

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Part 71**

[Docket No. FAA-2005-20065; Airspace  
Docket No. 05-ACE-7]

**Modification of Class E Airspace;  
Monett, MO**

**AGENCY:** Federal Aviation  
Administration (FAA), DOT.

**ACTION:** Direct final rule; confirmation of  
effective date.

**SUMMARY:** This document confirms the  
effective date of the direct final rule  
which revises Class E airspace at  
Monett, MO.

**EFFECTIVE DATE:** 0901 UTC, July 7, 2005.

**FOR FURTHER INFORMATION CONTACT:**  
Brenda Mumper, Air Traffic Division,  
Airspace Branch, ACE-520A, DOT  
Regional Headquarters Building, Federal  
Aviation Administration, 901 Locust,  
Kansas City, MO 64106; telephone:  
(816) 329-2524.

**SUPPLEMENTARY INFORMATION:** The FAA  
published this direct final rule with a  
request for comments in the **Federal  
Register** on March 7, 2005 (70 FR  
10917). The FAA uses the direct final  
rulemaking procedure for a non-  
controversial rule where the FAA  
believes that there will be no adverse  
public comment. This direct final rule  
advised the public that no adverse  
comments were anticipated, and that  
unless a written adverse comment, or a  
written notice of intent to submit an  
adverse comment, were received within  
the comment period, the regulation  
would become effective on July 7, 2005.  
No adverse comments were received,  
and thus this notice confirms that this  
direct final rule will become effective on  
that date.

Issued in Kansas City, MO on April 22,  
2005.

**Elizabeth S. Wallis,**

*Acting Area Director, Western Flight Services  
Operations.*

[FR Doc. 05-8938 Filed 5-4-05; 8:45 am]

**BILLING CODE 4910-13-M**

**DEPARTMENT OF THE TREASURY****Internal Revenue Service****26 CFR Part 1**

[TD 9170]

RIN 1545-BD99

**Section 1374 Effective Dates;  
Correction**

**AGENCY:** Internal Revenue Service (IRS),  
Treasury.

**ACTION:** Correcting amendment.

**SUMMARY:** This document corrects  
temporary regulations (TD 9170) that  
were published in the **Federal Register**  
on Wednesday, December 22, 2004 (69  
FR 76612). The document contains  
temporary regulations providing  
guidance concerning the applicability of  
section 1374 to S corporations that  
acquire assets in carryover basis  
transactions from C corporations on or  
after December 27, 1994, and to certain  
corporations that terminate S  
corporation status and later elect again  
to become S corporations.

**DATES:** This document is effective on  
December 22, 2004.

**SUPPLEMENTARY INFORMATION:****Background**

The temporary regulations (TD 9170)  
that is the subject of this correction are  
under section 1374 of the Internal  
Revenue Code.

**Need for Correction**

As published, the temporary  
regulations (TD 9170) contain errors that  
may prove to be misleading and are in  
need of clarification.

**List of Subjects 26 CFR Part 1**

Income taxes, Reporting and  
recordkeeping requirements.

**Correction of Publication**

■ Accordingly, 26 CFR part 1 is corrected  
by making the following correcting  
amendments:

**PART 1—INCOME TAXES**

■ **Paragraph 1.** The authority citation for  
part 1 continues to read in part as  
follows:

**Authority:** 26 U.S.C. 7805 \* \* \*

■ **Par. 2.** The section heading and text of  
§ 1.1374-8T is revised to read as follows:

**§ 1.1374-8T 1374(d)(8) transactions  
(temporary).**

(a)(1) [Reserved]. For further  
guidance, see § 1.1374-8(a).

(2) Section 1374(d)(8) applies to any  
section 1374(d)(8) transaction, as

defined in paragraph (a)(1) of this  
section, that occurs on or after  
December 27, 1994, without regard to  
the date of the corporation's election to  
be an S corporation under section 1362.  
(b) through (d) [Reserved]. For further  
guidance, see § 1.1374-8(b) through (d).

**Cynthia Grigsby,**

*Acting Chief, Publications and Regulations  
Branch, Legal Processing Division, Associate  
Chief Counsel (Procedures and  
Administration).*

[FR Doc. 05-8912 Filed 5-4-05; 8:45 am]

**BILLING CODE 4830-01-P**

**DEPARTMENT OF DEFENSE****48 CFR Parts 207, 212, 225, and 252**

[DFARS Case 2003-D087]

**Defense Federal Acquisition  
Regulation Supplement; Contractor  
Personnel Supporting a Force  
Deployed Outside the United States**

**AGENCY:** Department of Defense (DoD).

**ACTION:** Final rule.

**SUMMARY:** DoD has issued a final rule  
amending the Defense Federal  
Acquisition Regulation Supplement  
(DFARS) to address issues related to  
contract performance outside the United  
States. The rule contains a clause for use  
in contracts that require contractor  
personnel to deploy with or otherwise  
provide support in the theater of  
operations to U.S. military forces  
deployed outside the United States in  
contingency operations, humanitarian  
or peacekeeping operations, or other  
military operations or exercises  
designated by the combatant  
commander.

**DATES:** *Effective Date:* June 6, 2005.

**FOR FURTHER INFORMATION CONTACT:** Ms.  
Amy Williams, Defense Acquisition  
Regulations Council, OUSD (AT&L)  
DPAP (DAR), IMD 3C132, 3062 Defense  
Pentagon, Washington, DC 20301-3062.  
Telephone (703) 602-0328; facsimile  
(703) 602-0350. Please cite DFARS Case  
2003-D087.

**SUPPLEMENTARY INFORMATION:****A. Background**

This final rule contains DFARS policy  
relating to contracts that require  
contractor personnel to deploy with or  
otherwise provide support in the theater  
of operations to U.S. military forces  
deployed outside the United States in  
contingency operations, humanitarian  
or peacekeeping operations, or military  
operations or exercises designated by  
the combatant commander. In addition,  
as a result of the DFARS Transformation

initiative, this rule moves text from DFARS 225.802-70 and 225.7401 to the new DFARS companion resource, Procedures, Guidance, and Information (PGI), available at <http://www.acq.osd.mil/dpap/dars/pgi>.

DoD published a proposed rule at 69 FR 13500 on March 23, 2004. Twenty-six sources submitted comments on the proposed rule. This final rule includes changes made as a result of public comments and as a result of comments received from within DoD. In addition, the paragraphs of the new clause have been re-ordered to provide a more logical sequence. The following is a synopsis of DoD's response to the public comments and the changes made to the rule.

#### 1. Scope

##### a. *Too broad.*

*Comment:* Several respondents believe that the rule is too broadly written and that it attempts to cover too many disparate situations. One respondent states that the rule should distinguish between "combat" and "peacekeeping or humanitarian" operations. Another respondent also considers that contingency, humanitarian, peacekeeping, and combat operations are potentially greatly dissimilar.

*DoD Response:* Nonconcur. The clause language is written in such a way as to allow for its use in a wide range of military operations.

##### b. *Too narrow.*

*Comment:* Several respondents thought that the rule was too narrow. One respondent recommends that the clause cover defense contractors working mission essential services within the United States. The respondent suggests that the clause incorporate the requirements of DoDI 3020.37, Continuation of Essential DoD Contractor Services During Crises. Another respondent believes that the rule should cover "nation-" and "infrastructure-" building.

*DoD Response:* Out of scope/Concur in part. DoD considers the first comment to be out of scope because most of the requirements of the clause would be inapplicable in the United States. Creation of a new clause to implement DoDI 3020.37 as it applies to crises within the United States is not within the scope of this case. With regard to the second respondent, flexibility has been added to the scope by including other military operations or exercises designated by the combatant commander.

##### c. *Further revision.*

DoD has carefully considered how to accurately express the scope of this case

and has developed the following scope statement at 225.7402-1:

"This section applies to contracts requiring contractor personnel to deploy with or otherwise provide support in the theater of operations to U.S. military forces deployed outside the United States in—

- (a) Contingency operations;
- (b) Humanitarian or peacekeeping operations; or
- (c) Other military operations or exercises designated by the combatant commander."

The new clause is intended to apply not only to contractor personnel that "accompany" or "deploy" with the U.S. forces, but to also cover "support in the theater of operations." On the other hand, it does not apply to contractor personnel providing support from outside the theater of operations or to nation-building efforts such as the reconstruction of Iraq. The term "combat operations" was removed, as it is an undefined term, and "other military operations or exercises designated by the combatant commander" was added to increase flexibility. Application of this scope has caused revisions throughout the rule, particularly in the title of the clause, the clause prescription at 225.7402-4(a), and paragraphs (b) and (q) (as redesignated in the final rule) of the clause (applicability and subcontract flowdown).

#### 2. Applicability to Other Nationals

*Comment:* One respondent comments that some of the requirements of the proposed DFARS clause appear not to apply to either host country contractor personnel or third country national contractor personnel.

*DoD Response:* Concur in part. DoD agrees that some requirements do not apply to host country contractor personnel or third country national contractor personnel. However, DoD considers that, in most cases, the clause is already drafted in such a manner that it specifies, when necessary, any limitations in the application to host country contractor personnel and third country national contractor personnel. With regard to compliance with laws and regulations, DoD has added the word "applicable." Thus, if a U.S. law is not applicable to host country contractor personnel or third country national contractor personnel, compliance is not required. The paragraphs on pre-deployment and processing and departure point clearly apply only to those employees who are deploying from the United States. The paragraph on evacuation is already focused on employees from the United

States and third country national contractor personnel. All the other cited paragraphs would apply equally to United States contractor personnel, host country contractor personnel, and third country national contractor personnel.

