

any such contract must be separate from any annuity contract or contracts for the qualified employer plan. In addition, such contract must satisfy the requirements of section 408(b) and there must be separate accounting for the interest of each participant.

(3) *Deductibility.* The deductibility of voluntary employee contributions to a deemed traditional IRA is determined in the same manner as if it were made to any other traditional IRA. Thus, for example, taxpayers with compensation that exceeds the limits imposed by section 219(g) may not be able to make contributions to deemed IRAs, or the deductibility of such contributions may be limited in accordance with sections 408(a) and 219(g). However, section 219(f)(5), regarding the taxable year in which amounts paid by an employer to an individual retirement plan are includible in the employee's income, is not applicable to deemed IRAs.

(4) *Rollovers and transfers.* The same rules apply to rollovers and transfers to and from deemed IRAs as apply to rollovers and transfers to and from other IRAs. Thus, for example, an employee may request and receive a distribution of his or her deemed IRA account balance and may roll it over to an eligible retirement plan in accordance with section 408(d)(3), regardless of whether that employee may receive a distribution of any other plan benefits.

(5) *Nondiscrimination.* The availability of a deemed IRA is not a benefit, right or feature of the qualified employer plan under § 1.401(a)(4)–4 of the regulations.

(g) *Disqualifying defects.* If the qualified employer plan fails to satisfy its qualification requirements, either in form or in operation, section 408(q) does not apply. Accordingly, any account or annuity maintained under the plan as a deemed IRA is not a deemed IRA, and its status as an IRA will be determined by considering whether the account or annuity satisfies the applicable requirements of section 408 and 408A (including the prohibition of commingling under paragraph (a)(5) of section 408). Also, if any of the deemed IRAs fail to satisfy the applicable requirements of section 408 or 408A, section 408(q) does not apply and the plan will fail to satisfy the plan's qualification requirements.

(h) *Definitions.* The following definitions apply for purposes of this section:

(1) *Qualified employer plan.* A *qualified employer plan* is a plan described in section 401(a), an annuity plan described in section 403(a), a section 403(b) plan, or a governmental plan under section 457(b).

(2) *Voluntary employee contribution.* A *voluntary employee contribution* is any contribution (other than a mandatory contribution within the meaning of section 411(c)(2)(C)) which is made by an individual as an employee under a qualified employer plan that allows employees to elect to make contributions to deemed IRAs and with respect to which the individual has designated the contribution as a contribution to which section 408(q) applies.

(i) *Effective date.* These regulations are applicable beginning on or after August 1, 2003.

**David A. Mader,**

*Assistant Deputy Commissioner of Internal Revenue.*

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**BILLING CODE 4830–01–P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

#### 32 CFR Part 3

**RIN 0790–AG97**

#### Transactions Other than Contracts, Grants, or Cooperative Agreements for Prototype Projects

**AGENCY:** Office of the Secretary, DoD.

**ACTION:** Proposed rule.

**SUMMARY:** This document proposes to implement section 822 of the National Defense Authorization Act for Fiscal Year 2002, Public Law 107–107, 115 Stat. 1182. Section 822 provides for award of a follow-on production contract to traditional Defense contractors, without further competition, when the other transaction (OT) agreement for the prototype project provided for at least one-third non-Federal cost-share, consistent with law, and the OT agreement for the prototype project satisfies certain additional conditions of law.

**DATES:** Comments on the proposed rule must be received in writing to the address specified below by July 21, 2003, to be considered in the formation of the final rule.

**ADDRESSES:** Interested parties should submit written comments on the proposed rule to: Office of the Director, Defense Procurement, Attn: Mr. David Boyd, OUSD(AT&L)/DPAP(P), 3060 Defense Pentagon, Washington, DC 20301–3060. Telefax (703) 614–1254.

**FOR FURTHER INFORMATION CONTACT:**

David Boyd, (703) 697–6710.

**SUPPLEMENTARY INFORMATION:**

## Background and Purpose

Section 845 of the National Defense Authorization Act for Fiscal Year 1994, Public Law 103–160, 107 Stat. 1721, as amended, authorizes the Secretary of a Military Department, the Director of Defense Advanced Research Projects Agency and any other official designated by the Secretary of Defense, to enter into transactions other than contracts, grants or cooperative agreements in certain situations for prototype projects that are directly relevant to weapons or weapon systems proposed to be acquired or developed by the Department of Defense. Such transactions are commonly referred to as “other transaction” agreements for prototype projects. To the extent that a particular statute or regulation is limited in its applicability to the use of a procurement contract, it would generally not apply to “other transactions” for prototype projects.

Use of OT authority is authorized by law in the absence of the significant participation of a nontraditional Defense contractor, when at least one-third of the costs of the prototype project are to be provided by non-Federal parties to the agreement. The authority granted by section 822 of the National Defense Authorization Act for Fiscal Year 2002 provides for the authority to continue such prototype projects into production without competition in certain circumstances. The circumstances are identified in this rule. Additionally, a rule will be issued to the Defense Federal Acquisition Regulation Supplement that exempts such production contracts from further competition, notwithstanding the requirements of section 2304 of title 10, United States Code.

In implementing the law, the Department clarifies that the number of production units and target prices proposed for production must be evaluated during the competition for the prototype project. This is consistent with the law's competition requirement and is the basis for being exempted from the need for further competition for the stated production quantity.

