List of Subjects in 48 CFR Parts 215 and 216

Government procurement.

Michele P. Peterson,
Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR parts 215 and 216 are amended as follows:

■ 1. The authority citation for 48 CFR parts 215 and 216 continues to read as follows:

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

PART 215—CONTRACTING BY NEGOTIATION

■ 2. Section 215.304 is amended by adding paragraph (c)(iii) to read as follows:

215.304 Evaluation factors and significant subfactors.

(c) * * *

(iii) In accordance with 10 U.S.C. 2436, consider the purchase and use of capital assets (including machine tools) manufactured in the United States, in source selections for all major defense acquisition programs, as defined in 10 U.S.C. 2430, when it is pertinent to the best value determination.

PART 216—TYPES OF CONTRACTS

■ 3. Section 216.470 is amended as follows:

■ a. In the introductory text by removing the dash and adding a colon in its place;

■ b. By redesignating paragraphs (1) through (5) as paragraphs (a) through (e) respectively; and

■ c. By revising newly designated paragraph (a) to read as follows:

216.470 Other applications of award fees.

* * * * *

(a) The Government wishes to motivate and reward a contractor for—

(1) Purchase and use of capital assets (including machine tools) manufactured in the United States, on major defense acquisition programs; or

(2) Management performance in areas which cannot be measured objectively and where normal incentive provisions cannot be used. For example, logistics support, quality, timeliness, ingenuity, and cost effectiveness are areas under the control of management which may be susceptible only to subjective measurement and evaluation.

* * * * *

[FR Doc. 05-10233 Filed 5-23-05; 8:45 am]

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DEPARTMENT OF DEFENSE**48 CFR Part 219 and Appendix I to Chapter 2**

[DFARS Case 2004-D028]

Defense Federal Acquisition Regulation Supplement; DoD Pilot Mentor-Protege Program

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 Sections 841 and 842 of the National Defense Authorization Act for Fiscal Year 2005. Section 841 extends the length of the DoD Pilot Mentor-Protege Program for 5 additional years. Section 842 expands the Program to permit service-disabled veteran-owned small business concerns and HUBZone small business concerns to participate in the Program as protege firms.

DATES: Effective Date: May 24, 2005.

Comment Date: Comments on the interim rule should be submitted to the address shown below on or before July 25, 2005 to be considered in the formation of the final rule.

ADDRESSES: You may submit comments, identified by DFARS Case 2004-D028, 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 2004-D028 in the subject line of the message.

○ Fax: (703) 602-0350.

○ Mail: Defense Acquisition Regulations Council, Attn: Ms. Deborah Tronic, 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: Ms. Deborah Tronic, (703) 602-0289.

SUPPLEMENTARY INFORMATION:**A. Background**

This interim rule amends DFARS Subpart 219.71 and Appendix I to implement Sections 841 and 842 of the

National Defense Authorization Act for Fiscal Year 2005 (Pub. L. 108-375). Section 841 extends, through September 30, 2010, the period during which companies may enter into agreements under the DoD Pilot Mentor-Protege Program; and extends, through September 30, 2013, the period during which mentor firms may incur costs that are eligible for reimbursement or credit under the Program. Section 842 expands the Program to permit service-disabled veteran-owned small business concerns and HUBZone small business concerns to participate in the Program as protege firms.

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 consistent with 5 U.S.C. 603. The analysis is summarized as follows:

This interim rule amends the DFARS to implement new statutory requirements pertaining to the DoD Pilot Mentor-Protege Program. The rule extends the length of the Program for 5 additional years, and expands the Program to permit service-disabled veteran-owned small business concerns and HUBZone small business concerns to participate in the Program as protege firms. The Program provides incentives for DoD contractors to assist protege firms in enhancing their capabilities and increasing their participation in Government and commercial contracts. Presently, there are 5,737 service-disabled veteran-owned small business concerns and 12,281 HUBZone small business concerns registered in the Central Contractor Registration database; and presently, there are 134 active mentor-protege agreements. Each protege firm must provide data to its mentor firm, annually for submission to the Government, regarding the progress of the protege firm in employment, revenues, and participation in DoD contracts. The rule does not duplicate, overlap, or conflict with any other Federal rules. The rule is expected to have a beneficial impact on service-disabled veteran-owned small business concerns and HUBZone small business concerns. There are no known significant alternatives to the rule. Participation in the DoD Pilot Mentor-Protege Program is voluntary.

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