#### 3. Equitable Adjustment

*Comment:* Many respondents brought up the potential need for equitable adjustment due to the perceived risks to contractors in the situations covered by this clause.

*DoD Response:* The need for equitable adjustment has been addressed in the following specific areas where the respondents raised the issue: government support, compliance with orders of the combatant commander, contractor personnel, insurance, scarce commodities, and changes.

#### 4. Need FAR Coverage

*Comment:* One respondent suggests that this clause would be beneficial to the civilian side of the Federal Government (GSA, NIH, DOI, etc.) who execute contracts for contractor support to accompany the forces. It would also be beneficial to the Department of State and the U.S. Agency for International Development, who deploy into contingency or humanitarian operations. Therefore, the respondent suggests either including authorization for other Federal agencies procuring on behalf of DoD or other deployed federal agencies to utilize the clause, or including it in the FAR.

*DoD Response:* Concur in part. We have no objection to any agency using this clause, but it would be up to that agency to make the decision. There is no prohibition against an agency adopting the clause of another agency. It may also be a good idea to eventually include a similar clause in the FAR but, because DoD has an urgent need for the clause, implementation is limited to the DFARS at this time.

#### 5. Fewer Contractor Personnel Should Accompany Deployed Forces

*Comment:* One respondent states that contractor support in theaters of war should be limited to specialties that the military cannot or does not have within its personnel inventory, such as technical support for systems. Several respondents want to leave military operations to military personnel, and recruit more soldiers, if necessary.

*DoD Response:* Out of scope. The purpose of this DFARS change is to provide a clause to regulate contractor personnel supporting a deployed force, not to determine the policy on which contractors should do so.

#### 6. Need for a List of Other Clauses That Should Be Used With This Clause

*Comment:* One respondent recommends revising the proposed rule to ensure that other FAR and DFARS clauses that address performance overseas are indicated as mandatory clauses, where applicable.

*DoD Response:* Concur in part. DoD has included at DFARS 225.7402-4(b) a reference to guidance in PGI on clauses to consider when using the new clause at DFARS 252.225-7040.

#### 7. Contents of Written Acquisition Plans

*Comment:* One respondent suggests the rule explain “how” to implement DoDI 3020.37, Continuation of Essential DoD Contractor Services During Crises. The respondent stated that commanders and contracting officers must attend to these questions during acquisition planning.

*DoD Response:* Concur. A reference to PGI guidance on acquisition planning for crisis situations outside the United States has been added at DFARS 207.105(b)(19)(E).

#### 8. Solicitation Provisions and Contract Clauses for the Acquisition of Commercial Items

*Comment:* One respondent suggests that the final rule add to DFARS 212.301 the authority to use the clause at DFARS 252.225-7043, Antiterrorism/Force Protection Policy for Defense Contractors Outside the United States, in commercial item contracts awarded under FAR Part 12.

*DoD Response:* Concur. DoD has revised DFARS 212.301 to prescribe use of the clause at DFARS 252.225-7043, Antiterrorism/Force Protection Policy for Defense Contractors Outside the United States, in commercial item contracts that include the clause at DFARS 252.225-7040. Although the intent of FAR Part 12 is to keep contract requirements that are not standard commercial practices to a minimum, authorizing inclusion of this clause in commercial contracts when contractor personnel are providing support in the theater of operations will minimize the risk to personnel safety and the organization and, at the same time, make completion of contract performance more efficient and effective. This is important in contracts for acquisitions in high risk situations, whether the items are commercial or noncommercial.

#### 9. Defense Contractors Outside the United States—General

*Comment:* One respondent questions why the rule only specifically addresses Germany. Several respondents request

specific reference to bilateral agreements with Japan and Korea and policies that have application to contractor employees.

*DoD Response:* Concur. DoD has added 225.7401(c), with a reference to PGI 225.7401(c) for work performed in Japan or Korea.

#### 10. Definitions (252.225-70XX(a) (252.225-7040(a))

##### a. “Combatant commander.”

*Comment:* Several respondents discuss the use of the term “combatant commander,” which was defined in the proposed rule to include subordinate commanders given authority by the combatant commander to issue direction to contractors in a specified geographical area or for a specific functional area.

*DoD Response:* Concur in part. Subordinate commanders have been removed from the definition of “combatant commander.” It is still possible for the combatant commander to delegate authority to a subordinate commander. According to FAR 1.108(b), each authority in the FAR (or DFARS) is delegable unless specifically stated otherwise. Furthermore, paragraph (p) of the clause in the proposed rule has been substantially modified, and paragraph (q) of the clause in the proposed rule has been deleted, which will remove the conflicts regarding contractors receiving direction from unidentified subordinate commanders.

##### b. “Combat operations.”

*Comment:* One respondent observes that in the prescription the term “combat operations” is used but no definition is provided.

*DoD Response:* Concur. “Combat operations” is not a defined term in the DoD Dictionary of Military and Associated Terms, and has been deleted from the final rule.

##### c. “Contractors accompanying the force.”

*Comment:* Several respondents request the definition for “accompanying a force.” One respondent questions whether it is applicable strictly to contractors accompanying a force on the move or whether it also covers contractors situated in an area where military forces are deployed.

*DoD Response:* The term “accompanying the force” is no longer used. The phrase “deploy with or otherwise provide support in the theater of operations” should answer the issues raised by the respondents. It applies to contractor personnel situated in an area where military forces are deployed, and to some extent, contractor personnel in-transit, although some provisions would

be applicable only in the theater of operations. DoD uses the term “in the theater of operations” rather than “in country” as the theater of operations may not be restricted to a single country.

##### d. Further revision.

DoD has not included definitions for “contingency operation” and “humanitarian or peacekeeping operation” in the clause as they are now automatically incorporated from FAR Part 2 by the new clause at FAR 52.202-1, Definitions (July 2004).

#### 11. Shifts Risk to Contractors (252.225-70XX(b)) (252.225-7040(b))

*Comment:* Several respondents comment that the proposed rule appeared to shift too much risk to contractors. One respondent comments that the use of the term “inherently dangerous” in paragraph (b) of the clause could jeopardize a contractor’s ability to obtain insurance coverage under the Defense Base Act and other provisions.

*DoD Response:* Concur in part. The term “inherently dangerous” overstates the intent of the rule. There was no intent to change the law or to affect coverage under the Defense Base Act, the War Hazards Compensation Act, or any other provision of law or regulation. Paragraph (b)(2) of the clause has been changed to state that contract performance in support of military forces may require work in dangerous or austere conditions. If an independent contractor volunteers or agrees to perform work in such a setting, the contractor must assume responsibility to supervise its employees and to train and prepare them to behave in as safe a mode as possible. Contractors must not directly participate in hostilities against an armed enemy. The risk associated with inherently Governmental functions will remain with the Government. Contractors should resolve concerns about a specific contract during pre-award negotiations.

#### 12. Government Support

##### a. Government-provided support should be set forth in contract.

*Comment:* Several respondents comment that a contractor would not be able to ascertain what is in an individual operation order.

*DoD Response:* Concur. The language stating “or in the operation order of the combatant commander” has been removed.

*Comment:* Several respondents have concern about the effect of paragraph (c)(2) of the clause in the proposed rule. They believe that the Government should be required to specify in the

solicitation and resulting contract the types of Government-provided support, if any, that will be required or authorized.

*DoD Response:* Concur in part. DoD concurs that Government-provided support should be specified in the contract. Paragraph (c)(2) of the clause has been deleted.

*b. Changes in available support.*

*Comment:* One respondent expresses concern relative to any deficit (or unanticipated availability) that might arise between support authorized in a contract and actual support available in a particular theater. A second respondent notes that the combatant commander would make the ultimate decision on providing resources to a contractor regardless of what is in the contract. Another respondent recommends adoption of additional language that will provide a mechanism for handling delays or non-delivery of promised Government-provided support similar to that utilized in the Government property clauses. The respondent also recommends the adoption of language substantially similar to that in the FAR Government property clauses that would provide for equitable adjustment in the case of late or non-delivery of promised support on commercial contracts under FAR Part 12, since such contracts do not normally contain a Government property clause.

*DoD Response:* Concur in part. The rule should address potential differences between Government-provided support anticipated at time of contract/task/option award and actual support made available in the theater of operations. Changes will be handled as specified in the Changes clause of the contract, which will also cover changes in Government-furnished facilities, equipment, material, services, or site, as specified in paragraph (p) of the clause at 252.225-7040 in the final rule. DoD does not concur with the recommendation to outline the scope of any adjustment necessitated by changes in Government support, since there is no intent to modify the already-existing procedures inherent in any changes clause.

*c. Lack of sufficient detail defining variety of support functions.*

*Comment:* Several respondents believe that the subject provision is lacking in sufficient detail on defining a variety of support functions.

*DoD Response:* Partially concur. The final rule now implements DoD policy that the combatant commander will develop a security plan to provide protection, through military means, of contractor personnel engaged in the theater of operations unless the terms of

the contract place the responsibility with another party. In addition, the clause states that all contractor personnel engaged in the theater of operations are authorized resuscitative care, stabilization, hospitalization at level III military treatment facilities, and assistance with patient movement in emergencies where loss of life, limb, or eyesight could occur. Hospitalization will be limited to stabilization and short-term medical treatment, with an emphasis on return to duty or placement in the patient movement system. However, the contractor is responsible for ensuring that the Government is reimbursed for any costs associated with such treatment or transportation.

The remaining language is deliberately non-specific in outlining available Government support, since that can only be ascertained after consultation with the relevant combatant command and service components. The general types of support that should be considered are outlined in the corresponding PGI coverage. Once adequate research regarding availability of Government support is accomplished, the contracting officer can then provide for such support in the resulting contract.

*d. Difficulty in ascertaining available support.*

*Comment:* Several respondents suggest that DoD inform users how to obtain the information necessary to specify support in a contract. This will require a high degree of coordination between a contracting officer and military organizations that would be responsible for providing resources in an area of operations.

*DoD Response:* Partially concur. The new PGI guidance on acquisition planning specifies that the requiring activity is responsible for obtaining pertinent operation plans, operation orders, and annexes from the affected combatant command or military service element, so that the contract will be consistent.

*e. Support should be commensurate with military personnel.*

*Comment:* One respondent expresses concern that companies in many cases do not, and cannot, provide in-country support for deployed employees. They note that contractor personnel have received, and should receive, support commensurate with the uniformed members with whom they serve.

*DoD Response:* Nonconcur. The Government will only provide support services that are available in the theater of operations concerned. To the extent that such support is identifiable and known at time of solicitation and award,

it can be specified in the solicitation and resulting contract. However, where unavailable from Government sources, such support can only be provided by the contractor. Any contractor can base its decision to submit a proposal on its own assessment of ability to provide and price personnel support.

*f. Contracting officer must communicate support requirements to combatant commander.*

*Comment:* One respondent presumes that the contracting officer would have to communicate the support requirements to the combatant commander for incorporation into an operation order.

*DoD Response:* Nonconcur. The contracting officer can only provide for Government resources that are available to a combatant commander. The language referring to support outlined in operation orders has been deleted in response to another comment to avoid contractor confusion.

*g. Which military organization will provide the support?*

*Comment:* One respondent recommends adding a requirement for the contracting officer to specify in the contract or task order the military organizations that will provide support to a contractor, with further description in PGI.

*DoD Response:* Nonconcur. It is unlikely that the annexes will be specific in describing the individual military organizations that would provide any contractor with support in defined areas. Hence, the suggested additional language would be unworkable, particularly when specifying Government-provided resources too far in advance of an actual deployment.

*h. Effect on Defense Base Act.*

*Comment:* One respondent argues that the requirement for contractors to generally provide their own in-theater support would make it even more difficult for contractors to obtain Defense Base Act coverage.

*DoD Response:* The DAR Council believes that the type of support the respondent is concerned about is force protection. It is DoD policy that the combatant commander will develop a security plan to provide protection through military means unless valid contract terms, approved by the combatant commander, place the responsibility with another party. DoD has modified 225.7402-3(a) and paragraph (c) of the clause at 252.225-7040 to state this policy and to emphasize the fact that the Government may provide the other types of support listed in PGI 225.7402-3(a) and that such support to be provided will be

specified in the contract. Also see the responses at paragraph 12.c and the responses regarding insurance issues in paragraph 22.

i. *Force protection.*

*Comment:* One respondent expresses concern that the rule permits contractors to hire other contractors who, in turn, will hire armies of mercenaries (frequently local mercenaries) to provide force protection. The respondent foresees that such mercenaries will attempt control of the protection market, may be likely to put intelligence information at risk, and will contribute to "power politics" in the particular theater.

*DoD Response:* Nonconcur. As stated in the previous paragraph, it is DoD policy to provide force protection to contractor employees providing support in the theater of operations to U.S. military forces unless valid contract terms, approved by the combatant commander, place that responsibility with another party. Even though in some instances contractors may be required to hire security and force protection, this does not equate to "armies of mercenaries." Every contractor will be required to adhere to laws and regulations of the United States, the host country, and third country laws, as well as orders, directives, and instructions issued by the combatant commander relating to various topics, including force protection. This requirement effectively permits Government control over and minimization of the types of excesses foreseen by this respondent.

13. Compliance With Laws and Regulations

a. *Inaccessibility of information on applicable laws and regulations.*

*Comment:* Some respondents consider paragraph (d) of the clause to be an unreasonable requirement because there is no reliable and accessible source of information for contractors regarding all of the laws (particularly host country and local laws) that may be applicable to a contractor supporting a contingency or humanitarian effort. A contractor may be asked to deploy to countries or areas of the world on short notice without extended advance notice and without meaningful access to information on relevant foreign and local laws. Contractors are often denied access to the very information that would be required to comply with this requirement because it is classified. One respondent wants the Government to notify contractors in writing of all the requirements with which the contractors are expected to comply, other than laws and international

treaties. The respondents are concerned that internal Government policies, procedures, and directives and instructions would not always be communicated by the Government to the contractor.

*DoD Response:* Generally nonconcur. Paragraph (d) of the clause is a reminder of the existing obligation for contractor personnel to comply with the laws and regulations applicable to a contract. Contractors have access to all of these laws and regulations and are bound to comply with them. For example, analysis of the host country law is an existing aspect of acquisition planning under FAR Part 7. Country studies are available online at <http://www.state.gov>. Such available online resources indicate that a contractor may independently ascertain the laws and regulations necessary to comply with paragraph (d) of the clause. A single resource for the laws and regulations enumerated in paragraph (d) would be convenient to the contractor, but it would need to be specific to each contract, it could easily inadvertently omit an applicable law or regulation, and is in large part redundant to available resources. However, DoD concurs that it needs to make organizational improvements to improve the accessibility of contractors to nonclassified portions of classified documents and orders of the combatant commanders.

b. *Conflicting requirements.*

*Comment:* One respondent is concerned that it may be impossible to comply with every applicable law, treaty, agreement, regulation, directive, and instruction simultaneously because they are inconsistent and contain conflicting provisions.

*DoD Response:* Nonconcur. Again, paragraph (d) of the clause is a reminder of the existing obligation. Regardless of paragraph (d), it is incumbent upon the contractor to make the best possible judgment in deciding which law or regulation takes precedence in the case of conflict.

c. *Employees do not need to know.*

*Comment:* One respondent notes that, while there may be a reason for a contractor to have a basic understanding of the special laws and policies related to performance of a contingency contract, there is little need for all employees to have such comprehensive knowledge.

*DoD Response:* Concur in part. The contractor personnel need to have sufficient knowledge of the laws and regulations that are applicable to them, to avoid violating them in a foreign country. DoD has added a qualifying phrase to focus the applicability to personnel "supporting a force deployed

outside the United States as specified in paragraph (b)(1)" of the clause.

d. *The contractor cannot verify compliance by individual employees.*

*Comment:* One respondent comments that private business has no ability to verify compliance with local law when its individual employees are assigned to classified locations.

*DoD Response:* Nonconcur. The contractor is still responsible for its employees.

e. *Paragraph (d)(2) of the clause, Treaties and international agreements (e.g., Status of Forces Agreements, Host Nation Support Agreement, and Defense Technical Agreements).*

*Comment:* The Geneva and Hague Conventions should be added to the parenthetical.

*DoD Response:* Nonconcur. The treaties and international agreements that are listed are some examples, not an exhaustive list. The problem with examples is that they are not all inclusive, but are often misinterpreted (i.e., if it is not listed, it doesn't apply). Therefore, DoD has deleted the examples.

f. *Paragraph (d)(4) of the clause, Orders, directives, and instructions issued by the Combatant Commander relating to force protection, security, health, safety, or relations and interaction with local nationals.*

*Comment:* One respondent states that the mandate in paragraph (d)(4) that contractors comply with the "orders, directives, and instructions issued by the Combatant Commander" puts the Commander in a position of directing contract performance without actual contracting authority. Another respondent suggests that a new subparagraph be added to read as follows: "The Government Contracting Officer or the Combatant Commander is responsible for communicating to the Contractor any applicable instructions, orders, directives, etc. to the Contractor and Contractor's personnel. To the extent that compliance requirements change after contract award, the contractor shall be entitled to an equitable adjustment for any increased costs associated with those costs."

*DoD Response:* Nonconcur. The combatant commander acts in a position of sovereign authority for issues relating to force protection, security, health, and safety. If a contractor were driving a vehicle on a street in the United States and a fire marshal directed the contractor to take a detour because of a fire, the contractor would be required to obey that order. The combatant commander has the authority to serve as the single point of contact for such areas in the theater of operations, since the

combatant commander is in the best position to anticipate the needs of the force and how it will operate in the field. Any claim to equitable adjustment as the result of a change in the orders, directions, or instructions of the combatant commander will be handled in accordance with the terms of the contract.

*g. Paragraph (d)(5) of the clause, Applicability of the Uniform Code of Military Justice (UCMJ).*

*Comment:* Some respondents request more specific delineation of the applicability of the UCMJ. One respondent comments that paragraph (d)(5) should be deleted because the UCMJ will never, as a practical matter, be applicable under the clause because contractor employees are not subject to the UCMJ except during a declared war.

*DoD Response:* Concur. Paragraph (d)(5) has been deleted in its entirety. To the extent that it is applicable, it is covered by paragraph (d)(1) of the clause.

14. Contractor Personnel (252.225–70XX(e)) (252.225–7040(h))

*a. Role of the combatant commander.*

*Comment:* One respondent recommends that paragraph (1) should reference paragraphs (p) and (q) because combatant commanders can also take action to remove contractor personnel without the involvement of the contracting officer.

*DoD Response:* Paragraph (p) has been substantially modified and paragraph (q) of the clause has been deleted. (See paragraph 25 of this section.)

*b. Notification to contractor.*

*Comment:* One respondent recommends rewording paragraph (e)(1) of the clause to require notification and an opportunity to resolve the matter with the contracting officer.

*DoD Response:* Nonconcur. Contracting officers must have the ability to summarily direct the removal of personnel perceived as jeopardizing or interfering with the mission. It is reasonable to assume that, prior to directing removal, the contracting officer would have already made efforts to resolve the matter with the contractor.

