



This document is scheduled to be published in the Federal Register on 03/25/2016 and available online at <http://federalregister.gov/a/2016-06721>, and on [FDsys.gov](http://FDsys.gov)

(Billing Code 5001-06)

**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:** Final rule.

**SUMMARY:** DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement a section of the National Defense Authorization Act for Fiscal Year 2015 that 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:** Effective **[Insert date of publication in the FEDERAL REGISTER]**.

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

**SUPPLEMENTARY INFORMATION:**

## **I. Background**

DoD published a proposed rule in the Federal Register at 80 FR 72671 on November 20, 2015, to revise the DFARS to implement section 811 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2015 (Pub. L. 113-291, enacted December 19, 2014), which amended paragraphs (a) and (b) of section 819 of the NDAA for FY 2010 (10 U.S.C. 2302 note). The rule proposed to amend DFARS 217.202(2) and 234.005-1(1) to add "or initial production" to the text, to allow for inclusion of a contract line item (possibly an option) for advanced component development and prototype units to go to initial production without further competition. The rule also proposed to amend DFARS 234.005-1(2) to extend this authority to September 30, 2019. There were no public comments submitted in response to the proposed rule. There are no changes from the proposed rule made in the final rule.

## **II. Applicability to Contracts at or Below the Simplified Acquisition Threshold and for Commercial Items, Including Commercially Available Off-the-Shelf Items**

This case does not add any new provisions or clauses or impact any existing provisions or clauses.

## **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 has prepared a Final Regulatory Flexibility Analysis (FRFA) consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. The FRFA is summarized as follows:

This rule is necessary to implement section 811 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2015 (Pub. L. 113-291). Section 811 amends paragraphs (a) and (b) of section 819 of the NDAA for FY 2010 (10 U.S.C. 2302 note). The objective of this rule is to provide authority for the inclusion of a contract line item (possibly an option) for advanced component development and prototype units to go to initial production without further competition.

There were no significant issues raised by the public in response to the initial regulatory flexibility analysis.

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 significant number of small entities.

This rule does not impose new recordkeeping or reporting requirements. There are no known significant alternative approaches to the rule that would meet the requirements of the statute.

#### **V. Paperwork Reduction Act**

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (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 amended as follows:

1. The authority citation for 48 CFR 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.

[FR Doc. 2016-06721 Filed: 3/24/2016 8:45 am; Publication Date: 3/25/2016]