

**SUMMARY:** DoD is adopting as final, with a minor change, an interim rule amending the DFARS to implement section 819 of the National Defense Authorization Act for Fiscal Year 2010. Section 819 places limitations on certain types of line items and contract options that may be included in contracts initially awarded pursuant to competitive solicitations.

**DATES:** *Effective Date:* November 24, 2010.

**FOR FURTHER INFORMATION CONTACT:** Ms. Meredith Murphy, 703-602-1302.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

DoD published an interim rule in the **Federal Register** at 75 FR 32638 on June 8, 2010, to implement section 819 of the National Defense Authorization Act for Fiscal Year 2010. The interim rule added coverage at DFARS 217.202 and 234.005-1. The intent of the statute is to prevent a contract for new technology that is initially awarded as a result of competition, from becoming a noncompetitive effort for the development of advance components or the procurement of prototype units. The DFARS implementation places specific limits, in accordance with the statute, on the dollar value, period of performance, and time for exercise of contract line items or contract options for such contracts.

The comment period closed on August 9, 2010. A single comment was received in response to the interim rule. The respondent commented that including the change in DFARS part 234 will result in users following this requirement only when procuring major systems. This issue was raised during the preparation of the interim rule. DoD confirmed that part 234 is the optimal location, but has added to DFARS part 235, Research and Development Contracting, a second cross-reference to the part 234 coverage.

**II. Executive Order 12866**

This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of Executive Order 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 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 changes are to internal Government operating procedures.

Specifically, the final rule implements section 819 of the National Defense Authorization Act for Fiscal Year 2010. Section 819 places limitations on certain types of line items and contract options that may be included in contracts initially awarded pursuant to competitive solicitations. When the prohibition applies, it limits the dollar value, period of performance, and time for exercise of such contract line items or contract options. The intent of the final rule is to prevent a contract for new technology that is initially awarded as a result of competition from becoming a noncompetitive effort for the development of advanced components or the procurement of prototype units.

**IV. Paperwork Reduction Act**

The Paperwork Reduction Act does not apply because the final 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 217, 234, and 235**

Government procurement.

**Clare M. Zebrowski,**  
*Editor, Defense Acquisition Regulations System.*

**Interim Rule Adopted as Final With Changes**

■ Accordingly, the interim rule amending 48 CFR parts 217 and 234, which was published in the **Federal Register** at 75 FR 32638 on June 8, 2010, is adopted as final with the following changes:

■ 1. The authority citation for 48 CFR parts 217, 234, and 235 continues to read as follows:

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

**PART 235—RESEARCH AND DEVELOPMENT CONTRACTING**

■ 2. Section 235.006-71 is added to subpart 235.006 to read as follows:

**235.006-71 Competition.**

See 234.005-1 for limitations on the use of contract line items or contract options for the provision of advanced component development or prototypes of technology developed under a competitively awarded proposal.

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**DEPARTMENT OF DEFENSE**

**Defense Acquisition Regulations System**

**48 CFR Part 237**

**Defense Federal Acquisition Regulation Supplement; Services of Senior Mentors (DFARS Case 2010-D025)**

**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 DoD policy on the services of senior mentors.

**DATES:** *Effective:* November 24, 2010.

**FOR FURTHER INFORMATION CONTACT:** Ms. Meredith Murphy, 703-602-1302, Defense Acquisition Regulations System, OUSD (AT&L) DPAP/DARS, 3060 Defense Pentagon, Room 3B855, Washington, DC 20301-3060.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

This DFARS case is implementing the DoD policy on the services of senior mentors. These policies are set forth in two memoranda:

- Secretary of Defense Memorandum entitled "Policy on Senior Mentors," dated April 1, 2010; and
- Deputy Secretary of Defense Memorandum entitled "Implementation Guidance on Senior Mentor Policy," dated July 8, 2010.

This case is being published as a final rule because the policy changes have already been established by the Secretary of Defense and the Deputy Secretary of Defense in their policy memoranda. The DFARS language incorporated by this rule is implementing the policy established in the memoranda, which impacts internal DoD operations with no impact on the public. Therefore, publication for public comments is not necessary.

**II. Discussion**

Senior mentors are retired flag, general, or other military officers or retired senior civilian officials who provide expert experience-based mentoring, teaching, training, advice, and recommendations to senior military officers, staff, and students as they participate in war games, warfighting courses, operational planning, operational exercises, and decision-making exercises. The relevant prior service, joint force experience, and

unique expertise of senior mentors provide senior leadership with valuable insights and contribute to the continuous improvement of the DoD operations.