## Regulatory Evaluation

*Executive Order 12866, “Regulatory Planning and Review”*

It has been determined that this rule is not a significant rule as defined under section 3(f)(1) through 3(f)(4) of Executive Order 12866.

*Unfunded Mandates Reform Act (Sec. 202, Pub. L. 104–4)*

It has been certified that this rule does not contain a Federal mandate that may

result in the expenditure by State, local and tribal governments, in aggregate, or by the private sector, of \$100 million or more in any one year.

*Pub. L. 96-354, "Regulatory Flexibility Act" (5 U.S.C. 601)*

It has been certified that this rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities. The rule does not require additional record keeping or other significant expense by project participants.

*Pub. L. 96-511, "Paperwork Reduction Act of 1995" (44 U.S.C. 3501 *et seq.*)*

It has been certified that this rule does not impose any reporting or record keeping requirements under the Paperwork Reduction Act of 1995.

*Federalism (Executive Order 13132)*

It has been certified that this rule does not have federalism implications, as set forth in Executive Order 13132.

#### List of Subjects in 32 CFR Part 3

Government procurement,  
Transactions for prototype projects.

Accordingly, 32 CFR part 3 is proposed to be amended to read as follows:

#### PART 3—TRANSACTIONS OTHER THAN CONTRACTS, GRANTS, OR COOPERATIVE AGREEMENTS FOR PROTOTYPE PROJECTS

1. The authority citation for 32 CFR part 3 continues to read as follows:

**Authority:** Section 845 of Public Law 103-160, 107 Stat. 1721, as amended.

2. Section 3.4 is amended to add new definitions in alphabetical order to read as follows:

*Project Manager.* The government manager for the prototype project.

*Contracting Officer.* A person with the authority to enter into, administer, and/or terminate contracts and make related determinations and findings as defined in chapter 1 of title 48, CFR, Federal Acquisition Regulation, part 2.101(b).

3. New § 3.9 is added to read as follows:

#### § 3.9 Follow-on production contracts.

(a) *Authority.* A competitively awarded OT agreement for a prototype project that satisfies the condition set forth in law that requires non-Federal parties to the OT agreement to provide at least one-third of the costs of the prototype project may provide for the award of a follow-on production contract to the awardee of the OT

prototype agreement for a specific number of units at specific target prices, without further competition.

(b) *Conditions.* The Agreements Officer must do the following in the award of the prototype project:

(1) Ensure non-Federal parties to the OT prototype agreement offer at least one third of the costs of the prototype project pursuant to subsection (d)(1)(B)(i), 10 U.S.C. 2371 note.

(2) Use competition to select parties for participation in the OT prototype agreement and evaluate the proposed quantity and target prices for the follow-on production units as part of that competition.

(3) Determine the production quantity that may be procured without further competition, by balancing of the level of the investment made in the project by the non-Federal parties with the interest of the Federal Government in having competition among sources in the acquisition of the product or products prototyped under the project.

(4) Specify the production quantity and target prices in the OT prototype agreement and stipulate in the agreement that the Contracting Officer for the follow-on contract may award a production contract without further competition if the awardee successfully completes the prototype project and agrees to production quantities and prices that do not exceed those specified in the OT prototype agreement (see part 206.001 of the Defense Federal Acquisition Regulation Supplement).

(c) *Limitation.* As a matter of policy, establishing target prices for production units should only be considered when the risk of the prototype project permits realistic production pricing without placing undue risks on the awardee.

(d) *Documentation.* (1) The Agreements Officer will need to provide information to the Contracting Officer from the agreement and award file that the conditions set forth in paragraph (b) of this section have been satisfied.

(2) The information shall contain, at a minimum:

(i) The competitive procedures used;  
(ii) How the production quantities and target prices were evaluated in the competition;

(iii) The percentage of cost-share; and  
(iv) The production quantities and target prices set forth in the OT agreement.

(3) The Project Manager will provide evidence of successful completion of the prototype project to the Contracting Officer.

Dated: May 12, 2003.

**Patricia L. Toppings,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

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## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

#### 33 CFR Parts 100 and 117

[CGD09-03-208]

RIN 1625-AA08

RIN 1625-AA09

#### Toledo Tall Ships Parade 2003, Port of Toledo, OH

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Coast Guard proposes to establish temporary regulations, including an exclusionary area and spectator anchorage areas, as well as drawbridge regulations for the Parade of Sail Toledo 2003 in the Port of Toledo, Ohio, on July 16, 2003. These regulations are necessary to promote the safe navigation of vessels and the safety of life and property during the heavy volume of vessel traffic expected during this event. These regulations are intended to restrict vessel traffic from a portion of Lake Erie and the Maumee River.

**DATES:** Comments and related material must reach the Coast Guard on or before June 15, 2003.

**ADDRESSES:** You may mail or hand-deliver comments and related material to Marine Safety Office (MSO) Toledo, 420 Madison Ave, Suite 700, Toledo, Ohio 43604. MSO Toledo maintains the public docket for this rulemaking. Comments and materials received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying between 8 a.m. and 4 p.m., Monday through Friday, except Federal Holidays.

**FOR FURTHER INFORMATION CONTACT:** LT Herb Oertli, Chief of Port Operations, MSO Toledo, at (419) 418-6050.

#### SUPPLEMENTARY INFORMATION:

#### Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for