

to the policies and procedures in DoDD 5000.1, The Defense Acquisition System, and DoDI 5000.2, Operation of the Defense Acquisition System.

3. Sections 211.201 and 211.204 are revised to read as follows:

**211.201 Identification and availability of specifications.**

Follow the procedures at PGI 211.201 for use of specifications, standards, and data item descriptions.

**211.204 Solicitation provisions and contract clauses.**

(c) When contract performance requires use of specifications, standards, and data item descriptions that are not listed in the Acquisition Streamlining and Standardization Information System database, use provisions, as appropriate, substantially the same as those at—

(i) 252.211–7001, Availability of Specifications, Standards, and Data Item Descriptions Not Listed in the Acquisition Streamlining and Standardization Information System (ASSIST), and Plans, Drawings, and Other Pertinent Documents; and

(ii) 252.211–7002, Availability for Examination of Specifications, Standards, Plans, Drawings, Data Item Descriptions, and Other Pertinent Documents.

**211.273–2 [Amended]**

4. Section 211.273–2 is amended in paragraph (c) by removing “(see 211.273–3(c))”.

5. Section 211.273–3 is revised to read as follows:

**211.273–3 Procedures.**

Follow the procedures at PGI 211.273–3 for encouraging the use of SPI processes instead of military or Federal specifications and standards.

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

6. Section 252.211–7001 is amended by revising the section heading, clause title, and clause date to read as follows:

**252.211–7001 Availability of Specifications, Standards, and Data Item Descriptions Not Listed in the Acquisition Streamlining and Standardization Information System (ASSIST), and Plans, Drawings, and Other Pertinent Documents.**

\* \* \* \* \*

**Availability of Specifications, Standards, and Data Item Descriptions Not Listed in the Acquisition Streamlining and Standardization Information System (Assist), and Plans, Drawings, and Other Pertinent Documents (XXX 2005)**

\* \* \* \* \*

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**DEPARTMENT OF DEFENSE**

**48 CFR Parts 212, 225, and 252**

[DFARS Case 2004–D017]

**Defense Federal Acquisition Regulation Supplement; Combating Trafficking in Persons**

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

**ACTION:** Proposed rule with request for comments.

**SUMMARY:** DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to implement policy prohibiting activities on the part of DoD contractor employees that support or promote trafficking in persons.

**DATES:** Comments on the proposed rule should be submitted in writing to the address shown below on or before August 22, 2005, to be considered in the formation of the final rule.

**ADDRESSES:** You may submit comments, identified by DFARS Case 2004–D017, using any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Defense Acquisition Regulations Web Site: <http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm>. Follow the instructions for submitting comments.
- E-mail: [dfars@osd.mil](mailto:dfars@osd.mil). Include DFARS Case 2004–D017 in the subject line of the message.

- Fax: (703) 602–0350.
- Mail: Defense Acquisition Regulations Council, Attn: Ms. Amy Williams, OUSD (AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062.
- Hand Delivery/Courier: Defense Acquisition Regulations Council, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202–3402.

All comments received will be posted to <http://emissary.acq.osd.mil/dar/dfars.nsf>.

**FOR FURTHER INFORMATION CONTACT:** Ms. Amy Williams, (703) 602–0328.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

A memorandum issued by the Deputy Secretary of Defense on January 30, 2004, states as an objective that, consistent with U.S. and host-nation law, provisions should be incorporated in overseas service contracts that prohibit any activities on the part of contractor employees that support or promote trafficking in persons and that impose suitable penalties on contractors who fail to monitor the conduct of their employees. The memorandum cites National Security Presidential Directive/NPSD–22, which decrees that all departments of the U.S. Government will take a “zero tolerance” approach to trafficking in persons. NSPD–22 utilizes the definitions in Public Law 106–386, Victims of Trafficking and Violence Protection Act of 2000, codified at 22 U.S.C. 7102. This proposed DFARS rule contains an implementing clause for use in contracts that require performance outside the United States. The proposed clause requires contractors to establish policy and procedures for combating trafficking in persons and to notify the contracting officer of any violations and the corrective action taken. The clause also requires the contractor to effectively manage its subcontractors and to take remedial action against any subcontractor that violates policy regarding trafficking in persons.

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 does not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the proposed clause applies only to contracts that require performance outside the United States. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2004–D017.

**C. Paperwork Reduction Act**

The Paperwork Reduction Act (44 U.S.C. Chapter 35) applies, because the proposed rule contains information collection requirements. These requirements will increase the burden hours currently approved by the Office of Management and Budget (OMB)

under Control Number 0704-0229; DFARS Part 225, Foreign Acquisition, and related clauses. DoD invites comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of DoD, including whether the information will have practical utility; (b) the accuracy of the estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology.

*Needs and Uses:* DoD contracting officers will use this information to monitor contractor compliance with National Security Presidential Directive 22 and DoD policy that decrees "zero tolerance" for trafficking in persons.

*Affected Public:* Businesses or other for-profit and not-for-profit institutions.

*Annual Burden Hours:* 60.

*Number of Respondents:* 30.

*Responses Per Respondent:* 2.

*Annual Responses:* 60.

*Average Burden Per Response:* 1 hour.

*Frequency:* On occasion.

