

Submission of Federal Rules Under the Congressional Review Act

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President of the Senate

Speaker of the House of Representatives

GAO

Please fill the circles electronically or with black pen or #2 pencil.

1. Name of Department or Agency Department of Defense	2. Subdivision or Office OUSD(AT&L)DPAP(DAR)
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3. Rule Title
Contracting for Architect-Engineer Services

4. Rule Identification Number (RIN) or Other Unique Identifier (if applicable)
DFARS Case 2003-D105

5. Major Rule Non-major Rule

6. Final Rule Other Interim Rule

7. With respect to this rule, did your agency solicit public comments? Yes No N/A

8. Priority of Regulation (fill in one)
 Economically Significant; or Significant; or Substantive, Nonsignificant
 Routine and Frequent or Informational/Administrative/Other (Do not complete the other side of this form if filled in above.)

9. Effective Date (if applicable) June 8, 2004 (estimated)

10. Concise Summary of Rule (fill in one or both) attached stated in rule

Submitted by: Deidre A. Lee (signature)

Name: Deidre A. Lee **MAY 24 2004**

Title: Director, Defense Procurement and Acquisition Policy

For Congressional Use Only:
Date Received: _____
Committee of Jurisdiction: _____

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U.S. HOUSE OF REPS.

	Yes	No	N/A
A. With respect to this rule, did your agency prepare an analysis of costs and benefits?	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
B. With respect to this rule, at the final rulemaking stage, did your agency			
1. certify that the rule would not have a significant impact on a substantial number of small entities under 5 U.S.C. § 605(b)?	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
2. prepare a final Regulatory Flexibility Analysis under 5 U.S.C. § 604(a)?	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
C. With respect to this rule, did your agency prepare a written statement under § 202 of the Unfunded Mandates Reform Act of 1995?	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
D. With respect to this rule, did your agency prepare an Environmental Assessment or an Environmental Impact Statement under the National Environmental Policy Act (NEPA)?	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
E. Does this rule contain a collection of information requiring OMB approval under the Paperwork Reduction Act of 1995?	<input type="radio"/>	<input checked="" type="radio"/>	<input type="radio"/>
F. Did you discuss any of the following in the preamble to this rule?	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
● E.O. 12612, Federalism	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
● E.O. 12630, Government Actions and Interference with Constitutionally Protected Property Rights	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
● E.O. 12866, Regulatory Planning and Review	<input checked="" type="radio"/>	<input type="radio"/>	<input type="radio"/>
● E.O. 12875, Enhancing the Intergovernmental Partnership	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
● E.O. 12988, Civil Justice Reform	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
● E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks	<input type="radio"/>	<input type="radio"/>	<input checked="" type="radio"/>
● Other statutes or executive orders discussed in the preamble concerning the rulemaking process (please specify)			

(Billing Code 5001-08-P)

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: Comments on the interim rule should be submitted in writing to the address shown below on or before *[60 days after date of publication in Federal Register]*, 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:

- o Federal eRulemaking Portal: <http://www.regulations.gov>.

Follow the instructions for submitting comments.

- o Defense Acquisition Regulations Web Site:

<http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm>. Follow the instructions for submitting comments.

- o E-mail: dfars@osd.mil. Include DFARS Case 2003-D105 in the subject line of the message.

- o Fax: (703) 602-0350.

- o Mail: Defense Acquisition Regulations Council, Attn: Mr. Euclides Barrera, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301-3062.

- o 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. 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 Public Law 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 (Public Law 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.