*c. Reasonable opportunity to replace/ equitable adjustment.*

*Comment:* Several respondents recommend that contractors be given a reasonable opportunity to replace any personnel removed from the force and be given an equitable adjustment for any additional expenses that may be compensable under the contract.

*DoD Response:* Nonconcur. Contractors, in accordance with requirements of the contract, must have

a plan for immediate replacement of employees removed from the theater of operations. Contractors must replace and, where applicable, repatriate any contractor personnel at its own expense.

*Further revision:* DoD has revised paragraph (e)(1) of the clause (redesignated as paragraph (h)(1) in the final rule) as follows: “(1) The Contracting Officer may direct the Contractor, at its own expense, to remove and replace any contractor personnel who jeopardize or interfere with mission accomplishment or who fail to comply with or violate applicable requirements of this clause. Such action may be taken at the Government’s discretion without prejudice to its rights under any other provision of this contract, including the Termination for Default clause.” This language was adopted from the Army interim rule (48 CFR 5152.225–74–9000, Contractors Accompanying the Force, 68 FR 66740, November 28, 2003).

*d. Provide the plan to the contracting officer.*

*Comment:* One respondent recommends revising the last sentence of paragraph (e)(2) of the clause to read: “This plan shall be provided to the Contracting Officer upon request and shall be made available for review by the Contracting Officer’s Representative.”

*DoD Response:* Partially concur. DoD concurs that the plan should be made available to the contracting officer upon request. Since the FAR defines “contracting officer” to include authorized representatives of the contracting officer when acting within the limits of their authority as delegated by the contracting officer, the phrase “shall be made available for review by the Contracting Officer’s Representative” has been deleted from the clause.

*e. Data item description for the plan.*

*Comment:* One respondent recommends that the Government provide a data item description for the desired unavailable employee replacement plan and list the plan on the contract data requirements list.

*DoD Response:* Nonconcur. It is not necessary to establish a data item description in order to request that the contractor have a plan for replacing employees. This allows the contractor more flexibility in determining the format and content of the plan.

*f. Further revision.* DoD has also added a requirement to keep the plan current.

15. Personnel Data (252.225–70XX(f)) (252.225–7040(g))

*a. “Theater of operations” not defined.*

*Comment:* One respondent believes “theater of operations” (not the term used in the proposed rule) is not a specifically defined term and could create confusion as to which employees are in a given geographic location supporting specific activities. The respondent recommends revising paragraph (1) to require the contractor to maintain information on all employees deployed into a theater of operation as defined by the contracting officer for each covered contingency operation.

*DoD Response:* Concur in part. A definition of “theater of operations” has been added in paragraph (a) of the clause. In accordance with the scope of this case, DoD has substituted the following language: “current list of all contractor personnel that deploy with, or otherwise provide support in the theater of operations to the U.S. military forces as specified in paragraph (b)(1) of this clause.”

*b. Cost of performance.*

*Comment:* Several respondents express concern over the time and expense for contractors to prepare and maintain the information.

*DoD Response:* Nonconcur. As the system is currently envisioned, this requirement is incidental to contract performance and it is not expected to place an unreasonable cost burden on the contractors. It would appear to be a normal prudent business practice to be able to identify which employees are working in high risk areas.

*c. Specifically priced contract deliverable.*

*Comment:* One respondent recommends making the contractual obligation to maintain and/or provide the data a specifically priced contract deliverable.

*DoD Response:* Nonconcur. Contractors should consider the work involved and price their proposal accordingly. As the system is currently envisioned, this requirement is incidental to contract performance and it is not expected to place an unreasonable cost burden on the contractors.

16. Pre-deployment Requirements (252.225–70XX(g)) (252.225–7040(e) and (k))

*a. Information from operation plans and operation orders may not be available to contractor.*

*Comment:* Several respondents suggest deleting the verbiage about “contract annex to the operation order”

and including requirements from the operation order in the contract. One respondent further recommends that the clause language require compliance "to the best of the contractor's knowledge."

*DoD Response:* Concur in part. DoD has deleted "contract annex to the operation order" from the clause. It is the responsibility of the requiring activity to ensure that specific operational requirements are deciphered, and the contracting officer must incorporate them into the contract. DoD does not agree that the clause language should be changed to require compliance "to the best of the contractor's knowledge," as language of this nature would be unenforceable. Specific requirements of each element of this clause paragraph will be sufficiently spelled out so contractors know exactly what is required.

b. *Specific number of employees.*

*Comment:* Several respondents believe that this clause should be revised to refer to a specific number of employees a contractor can provide to meet desired qualifications, to permit advance negotiations between contractors and customers to avoid lag times once operations begin.

*DoD Response:* Nonconcur. This clause puts contractors on notice that they may need to deploy and, therefore, they need to ensure they have qualified or qualifiable personnel to meet contract requirements.

c. *Security and background checks (para. (1)).*

*Comment:* One respondent notes that the Government must specify security requirements on the DD Form 254, Access to National Security Information, if the contractor and its employees may be required to have access to certain national security information. Another respondent recommends deleting "All applicable specified" and replacing it with "Applicable." A respondent also recommends adding "and acceptable" at the end of the paragraph to ensure security and background checks were accomplished and are acceptable.

*DoD Response:* Concur in part. A DD Form 254 is used when a contractor will require access to or will generate classified information, so it may or may not be applicable in a contract. Background checks may also be required and, if so, should be specified in the contract. DoD has changed "All applicable specified" to "All required" and "and acceptable" has been added at the end.

d. *Medical requirements (para. (2)).*

*Comment:* Several comments were received regarding the fact that no specific minimum medical standards were included in the clause; thus,

contractors do not know what constitutes "medically and physically fit." Specific readiness requirements and required vaccinations must be set forth in the contract. An appeal procedure should be included to preclude forcing contractors to submit to potentially hazardous, experimental, or untested vaccinations. DoD should provide any vaccines that are only available to federal providers. This requirement has the potential to significantly increase cost of performance to establish and maintain a system concerning health and level of physical readiness for contractor employees. Another respondent is concerned that contractors are dependent upon the Government to provide certain vaccines because only the Government has access to those vaccines.

*DoD Response:* Concur in part. The clause has been revised to state that contractor personnel must meet the minimum medical screening requirements as set forth in the contract. The Government will provide contractors with theater-specific medical supplies or medications.

The term "vaccinations" has been changed to "immunizations" to be consistent with terminology in DoD policy. The Combatant Command Surgeon establishes immunization requirements for the area of operations and maintains a listing of them. The immunization listing will also need to be incorporated in contracts. DoD does not agree with establishment of appeal procedures for immunizations for contractors. If contractor personnel are not willing to receive the required immunizations, the contractor will be required to provide other personnel who are willing to meet the contractual requirements.

e. *Vehicle or equipment licenses (para. (3)).*

*Comment:* One respondent recommends adding "United States" before "licenses" to clarify that there is no obligation for contractors to search out or comply with any foreign requirements to operate vehicles or equipment.

*DoD Response:* Nonconcur. Although contractor personnel may not be able to obtain foreign licenses prior to deployment, contractors may be required to obtain foreign licenses at the deployed location. Paragraph (3) has been relocated from pre-deployment requirements to a separate paragraph (k).

*Comment:* Another respondent states that the clause should address ownership of vehicles and equipment necessary to perform the contract in the

theater of operations and requests that the contractor and its employees not be held liable for damages, of any kind, resulting from the operation of Government owned or leased equipment, and shall be indemnified and held harmless against all losses, costs, claims, causes of action, damages, liabilities, and expenses arising directly or indirectly from any act or omission relating to the operation of such equipment by contractor or contractor's employees, agents, subcontractors, or suppliers.

*DoD Response:* Nonconcur. Generally, contractors are required to provide their own vehicles and equipment to meet the terms of their contract. Vehicle requirements should be specified elsewhere in the contract and any contract that provides government furnished equipment (GFE) will include a GFE clause in the contract to cover liability for damages. This paragraph only covers required licenses to operate vehicles and equipment.

f. *Visas.*

*Comment:* One respondent does not believe it is in the best interest of the United States to impose a requirement that a contractor obtain a foreign Government's approval through entrance or exit visas before implementing a U.S. Government contract.

*DoD Response:* Nonconcur. Contractors must coordinate through the State Department and ensure their personnel meet all requirements for entering and exiting the deployed location. The mere fact that a contractor has a contract with the U.S. Government does not absolve the contractor from meeting foreign entry and exit requirements.

g. *Geneva Conventions identification card.*

*Comment:* One respondent recommends issuing Geneva Conventions identification cards to contractor employees.

*DoD Response:* Concur. The clause has been revised to clarify that deploying contractor personnel should receive a Geneva Conventions identification card from the deployment center.

h. *Country and theater clearance (para. (5)).*

*Comment:* Several respondents comment that the clause should specify what country and theater clearances are required and where to obtain them.

*DoD Response:* Concur. The clause has been revised to cite DoD Directive 4500.54, Official Temporary Duty Abroad, and DoD 4500.54-G, DoD Foreign Clearance Guide.

17. Military clothing and equipment (252.225-70XX(h)) (52.225-7040(i))

a. *Authorization to wear military clothing (para (1)).*

*Comment:* One respondent commented that “specifically authorized by the Combatant Commander” should be changed to “required by the Combatant Commander.” They recommended changing “military clothing” to “military uniforms” and they believe wearing of military uniforms by contractor personnel should require consent of the contractor.