Because of DoD's increased need for senior mentors to participate in warfighting exercises and its desire to promote public trust and confidence in the integrity of its programs and operations, the Secretary has directed the adoption of a uniform hiring process that will provide consistency and transparency to the senior mentor program. Specifically, the Secretary has directed that all requirements for senior mentor services must be satisfied by employing senior mentors as "highly qualified experts," a type of civil service position under 5 U.S.C. 9903. As highly qualified experts, senior mentors will be subject to applicable Federal personnel and ethics laws and regulations.

Therefore, DoD will not use the authority of 5 U.S.C. 3109 or 10 U.S.C. 129(b) to enter into personal services contracts with senior mentors or otherwise contract for the services of senior mentors. This final rule implements the Secretary's policy by adding a prohibition against contracting for the services of senior mentors at DFARS 237.102-73.

### III. Executive Order 12866

This is not a significant regulatory action and, therefore, is not subject to review under section 6(b) of Executive Order 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

The Regulatory Flexibility Act does not apply to this rule. This rule will not have a significant economic impact upon a substantial number of small entities because this final rule does not constitute a significant DFARS revision within the meaning of 41 U.S.C. 418b and FAR 1.501 and does not require publication for public comment. The rule is internal to DoD and does not impose any requirements on small businesses. Therefore, a regulatory flexibility analysis has not been performed.

### V. Paperwork Reduction Act

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

### List of Subjects in 48 CFR Part 237

Government procurement.

Clare M. Zebrowski,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR part 237 is amended as follows:

#### PART 237—SERVICE CONTRACTING

■ 1. The authority citation for 48 CFR part 237 continues to read as follows:

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

■ 2. Section 237.101 is amended by adding the definition for "senior mentor" in alphabetical order as follows:

#### 237.101 Definitions.

\* \* \* \* \*

"Senior mentor" means a retired flag, general, or other military officer or retired senior civilian official who provides expert experience-based mentoring, teaching, training, advice, and recommendations to senior military officers, staff, and students as they participate in war games, warfighting courses, operational planning, operational exercises, and decision-making exercises.

■ 3. Section 237.102-73 is added as follows:

#### 237.102-73 Prohibition on contracts for services of senior mentors.

DoD is prohibited from entering into contracts for the services of senior mentors. *See* PGI 237.102-73 for references to DoD policy and implementation guidance.

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## DEPARTMENT OF DEFENSE

### Defense Acquisition Regulations System

#### 48 CFR Part 242

RIN 0750-AG77

#### Defense Federal Acquisition Regulation Supplement; Contractor Insurance/Pension Review (DFARS Case 2009-D025)

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

**ACTION:** Final rule.

**SUMMARY:** The Department of Defense (DoD) is issuing a final rule to remove and relocate the requirements for conducting a Contractor Insurance/

Pension Review from Procedures, Guidance, and Information (PGI) to the Defense Federal Acquisition Regulation Supplement (DFARS).

**DATES:** *Effective Date:* November 24, 2010.

**FOR FURTHER INFORMATION CONTACT:** Ms. Mary Overstreet, 703-602-0311.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

This final rule relocates requirements for Contractor Insurance/Pension Review to DFARS 242.7302 from PGI 242.7302.

DoD published a proposed rule at 75 FR 33237 on June 11, 2010, and the public comment period closed on August 10, 2010. No public comments were received. Therefore, DoD is making no changes to the final rule.

##### II. Executive Order 12866

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

##### III. 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.* The rule is consistent with existing policy that a CIPR is only required for those contractors that have \$50 million in qualifying sales to the Government. The rule merely relocates the requirements for CIPR from the PGI to the DFARS.

##### IV. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96-511) applies because information collection requirements in the proposed rule at DFARS subpart 242.73 are currently approved under Office of Management and Budget Control Number 0704-0250. Relocating the requirement has no impact on the information collection requirement.

#### List of Subjects in 48 CFR Part 242

Government procurement.

Ynette R. Shelkin,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR part 242 is amended as follows:

#### PART 242—CONTRACT ADMINISTRATION AND AUDIT SERVICES

■ 1. The authority citation for 48 CFR part 242 continues to read as follows: