

Defense Contract Audit Agency (DCAA). At a minimum, the contracting officer shall request that DCAA evaluate—

(A) Completeness of the contractor's voluntary disclosure on the affected contract;

(B) Accuracy of the contractor's cost impact calculation for the affected contract; and

(C) Potential impact on existing contracts, task or deliver orders, or other proposals the contractor has submitted to the Government.

(ii) Voluntary disclosure of defective pricing is not a voluntary refund as defined in 242.7100 and does not waive the Government entitlement to the recovery of any overpayment plus interest on the overpayments in accordance with FAR 15.407-1(b)(7).

(iii) Voluntary disclosure of defective pricing does not waive the Government's rights to pursue defective pricing claims on the affected contract or any other Government contract.

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## DEPARTMENT OF DEFENSE

### Defense Acquisition Regulations System

#### 48 CFR Parts 217 and 234

[Docket DARS-2015-0042]

RIN 0750-AI62

#### Defense Federal Acquisition Regulation Supplement: Extension and Modification of Contract Authority for Advanced Component Development and Prototype Units (DFARS Case 2015-D008)

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

**ACTION:** Proposed rule.

**SUMMARY:** DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to implement a section of the National Defense Authorization Act for Fiscal Year 2015, which amended a section of the National Defense Authorization Act for Fiscal Year 2010, to extend and modify contract authority for advanced component development and prototype units.

**DATES:** Comments on the proposed rule should be submitted in writing to the address shown below on or before January 19, 2016, to be considered in the formation of a final rule.

**ADDRESSES:** Submit comments identified by DFARS Case 2015-D008, using any of the following methods:

○ *Regulations.gov:* <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by entering "DFARS Case 2015-D008" under the heading "Enter keyword or ID" and selecting "Search." Select the link "Submit a Comment" that corresponds with "DFARS Case 2015-D008." Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "DFARS Case 2015-D008" on your attached document.

○ *Email:* [osd.dfars@mail.mil](mailto:osd.dfars@mail.mil). Include DFARS Case 2015-D008 in the subject line of the message.

○ *Fax:* 571-372-6094.

○ *Mail:* Defense Acquisition Regulations System, Attn: Ms. Janetta Brewer, OUSD(AT&L)DPAP/DARS, Room 3B941, 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. To confirm receipt of your comment(s), please check [www.regulations.gov](http://www.regulations.gov), approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

**FOR FURTHER INFORMATION CONTACT:** Ms. Janetta Brewer, telephone: 571-372-6104.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

DoD is proposing to revise the DFARS to implement section 811 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2015 (Pub. L. 113-291). Section 811 entitled "Extension and Modification of Contract Authority for Advanced Component Development and Prototype Units" amends paragraphs (a) and (b) of section 819 of the NDAA for FY 2010 (10 U.S.C. 2302 note).

The rule proposes to amend DFARS 217.202(2) and 234.005-1(1) to add "or initial production" to the text. This will allow for the inclusion of a contract line item (possibly an option) to go to initial production without further competition. However, there is no new impact on contract cost because section 819(b) of the NDAA for FY 2010 (which is unchanged in 2015) continues to place a limitation on costs associated with any contract line item (option or otherwise) for the delivery of initial or additional items. The rule also extends this authority at DFARS 234.005-1(2) to September 30, 2019, from September 30, 2014.

##### II. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

##### III. Regulatory Flexibility Act

DoD does not expect this 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 rule primarily provides greater flexibility to DoD when contracting for major system acquisitions. However, an initial regulatory flexibility analysis has been performed and is summarized as follows:

The purpose of the rule is to implement section 811 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2015 (Pub. L. 113-291). Section 811 entitled "Extension and Modification of Contract Authority for Advanced Component Development and Prototype Units" amends paragraphs (a) and (b) of section 819 of the NDAA for FY 2010 (10 U.S.C. 2302 note).

The rule proposes to amend DFARS 217.202(2) and 234.005-1(1) to add "or initial production" to the text. This will allow for the inclusion of a contract line item (possibly an option) to go to initial production without further competition.

The rule will apply to DoD major defense acquisition program contractors and subcontractors. Most major defense acquisition programs are awarded to large concerns as they are of a scope too large for any small business to perform. As such, it is not expected that this rule will have a significant impact on a substantial number of small entities.