*DoD Response:* Nonconcur. The combatant commander does not require the wearing of military clothing but may authorize, in writing, certain contractor personnel to wear standard military clothing for operational reasons on a case-by-case basis. “Uniforms” implies military uniforms with appropriate rank, decorations, etc., which are only authorized for uniformed military personnel. Clothing denotes uniform items worn without specific military insignia.

b. *Need for distinctive insignia.*

*Comment:* If contractor personnel are authorized by the combatant commander to wear military clothing (and are not carrying firearms), they should be required to wear distinctive civilian insignia to keep non-combatant civilian status clear under the Geneva Conventions.

*DoD Response:* Concur. DoD has added to the clause language pertaining to distinctive insignia.

c. *Organizational clothing and equipment.*

*Comment:* Change “specific items” to “military-unique organizational clothing and individual equipment (OCIE).” The Government should inform the contractor of necessary clothing and protective equipment and provide OCIE to the contractor when such equipment is only available from the Government.

*DoD Response:* Concur. Use of term OCIE instead of “specific items” adds clarification and consistency. The clause, as written, already provides for Government issuance of military-unique OCIE. Necessary clothing and protective equipment should be spelled out elsewhere in the contract.

d. *Return of OCIE.*

*Comment:* Several respondents recommend changing the clause to allow the return of OCIE to places other than the original point of issue, as directed by the contracting officer or contracting officer’s representative (COR). Another respondent states that contracting officers are geographically separated from the place of performance

and do not have visibility over equipment issued to contractor employees in the theater. This respondent recommends adding language to make contractors directly responsible to the issuing organization for equipment that needs to be returned.

*DoD Response:* Concur in part. Concur with changing the language to allow the return of OCIE to places other than the original point of issue, as directed by the contracting officer, to provide for flexibility at the deployed location. Concur in theory with the recommendation to have contractors directly responsible to the issuing organization. However, the COR is usually in the theater of operations and would have visibility over equipment that is issued in the theater of operations. The COR can direct the contractor to return the equipment to the desired location if given the authority to do so. The language “In accordance with Government-Furnished Property clauses specified elsewhere in this contract” is redundant and unnecessary so it has been deleted.

18. Weapons (252.225-70XX(i)) (252.225-7040(j))

a. *Contractor personnel must be able to protect themselves.*

*Comment:* Many respondents feel strongly that contractor personnel must be able to protect themselves in dangerous situations and seem to think that the proposed rule bans contractors from carrying weapons. There are fears that commanders could easily depend upon contractor labor, transportation of heavy equipment, or civil engineering services, but will not be manned to a level necessary to protect them.

*DoD Response:* Partially nonconcur. The clause does not require contractors to be unarmed in all cases. The clause states that the combatant commander will make a determination whether contractors can be armed, and the type of arms allowed, in any particular situation. The clause allows the combatant commander, who is responsible for military control in the region, to determine on a case-by-case basis whether arms are necessary.

b. *Privately owned weapons.*

*Comment:* Several respondents object that allowing contractors to carry privately owned weapons is a major policy shift and should not be allowed. Authorizing private firearms carries a great risk of a political/military occurrence that can negatively impact the overall mission and national security and is not outweighed by the benefit of private firearms, since there is authority for military issuance already. Several respondents believe that

employee- or other privately-owned firearms should be prohibited in all cases, but wants a distinction made between “Government-furnished firearms” and “contractor-provided” firearms.

*DoD Response:* Concur in part. The language specifically allowing the combatant commander to authorize the carrying of privately-owned weapons has been deleted from the clause. However, as the DoD policy is not yet established, the clause leaves the decision to the combatant commander, to be made in conformity with treaties, laws, regulations, and policies that are in effect at the time of the decision.

c. *Status as noncombatant civilians.*

*Comment:* Several respondents are concerned that contractor personnel should not be armed except in extremely limited circumstances when necessary for self-defense. The Government actions of arming the contractor under certain circumstances places the contractor at risk of forfeiting their status as noncombatant civilians, subjecting a contractor captured by the enemy to be deemed an unlawful combatant or a mercenary, thereby losing POW status and treatment. If contractor employees are armed, the respondent recommends that the Government provide training to contractor personnel regarding when the weapons can be used, not just how to use them.

*DoD Response:* Concur in part. DoD understands the potential risk in allowing contractors to carry and use weapons in a hostile environment, which may arise in some of the situations covered by this clause. However, since the clause will be used for a variety of situations and circumstances, the most practical approach is to give the combatant commander the final decision as to whether to allow contractors to carry and use weapons and the types of weapons that will be authorized. The clause has been amended to caution that contractor personnel are not combatants and shall not undertake any role that would jeopardize that status. The clause already requires the Contractor to ensure that its personnel who are authorized to carry weapons are adequately trained. That should include training not only on how to use a weapon, but when to use a weapon.

d. *Contractor and contractor employees must agree to accept weapons.*

*Comment:* Several respondents want the rule to clarify that acceptance of weapons by contractor employees is strictly voluntary and must be explicitly authorized by the contractor.



*DoD Response:* Concur in part. The clause has been amended to explicitly state that the contractor must request authorization for its employees to carry weapons before the combatant commander authorizes such activity. It is the contractor's responsibility to determine whether to request authorization and for which employees to request such authorization. The employer-employee relationship is the responsibility of the contractor and its employees and should be dealt with in the employment agreement, not through the contract clause, as the Government has no privity of contract directly with the employees.

e. *Contractor liability.*

*Comment:* Several respondents are concerned about unmitigated liability for contractors in the event of injury or loss of life resulting from intentional use or accidental discharge of such weapons. The Government should indemnify and hold harmless the contractor against all losses, costs, claims, and causes of action relating to the use of Government-furnished weapons by contractor and/or contractor's employees. Unless the Government has and exercises authority to indemnify contractors and their employees against all claims for damage or injury and to ensure immunity from criminal prosecution associated with the use of weapons during deployment operations, the proposed clause should be modified to prohibit the issuance of weapons to contractor personnel.

*DoD Response:* Nonconcur. The clause in no way obligates contractors to allow their employees to carry weapons. Contractor personnel will only carry weapons if the contractor requests that its employees be allowed to carry weapons and the combatant commander authorizes the carrying of weapons. DoD cannot indemnify contractors and their personnel against all claims for damage or injury or ensure immunity from criminal prosecution associated with the use of weapons. Decisions to indemnify are made in accordance with FAR 50.403-1.

f. *Specified contractor employees.*

*Comment:* The word "specified" is not clear and could be interpreted to mean the Government specifies which contractor personnel would be issued the firearm, which the Government is not allowed to do.

*DoD Response:* Concur in part. The clause has been amended to clearly state that it is the contractor's responsibility to request that its personnel in the theater of operations be authorized to carry weapons. Therefore, it would be up to the contractor to determine which specific employees will be authorized to

carry weapons and the criteria for that authorization.

g. *Redeployment or revocation.*

*Comment:* Upon termination of the commander's authority, the contractor is required to return any Government-issued firearms according to the direction given by the contracting officer. One respondent requests that, if the employee is permitted to carry contractor-issued firearms, the employee must cease carrying those firearms and must follow contractor-provided direction for their disposition.

*DoD Response:* Nonconcur in part. It is the contractor's responsibility to direct the disposition of contractor-provided weapons.

h. *DD Form 2760.*

*Comment:* One respondent recommends required use of DD Form 2760 when weapons are issued, to ensure compliance with the Lautenberg amendment regarding domestic violence convictions.

*DoD Response:* Partially concur. The clause requires the contractor to ensure that its personnel who are authorized to carry weapons are not barred from possession of a firearm by 18 U.S.C. 922. The draft DoD Instruction on Procedures for the Management of Contingency Contractor Personnel During Contingency Operations proposes additional requirements for contracted security services, including submission of a DD Form 2760 (Qualification to Possess Firearms and Ammunition) for each individual employee that will be providing the security services.

19. Next of Kin (252.225-70XX(j)) (252.225-7040(n))

a. *"In-person notification."*

*Comment:* Several respondents have concerns about the requirement for in-person notification.

*DoD Response:* Concur. It is the responsibility of the contractor to determine how to notify its employee's next of kin.

b. *Notify the contracting officer.*

*Comment:* One respondent also suggests adding a requirement that the contractor inform the contracting officer if the contractor is informed through other than Government channels of the death, injury, or capture of one of its employees, or if the employee appears to be missing, so the Government can take action to verify and provide support as appropriate.

*DoD Response:* Concur in part. The contractor is already required to notify the contracting officer, because the contractor has a responsibility to keep current personnel data in accordance with paragraph (g) of the clause.

c. *Point of contact for continuing support.*

*Comment:* Personnel Recovery Policy OSD/Defense requires that, in the case of a missing or captured contractor, the Government will assign an official point of contact to the next of kin for continuing support, and provision of information, as appropriate and proper.

*DoD Response:* Concur. In the case of missing, captured, or abducted contractor personnel, the Government will assist in personnel recovery actions in accordance with DoD Directive 2310.2, Personnel Recovery.

20. Evacuation of Bodies (252.225-XX(k)) (252.225-7040(o)) DoDD 1300.22

*Comment:* Several respondents believe that the clause places an undue burden on the contractor and does not adequately address Government responsibilities or procedures; question the meaning of "point of identification"; and request that the clause be in accordance with DoDD 1300.22, Mortuary Affairs Policy.

*DoD Response:* Concur. DoD has modified the clause to state that mortuary affairs will be handled in accordance with DoD Directive 1300.22.

21. Evacuation (252.225-70XX (l)) (252.225-7040(m))

a. *Mandatory evacuation.*

*Comment:* Some respondents want to add, after "Combatant Commander," the phrase "or other competent authority" or "or other authority over the U.S. Forces."

*DoD Response:* Nonconcur. The combatant commander has the authority to delegate within the military chain of command. If the ambassador orders an evacuation, that is the intervention of a sovereign authority and the obligation to comply is not created by the contract. Procedures for evacuation are provided for in other regulations and are outside the scope of this rule.

*Comment:* Another respondent states that if the Government decides to evacuate contractor personnel, the Government should furnish transportation to do so.

*DoD Response:* Concur in part. The clause provides that the Government will provide assistance to the extent feasible to United States and third country national contractor personnel. Government guaranteed evacuation may or may not be possible in a fluid situation. Setting forth a promise that the Government may not be able to meet would be misleading to potential employees.

b. *Nonmandatory evacuation—continued contract performance.*

*Comment:* One respondent wants evacuation of contractor personnel and their dependents whenever conditions cause the United States to issue travel warnings or permit voluntary evacuation of non-essential U.S. Government personnel and dependants.

*DoD Response:* Nonconcur. The situations covered by this clause are not the type of situations in which DoD envisions that contractor personnel would have dependents with them. The Contractor has been warned in paragraph (b) about the risks of supporting the force in such operations, and contractor personnel who are unwilling to accept these risks should not be in these positions.

*Comment:* Another respondent requests modification of paragraph (l) to allow for evacuation of contractor employees due to the inherent dangers associated with job performance during deployment. This change is necessary to meet legal requirements that an employer provide a safe workplace for employees. Any clause governing deployment of contractor personnel should contain language excusing contractor performance in the event of refusal of contractor personnel to accompany the force or to perform work upon deployment.

*DoD Response:* Nonconcur. Since these are contracts to support the war fighter, by their nature these contracts are likely to involve some risk. It is the contractor's responsibility to ensure that it has willing personnel to fulfill the contract terms.

*Comment:* Several respondents recommend inserting "essential" between "meet" and "contractual" in the final sentence.

*DoD Response:* Nonconcur. A nonmandatory evacuation will not necessarily constitute a crisis situation as defined in DoDI 3020.37. DoD has added PGI guidance regarding identification in the contract of mission essential services that would require continued performance during crisis situations outside the United States. If the contract specifies which mission essential services must be continued during a crisis situation, and the non-mandatory evacuation order is during a crisis situation, then meeting the contractual obligations will only entail the continued performance of mission essential services. If the contract does not specify which services are mission essential, or the situation is not a crisis, the contracting officer can still designate that certain contractor personnel may leave.

22. Insurance (252.225-70XX(m)) (deleted from 252.225-7040)

a. *Contractor responsibility for employee's personal insurance policies.*

*Comment:* Several respondents object to this paragraph in the proposed rule, finding that it is confusing. One respondent finds an erroneous inference that contractors will or do provide employees with personal insurance policies over and above company-sponsored coverage, or that the contractor is responsible for any gaps that may exist in personal coverage. Several respondents believe that paragraph (m), placing responsibility on the contractor for all issues dealing with the exclusions contained in an employee's personal insurance policies, conflicts with the statutory requirements and protections of the Defense Base Act, 42 U.S.C. 1651 *et seq.*, and the War Hazards Compensation Act, 42 U.S.C. 1701 *et seq.*

*DoD Response:* Concur in part. DoD agrees that the language is somewhat confusing and open to misinterpretation, and has therefore removed this paragraph in the final rule.

b. *Defense Base Act, War Hazards Compensation Act, and other workers' compensation programs.*

*Comment:* Some respondents recommend that the clause make reference to existing FAR and DFARS clauses regarding the Defense Base Act clauses and various workers' compensation programs. In doing so, contractors may avoid purchasing unnecessary coverage, the cost of which is passed to the Government. One respondent recommends that each of the clauses implementing the Defense Base Act and the War Hazards Compensation Act be identified for mandatory inclusion in contracts covered by this clause.

*DoD Response:* Concur in part. DoD has included guidance in PGI regarding additional clauses to consider when using the clause at DFARS 252.225-7040. The PGI guidance recommends consideration of either the clause at FAR 52.228-3, Worker's Compensation Insurance (Defense Base Act), or the clause at FAR 52.228-4, Worker's Compensation and War Hazard Insurance, in accordance with the clause prescriptions at FAR 28.309(a) and (b); use of the clause at FAR 52.228-7, Insurance-Liability to Third Persons, in cost-reimbursement contracts as prescribed at DFARS 228.311-1; and use of the clauses at FAR 52.251-1, Government Supply Sources, as prescribed at FAR 51.107, and DFARS 252.251-7000, Ordering

from Government Supply Sources, as prescribed at DFARS 251.107.

Additionally, all other appropriate FAR and DFARS clauses will be included in the contract consistent with the prescriptions as to situations where they are applicable. This clause does not need to repeat the prescriptions for use of clauses that are already in the FAR and DFARS.

c. *Government should facilitate larger risk pool.*

*Comment:* One respondent believes that additional insurance coverage for war hazards, normally excluded from group life insurance policies, should be an allowable cost and recommends that the Government establish a mechanism for facilitating that coverage on an industry-wide basis in order to allow contractors to pool purchasing power.

*DoD Response:* Outside scope. The suggestions set forth, even if they were beneficial, are beyond the charter and authority of the DAR Council. DoD is participating in an interagency group, chaired by the Department of State, that is looking into insurance issues related to the Iraqi reconstruction.

23. Processing and Departure Points (252.225-70XX(n)) (252.225-7040(f))

a. *Purpose of deployment processing.*

*Comment:* One respondent recommended adding a sentence to state the purpose of deployment processing.

*DoD Response:* Concur. DoD has added language stating the purpose of deployment processing.

b. *Joint Reception Center.*

*Comment:* Another respondent suggests adding language about the Government notifying contractor personnel of all specific policies and requirements for personnel operating within the theater of deployment (IAW Joint Pub 4-0, Doctrine for Logistics Support of Joint Operations, Chapter V, Contractors in Theater).

*DoD Response:* Concur. The requirement to process through a Joint Reception Center in the theater of operations has been added to the clause.

24. Scarce Goods and Services (252.225-70XX(o)) (252.225-7040(l))

a. *Afford excusable delay relief and equitable adjustment allowance.*

*Comment:* One respondent expresses a concern that, if a contractor is not able to obtain scarce items in order to meet contract performance, this will impact the ability of the contractor to meet the terms and conditions of the contract, and that a contractor should be afforded an excusable delay and allowance for an equitable adjustment.

*DoD Response:* Concur in part. DoD has revised the clause language to

provide greater latitude to contractors for acquiring goods and services, so that they are not put in an untenable position. However, the processes and procedures for an equitable adjustment are already sufficiently covered under existing acquisition rules and regulations.

b. *Let contractor know about scarce commodities prior to contract formation.*

*Comment:* Such requirements to obtain approval of scarce commodities from the combatant commander's purchase review committee should be provided to the contractor prior to contract formation.

*DoD Response:* Concur in part. It is a good idea to provide this information in advance when available, but it is impossible to know all of the military operations that will occur during the period of performance on any specific contract, and it is not possible for the Government to provide contractors an advance listing of all those commodities that will be considered scarce.

c. *Acquisition of weapons, ammunition, and personal protective gear.*

*Comment:* One respondent is concerned that this language could prohibit or impede Private Security Companies from meeting their contract requirements and could compromise the physical safety of personnel.

*DoD Response:* Nonconcur. This paragraph in the clause covers local purchases of scarce goods such as clean water, fresh food, or building materials that might be in scarce supply in the local area, not weapons, ammunition, and personal protective gear. The clause has been revised to clarify that the contractor must coordinate local purchases of goods and services.

d. *Further revision.*

In addition, DoD has expanded the clause to cover scarce services, such as translators.

25. Changes (252.225-70XX(p) and (q)) (252.225-7040(p))

a. *Object to paragraphs (p) and (q) of 252.225-70XX.*

*Comment:* Many respondents had concerns about paragraphs (p) and (q). They are concerned that these paragraphs went beyond the "Changes" clause, to include what the contractor may consider out-of-scope changes. This could lead to the appearance of a personal services contract. Paragraph (p) could violate the Competition in Contracting Act and may lead to unauthorized commitments. The language raises questions about the Antideficiency Act in situations where the emergency exception may not apply.

The contractor should not be put in position of determining whose orders take precedence (contracting officer or combatant commander) or whether a commander giving an order has appropriate authority.

*DoD Response:* Concur. The proposed language is not consistent with existing procurement law and policy. DoD has substantially revised paragraph (p) and deleted the paragraph (q) that was in the clause in the proposed rule.

b. *Generally support the inclusion of (p) and (q), but recommended clarifying or expanding.*

*Comment:* Some respondents support providing authority for the military commander to have the flexibility to direct contractors, recommend expanding it to make it available to the lowest level of military command, and recommend expanding it beyond its limitations to "all transportation, logistical and support requirements." They recommend inclusion of a provision that prevents combatant commanders from ordering contractors to engage in armed conflict; recommend that paragraph (q) address all changes in emergency situations; and recommend that contractors be excused from complying with any order or directive that the contractor reasonably believes is contrary to law or international treaty. It is imperative that actions by commanders that are inconsistent with the contract be recognized as changes. The rule should make clear what types of direction a combatant commander may issue and should add language that requires 48-hour notification by the contractor to the contracting officer's representative.

*DoD Response:* Nonconcur. DoD does not recommend any revisions or expansions to the authorities of the combatant commander in paragraphs (p) and (q) of the clause in the proposed rule. The authority of combatant commanders to issue instructions is not dependent on contract provisions. Therefore, it is out of scope to address in this rule their authorities relative to hostile or non-hostile environments, or to address any documentation requirements flowing from their exercising such authority.