The rule does not impose any additional reporting, recordkeeping, and other compliance requirements. The rule does not duplicate, overlap, or conflict with any other Federal rules. There are no alternatives available that would meet the objectives of the statute.

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 affected DFARS subpart in accordance with 5 U.S.C. 601. Such comments should be submitted separately and should cite 5 U.S.C. 610 (DFARS Case 2015–D008) in correspondence.

#### IV. 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. chapter 35.

#### List of Subjects in 48 CFR Parts 217 and 234

Government procurement.

**Jennifer L. Hawes,**

*Editor, Defense Acquisition Regulations System.*

Therefore, 48 CFR parts 217 and 234 are proposed to be amended as follows:

■ 1. The authority citation for parts 217 and 234 continues to read as follows:

**Authority:** 41 U.S.C. 1303 and 48 CFR chapter 1.

#### PART 217—SPECIAL CONTRACTING METHODS

■ 2. Amend section 217.202 by revising paragraph (2) to read as follows:

##### 217.202 Use of options.

\* \* \* \* \*

(2) See 234.005–1 for limitations on the use of contract options for the provision of advanced component development, prototype, or initial production of technology developed under the contract or the delivery of initial or additional items.

#### PART 234—MAJOR SYSTEM ACQUISITION

##### 234.005–1 [Amended]

■ 3. Amend section 234.005–1—

■ a. In paragraph (1) introductory text, by removing “component development or prototype of technology” and adding “component development, prototype, or initial production of technology” in its place, and removing “additional prototype items” and adding “additional items” in its place; and

■ b. In paragraph (2), by removing “September 30, 2014” and adding “September 30, 2019” in its place.

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## DEPARTMENT OF DEFENSE

### Defense Acquisition Regulations System

#### 48 CFR Part 225

[Docket DARS–2015–0053]

RIN 0750–AI77

#### Defense Federal Acquisition Regulation Supplement: Buy American and Balance of Payments Program— Clause Prescription (DFARS Case 2015–D037)

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

**ACTION:** Proposed rule

**SUMMARY:** DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to clarify how the clause prescription addresses applicability when an exception to the Buy American statute or Balance of Payments Program applies.

**DATES:** Comments on the proposed rule should be submitted in writing to the address shown below on or before January 19, 2016, to be considered in the formation of a final rule.

**ADDRESSES:** Submit comments identified by DFARS Case 2015–D037, using any of the following methods:

- *Regulations.gov:* <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by entering “DFARS Case 2015–D037” under the heading “Enter keyword or ID” and selecting “Search.” Select the link “Submit a Comment” that corresponds with “DFARS Case 2015–D037.” Follow the instructions provided at the “Submit a Comment” screen. Please include your name, company name (if any), and “DFARS Case 2015–D037” on your attached document.
- *Email:* [osd.dfars@mail.mil](mailto:osd.dfars@mail.mil). Include DFARS Case 2015–D037 in the subject line of the message.
- *Fax:* 571–372–6094.
- *Mail:* Defense Acquisition Regulations System, Attn: Ms. Tresa Sullivan, OUSD(AT&L)DPAP/DARS, Room 3B941, 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. To confirm receipt of your comment(s), please check [www.regulations.gov](http://www.regulations.gov), approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

**FOR FURTHER INFORMATION CONTACT:** Ms. Tresa Sullivan, telephone 571–372–6089.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

DoD is proposing to revise the DFARS to clarify when it is appropriate to not include DFARS clause 252.225–7001, Buy American and Balance of Payments Program, with regard to exceptions to the Buy American statute and Balance of Payment Program. The prescription for use of DFARS clause 252.225–7001 does not clearly make a distinction with regard to when an exception to the Buy American statute or Balance of Payments Program applies. As written, procurement offices may inaccurately believe that it is permissible to omit the clause if either situation occurs. However, the clause is required in solicitations and contracts unless (1) the acquisition is for supplies for use within the United States and an exception to the Buy American statute applies (e.g., nonavailability or public interest), or (2) the acquisition is for supplies for use outside the United States and an exception to the Balance of Payments Program applies.

##### III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

##### IV. Regulatory Flexibility Act

DoD does not expect this proposed 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 it applies to internal procedures for Government contracting officers. This proposed rule clarifies how clause prescription addresses applicability when an exception to the Buy American statute or Balance of Payments Program applies. However, an initial regulatory flexibility analysis has