Instead of paragraphs (p) and (q) of the clause in the proposed rule, DoD has added a new paragraph (p) that refers to the Changes clause of the contract, but adds provision for coverage of changes in Government-furnished facilities, equipment, material, services, or site.

c. *Generally agree with equitable adjustment for changes but recommend changes in wording or scope.*

*Comment:* Several respondents request revision of the proposed clause

to address the fundamental issue of reimbursement to the contractor for additional costs and risks associated with deployment of contractor personnel. One respondent requests an equitable adjustment for continued contract performance, which would require segregation of all costs incurred in support of deployed military forces involved in humanitarian, peacekeeping, contingency, or combat operations.

Another respondent recommends addition of language that would require the contracting officer to approve requests for equitable adjustment, absent fraud, falsehood, or willful misconduct on the contractor's part. One respondent recommends addition of a new paragraph allowing the contractor to request equitable adjustment for unexpected costs beyond their reasonable control. Another respondent is concerned that the proposed rule would limit the ability of a contractor to submit a request for equitable adjustment to the situations described in (p) and (q). Therefore, other types of claims such as for delay and disruption or for third-party liability not covered by insurance appear to be proscribed.

*DoD Response:* Nonconcur. The authority of a combatant commander to issue orders is not a function of contract language, and remedies for additional costs incurred, if they exist, are either addressed by existing procurement laws and regulations (e.g., constructive changes doctrine) or found in non-contractual remedies. As already stated, DoD has substantially modified paragraph (p) and deleted paragraph (q) in its entirety, and reaffirmed reliance on the Changes clause of the contract.

26. Subcontracts (252.225-70XX(r)) (252.225-7040(q))

*Comment:* Some respondents are concerned about the impact this paragraph would have on subcontracts if the whole clause is flowed down. There is concern that this paragraph commits the Government to undertake affirmative support of such subcontractors. Some respondents question how privity of contract between the prime and their subcontracts will be handled when combatant commanders or senior military personnel give directions to subcontract personnel.

*DoD Response:* The intent of most of the areas addressed under this clause is to ensure that all contractor personnel, prime and subcontract personnel, who accompany and support the force have the kind of support they need to ensure their safety and security. The intent is

not for the Government to establish a privity of contract relationship with the subcontractors. Furthermore, paragraph (p) has been substantially modified and (q) of the clause in the proposed rule has been deleted.

## 27. Paperwork Reduction

*Comment:* Only one respondent commented on the information collection requirements of the proposed rule. That respondent considers that the proposed rule constitutes an information collection requirement which imposes a burden on contractors because, in the event of direction issued to a contractor by a Government official other than a contracting officer, the contractor must comply with FAR 43.104, Notification of contract changes. The respondent contends that the proposed clause provides authority for combatant commanders and hundreds of subordinate military commanders to issue orders to the contractor, for which the contractor must execute notices and records as required by FAR 43.104.

*DoD Response:* Nonconcur. The clause at 52.243-7, Notification of Changes, already has an approved information collection requirement burden under OMB Clearance Number 9000-026, which covers all Government agencies that use the FAR clause. Moreover, with the removal of paragraph (q) from the final clause, there should no more than an average number of such notifications required.

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 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 this rule does not impose economic burdens on contractors. The purpose and effect of this rule is to relieve the current perceived burden on contractors operating in a contingency environment without consistent DoD guidance or a standardized clause. By establishing a standardized clause, spelling out the standardized rules such as the need for a Letter of Authorization, and providing specific guidelines on force protection and resuscitative medical care, this rule effectively reduces the burden on small businesses. It establishes a framework within which it will be easier for contractors to operate overseas. In addition, the availability of Government deployment centers in the United States will make it easier for small businesses to meet all

deployment requirements. DoD did not receive any comments with regard to the Regulatory Flexibility Act or the impact of the proposed rule on small businesses.

## C. Paperwork Reduction Act

This rule does not impose any new information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.* Although the clause requires contractors to maintain (1) a current plan on file showing how the contractor would replace employees who are unavailable for deployment or who need to be replaced during deployment, and (2) a current list of all employees in the area of operations in support of the military force, DoD believes that these requirements are usual and customary and do not exceed what a contractor would maintain in the normal course of business.

### List of Subjects in 48 CFR Parts 207, 212, 225, and 252

Government procurement.

**Michele P. Peterson,**

*Editor, Defense Acquisition Regulations System.*

■ Therefore, 48 CFR Parts 207, 212, 225, and 252 are amended as follows:

### PART 207—ACQUISITION PLANNING

■ 1. The authority citation for 48 CFR Parts 207, 212, 225, and 252 continues to read as follows:

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

■ 2. Section 207.105 is amended by adding paragraph (b)(19)(E) to read as follows:

#### 207.105 Contents of written acquisition plans.

\* \* \* \* \*

(b) \* \* \*

(19) \* \* \*

(E) *Special considerations for acquisition planning for crisis situations outside the United States.* Ensure that the requirements of DoD Instruction 3020.37, Continuation of Essential DoD Contractor Services During Crises, are addressed. Also see the guidance at PGI 207.105(b)(19)(E).

### PART 212—ACQUISITION OF COMMERCIAL ITEMS

■ 3. Section 212.301 is amended by adding paragraphs (f)(vii) and (viii) to read as follows:

#### 212.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

\* \* \* \* \*

(f) \* \* \*

(vii) Use the clause at 252.225-7040, Contractor Personnel Supporting a Force Deployed Outside the United States, as prescribed in 225.7402-4.

(viii) Use the clause at 252.225-7043, Antiterrorism/Force Protection Policy for Defense Contractors Outside the United States, in solicitations and contracts that include the clause at 252.225-7040.

### PART 225—FOREIGN ACQUISITION

■ 4. Section 225.802-70 is revised to read as follows:

#### 225.802-70 Contracts for performance outside the United States and Canada.

Follow the procedures at PGI 225.802-70 when placing a contract requiring performance outside the United States and Canada. Also see Subpart 225.74, Defense Contractors Outside the United States.

■ 5. Subpart 225.74 is revised to read as follows:

#### Subpart 225.74—Defense Contractors Outside the United States

Sec.

225.7401 General.

225.7402 Contractor personnel supporting a force deployed outside the United States.

225.7402-1 Scope.

225.7402-2 Definitions.

225.7402-3 Government support.

225.7402-4 Contract clauses.

225.7403 Antiterrorism/force protection.

225.7403-1 General.

225.7403-2 Contract clause.

#### 225.7401 General.

(a) If an acquisition requires performance of work in a foreign country by U.S. personnel or a third country contractor, follow the procedures at PGI 225.7401(a).

(b) For work performed in Germany, eligibility for logistics support or base privileges of contractor employees is governed by U.S.-German bilateral agreements. Follow the procedures in Army in Europe Regulation 715-9, available at <http://www.per.hqusaureur.army.mil/cpd/docper/default.htm>.

(c) For work performed in Japan or Korea, see PGI 225.7401(c) for information on bilateral agreements and policy relating to contractor employees in Japan or Korea.

**225.7402 Contractor personnel supporting a force deployed outside the United States.****225.7402-1 Scope.**

This section applies to contracts requiring contractor personnel to deploy with or otherwise provide support in the theater of operations to U.S. military forces deployed outside the United States in—

- (a) Contingency operations;
- (b) Humanitarian or peacekeeping operations; or
- (c) Other military operations or exercises designated by the combatant commander.

**225.7402-2 Definitions.**

*Combatant commander* and *theater of operations*, as used in this section, have the meaning given in the clause at 252.225-7040, Contractor Personnel Supporting a Force Deployed Outside the United States.

**225.7402-3 Government support.**

(a) Government support that may be authorized or required for contractor personnel performing in a theater of operations may include, but is not limited to, the types of support listed in PGI 225.7402-3(a).

(b) The contracting officer shall—

(1) Ensure that the contract contains valid terms, approved by the combatant commander, that specify the responsible party, if a party other than the combatant commander is responsible for providing protection to the contractor personnel performing in the theater of operations as specified in 225.7402-1;

(2) Specify in the terms of the contract, if medical or dental care is authorized beyond the standard specified in paragraph (c)(2)(i) of the clause at 252.225-7040, Contractor Personnel Supporting a Force Deployed Outside the United States;

(3) Provide direction to the contractor, if the contractor is required to reimburse the Government for medical treatment or transportation of contractor personnel to a selected civilian facility in accordance with paragraph (c)(2)(ii) of the clause at 252.225-7040; and

(4) Specify in the contract the exact support to be authorized or required if the Government authorizes or requires contractor personnel to use any other Government-provided support.

(c) Contractor personnel must have a letter of authorization (LOA) issued by a contracting officer in order to process through a deployment center or to travel to, from, or within the theater of operations. The LOA also will identify any additional authorizations, privileges, or Government support that the contractor personnel are entitled to

under the contract. For a sample LOA, see PGI 225.7402-3(c).

**225.7402-4 Contract clauses.**

(a) Use the clause at 252.225-7040, Contractor Personnel Supporting a Force Deployed Outside the United States, in solicitations and contracts when contract performance requires that contractor personnel be available to deploy with or otherwise provide support in the theater of operations to U.S. military forces deployed outside the United States in—

- (1) Contingency operations;
- (2) Humanitarian or peacekeeping operations; or
- (3) Other military operations or exercises designated by the combatant commander.

(b) For additional guidance on clauses to consider when using the clause at 252.225-7040, see PGI 225.7402-4(b).

**225.7403 Antiterrorism/force protection.****225.7403-1 General.**

Information and guidance pertaining to DoD antiterrorism/force protection policy for contracts that require performance or travel outside the United States can be obtained from the offices listed in PGI 225.7403-1.

**225.7403-2 Contract clause.**

Use the clause at 252.225-7043, Antiterrorism/Force Protection Policy for Defense Contractors Outside the United States, in solicitations and contracts that require performance or travel outside the United States, except for contracts with—

- (a) Foreign governments;
- (b) Representatives of foreign governments; or
- (c) Foreign corporations wholly owned by foreign governments.

**PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

■ 6. Section 252.225-7040 is added to read as follows:

**252.225-7040 Contractor Personnel Supporting a Force Deployed Outside the United States.**

As prescribed in 225.7402-4(a), use the following clause:

**Contractor Personnel Supporting a Force Deployed Outside the United States (Jun 2005)**

(a) *Definitions.* As used in this clause—

*Combatant Commander* means the commander of a unified or specified combatant command established in accordance with 10 U.S.C. 161.

*Theater of operations* means an area defined by the combatant commander for the conduct or support of specific operations.

(b) *General.* (1) This clause applies when contractor personnel deploy with or otherwise provide support in the theater of operations to U.S. military forces deployed outside the United States in—

- (i) Contingency operations;
- (ii) Humanitarian or peacekeeping operations; or
- (iii) Other military operations or exercises designated by the Combatant Commander.

(2) Contract performance in support of U.S. military forces may require work in dangerous or austere conditions. The Contractor accepts the risks associated with required contract performance in such operations.

(3) Contractor personnel are not combatants and shall not undertake any role that would jeopardize their status. Contractor personnel shall not use force or otherwise directly participate in acts likely to cause actual harm to enemy armed forces.

(c) *Support.* (1) The Combatant Commander will develop a security plan to provide protection, through military means, of Contractor personnel engaged in the theater of operations unless the terms of this contract place the responsibility with another party.

(2)(i) All Contractor personnel engaged in the theater of operations are authorized resuscitative care, stabilization, hospitalization at level III military treatment facilities, and assistance with patient movement in emergencies where loss of life, limb, or eyesight could occur. Hospitalization will be limited to stabilization and short-term medical treatment with an emphasis on return to duty or placement in the patient movement system.

(ii) When the Government provides medical treatment or transportation of Contractor personnel to a selected civilian facility, the Contractor shall ensure that the Government is reimbursed for any costs associated with such treatment or transportation.

(iii) Medical or dental care beyond this standard is not authorized unless specified elsewhere in this contract.

(3) Unless specified elsewhere in this contract, the Contractor is responsible for all other support required for its personnel engaged in the theater of operations under this contract.

(d) *Compliance with laws and regulations.* The Contractor shall comply with, and shall ensure that its personnel supporting a force deployed outside the United States as specified in paragraph (b)(1) of this clause are familiar with and comply with, all applicable—

- (1) United States, host country, and third country national laws;
- (2) Treaties and international agreements;
- (3) United States regulations, directives, instructions, policies, and procedures; and
- (4) Orders, directives, and instructions issued by the Combatant Commander relating to force protection, security, health, safety, or relations and interaction with local nationals.

(e) *Pre-deployment requirements.* The Contractor shall ensure that the following requirements are met prior to deploying personnel in support of U.S. military forces. Specific requirements for each category may

be specified in the statement of work or elsewhere in the contract.

(1) All required security and background checks are complete and acceptable.

(2) All deploying personnel meet the minimum medical screening requirements and have received all required immunizations as specified in the contract. The Government will provide, at no cost to the Contractor, any theater-specific immunizations and/or medications not available to the general public.

(3) Deploying personnel have all necessary passports, visas, and other documents required to enter and exit a theater of operations and have a Geneva Conventions identification card from the deployment center.

(4) Country and theater clearance is obtained for personnel. Clearance requirements are in DoD Directive 4500.54, Official Temporary Duty Abroad, and DoD 4500.54-G, DoD Foreign Clearance Guide. Contractor personnel are considered non-DoD personnel traveling under DoD sponsorship.

(f) *Processing and departure points.* Deployed contractor personnel shall—

(1) Process through the deployment center designated in the contract, or as otherwise directed by the Contracting Officer, prior to deploying. The deployment center will conduct deployment processing to ensure visibility and accountability of contractor personnel and to ensure that all deployment requirements are met;

(2) Use the point of departure and transportation mode directed by the Contracting Officer; and

(3) Process through a Joint Reception Center (JRC) upon arrival at the deployed location. The JRC will validate personnel accountability, ensure that specific theater of operations entrance requirements are met, and brief contractor personnel on theater-specific policies and procedures.

(g) *Personnel data list.* (1) The Contractor shall establish and maintain with the designated Government official a current list of all contractor personnel that deploy with or otherwise provide support in the theater of operations to U.S. military forces as specified in paragraph (b)(1) of this clause. The Contracting Officer will inform the Contractor of the Government official designated to receive this data and the appropriate automated system(s) to use for this effort.

(2) The Contractor shall ensure that all employees on the list have a current DD Form 93, Record of Emergency Data Card, on file with both the Contractor and the designated Government official.

(h) *Contractor personnel.* (1) The Contracting Officer may direct the Contractor, at its own expense, to remove and replace any contractor personnel who jeopardize or interfere with mission accomplishment or who fail to comply with or violate applicable requirements of this clause. Such action may be taken at the Government's discretion without prejudice to its rights under any other provision of this contract, including the Termination or Default clause.

(2) The Contractor shall have a plan on file showing how the Contractor would replace

employees who are unavailable for deployment or who need to be replaced during deployment. The Contractor shall keep this plan current and shall provide a copy to the Contracting Officer upon request. The plan shall—

(i) Identify all personnel who are subject to military mobilization;

(ii) Detail how the position would be filled if the individual were mobilized; and

(iii) Identify all personnel who occupy a position that the Contracting Officer has designated as mission essential.

(i) *Military clothing and protective equipment.* (1) Contractor personnel supporting a force deployed outside the United States as specified in paragraph (b)(1) of this clause are prohibited from wearing military clothing unless specifically authorized in writing by the Combatant Commander. If authorized to wear military clothing, Contractor personnel must wear distinctive patches, arm bands, nametags, or headgear, in order to be distinguishable from military personnel, consistent with force protection measures and the Geneva Conventions.

(2) Contractor personnel may wear military-unique organizational clothing and individual equipment (OCIE) required for safety and security, such as ballistic, nuclear, biological, or chemical protective clothing.

(3) The deployment center, or the Combatant Commander, shall issue OCIE and shall provide training, if necessary, to ensure the safety and security of contractor personnel.

(4) The Contractor shall ensure that all issued OCIE is returned to the point of issue, unless otherwise directed by the Contracting Officer.

(j) *Weapons.* (1) If the Contractor requests that its personnel performing in the theater of operations be authorized to carry weapons, the request shall be made through the Contracting Officer to the Combatant Commander. The Combatant Commander will determine whether to authorize in-theater contractor personnel to carry weapons and what weapons will be allowed.

(2) The Contractor shall ensure that its personnel who are authorized to carry weapons—

(i) Are adequately trained;

(ii) Are not barred from possession of a firearm by 18 U.S.C. 922; and

(iii) Adhere to all guidance and orders issued by the Combatant Commander regarding possession, use, safety, and accountability of weapons and ammunition.

(3) Upon redeployment or revocation by the Combatant Commander of the Contractor's authorization to issue firearms, the Contractor shall ensure that all Government-issued weapons and unexpended ammunition are returned as directed by the Contracting Officer.

(k) *Vehicle or equipment licenses.* Contractor personnel shall possess the required licenses to operate all vehicles or equipment necessary to perform the contract in the theater of operations.

(l) *Purchase of scarce goods and services.* If the Combatant Commander has established an organization for the theater of operations whose function is to determine that certain

items are scarce goods or services, the Contractor shall coordinate with that organization local purchases of goods and services designated as scarce, in accordance with instructions provided by the Contracting Officer.

(m) *Evacuation.* (1) If the Combatant Commander orders a mandatory evacuation of some or all personnel, the Government will provide assistance, to the extent available, to United States and third country national contractor personnel.

(2) In the event of a non-mandatory evacuation order, unless authorized in writing by the Contracting Officer, the Contractor shall maintain personnel on location sufficient to meet obligations under this contract.

(n) *Next of kin notification and personnel recovery.* (1) The Contractor shall be responsible for notification of the employee-designated next of kin in the event an employee dies, requires evacuation due to an injury, or is missing, captured, or abducted.

(2) In the case of missing, captured, or abducted contractor personnel, the Government will assist in personnel recovery actions in accordance with DoD Directive 2310.2, Personnel Recovery.

(o) *Mortuary affairs.* Mortuary affairs for contractor personnel who die while providing support in the theater of operations to U.S. military forces will be handled in accordance with DoD Directive 1300.22, Mortuary Affairs Policy.

(p) *Changes.* In addition to the changes otherwise authorized by the Changes clause of this contract, the Contracting Officer may, at any time, by written order identified as a change order, make changes in Government-furnished facilities, equipment, material, services, or site. Any change order issued in accordance with this paragraph (p) shall be subject to the provisions of the Changes clause of this contract.

(q) *Subcontracts.* The Contractor shall incorporate the substance of this clause, including this paragraph (q), in all subcontracts that require subcontractor personnel to be available to deploy with or otherwise provide support in the theater of operations to U.S. military forces deployed outside the United States in—

(1) Contingency operations;

(2) Humanitarian or peacekeeping operations; or

(3) Other military operations or exercises designated by the Combatant Commander.

(End of clause)

#### 252.225-7043 [Amended]

■ 7. Section 252.225-7043 is amended in the introductory text by removing “225.7402” and adding in its place “225.7403-2”.

[FR Doc. 05-9007 Filed 5-4-05; 8:45 am]

BILLING CODE 5001-08-P