#### Summary of Information Collection

Paragraphs (g) through (i) of the proposed clause require the contractor to notify the contracting officer of any alleged violations of policy concerning trafficking in persons and the actions taken by the contractor in response to the violations. This information collection will increase, by 60 hours, the 352,380 burden hours currently approved under OMB Control Number 0704-0229 for use through May 31, 2007.

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

Government procurement.

**Michele P. Peterson,**

*Editor, Defense Acquisition Regulations System.*

Therefore, DoD proposes to amend 48 CFR Parts 212, 225, and 252 as follows:

#### PART 212—ACQUISITION OF COMMERCIAL ITEMS

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

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

2. Section 212.301 is amended by adding paragraph (f)(ix) to read as follows:

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

(f) \* \* \*

(ix) Use the clause at 252.225-70XX, Combating Trafficking in Persons, as prescribed in 225.7404-3.

#### PART 225—FOREIGN ACQUISITION

3. Sections 225.7404 through 225.7404-3 are added to read as follows:

##### 225.7404 Combating trafficking in persons.

See related information at PGI 225.7404.

##### 225.7404-1 Policy.

Contracts that require performance outside the United States shall—

(a) Prohibit any activities on the part of contractor employees that support or promote trafficking in persons, as defined in the clause at 252.225-70XX;

(b) Require contractors to develop procedures to combat trafficking in persons; and

(c) Impose suitable penalties on contractors that fail to monitor the conduct of their employees and subcontractors with regard to trafficking in persons.

##### 225.7404-2 Notification to combatant commander.

If the contracting officer receives information in accordance with paragraph (g), (h), or (i) of the clause at 252.225-70XX, the contracting officer shall notify the combatant commander through the local commander or other designated representative.

##### 225.7404-3 Contract clause.

Use the clause at 252.225-70XX, Combating Trafficking in Persons, in solicitations and contracts that require performance outside the United States.

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

4. Section 252.225-70XX is added to read as follows:

##### 252.225-70XX Combating Trafficking in Persons.

As prescribed in 225.7404-3, use the following clause:

##### Combating Trafficking in Persons (XXX 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.

*Commercial sex act* means any sex act on account of which anything of value is given to or received by any person (22 U.S.C. 7102(3)).

*Debt bondage* means the status or condition of a debtor arising from a pledge by the debtor for his or her personal services, or of those of a person under his or her control, as security for a debt, if—

(1) The value of those services as reasonably assessed is not applied toward the liquidation of the debt; or

(2) The length and nature of those services are not respectively limited and defined (22 U.S.C. 7102(4)).

*Employee* means an employee of the Contractor that is working outside the United States in the performance of this contract.

*Involuntary servitude* includes a condition of servitude induced by means of—

(1) Any scheme, plan, or pattern intended to cause a person to believe that, if the person did not enter into or continue in such condition, that person or another person would suffer serious harm or physical restraint; or

(2) The abuse or threatened abuse of the legal process (22 U.S.C. 7102(5)).

*Sex trafficking* means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act (22 U.S.C. 7102(9)).

*Trafficking in persons* means—

(1) The recruitment, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, debt bondage, or slavery; and

(2) Sex trafficking, including pimping, pandering, or maintaining brothels.

(b) As delineated in National Security Presidential Directive 22, the United States has adopted a zero tolerance policy regarding contractor employees who engage in or support trafficking in persons.

(c) During the performance of this contract, the Contractor shall ensure that its employees do not engage in or support trafficking in persons.

(d) The Contractor is responsible for obtaining copies of the policies, laws, regulations, and directives referenced in paragraph (f) of this clause, as well as for providing any necessary legal guidance and interpretations for its personnel regarding such policies, laws, regulations, and directives.

(e) The Contractor shall establish policy and procedures for combating trafficking in persons.

(f) The Contractor shall provide training to make its employees aware of the following:

(1) The United States Government zero-tolerance policy described in paragraph (b) of this clause.

(2) All host nation laws and regulations relating to trafficking in persons.

(3) All United States laws and regulations on trafficking in persons that may apply to its employees' conduct in the host nation, including those laws for which jurisdiction is established by the Military Extraterritorial Jurisdiction Act of 2000 (18 U.S.C. 3261-3267).

(4) Directives on trafficking in persons from the Combatant Commander, or the Combatant Commander's designated representative, that apply to contractor employees, such as general orders and

military listings of "off-limits" local establishments.

(g) The Contractor shall inform the Contracting Officer of any information it receives from any source (including host country law enforcement) that alleges a contractor employee or subcontractor has engaged in conduct that violates United States Government policy concerning trafficking in persons.

(h)(1) In accordance with its own operating procedures and applicable policies, laws, regulations, and directives, the Contractor shall take appropriate employment action, including removal from the host nation or dismissal, against any of its employees who engage in sex trafficking, or any other activity that may support trafficking in persons, or who otherwise violate a policy, law, regulation, or directive described in paragraph (f) of this clause.

(2) The Contractor shall inform the Contracting Officer of any such action.

(3) Upon direction of the Contracting Officer, the Contractor shall replace any such employee.

(i)(1) The Contractor shall ensure that its subcontractors comply with the mandates of this clause, as included in subcontracts pursuant to paragraph (k) of this clause. The Contractor shall take appropriate action, including termination of the subcontract, when the Contractor obtains sufficient evidence to determine that the subcontractor is in non-compliance with its contractual obligations regarding trafficking in persons.

(2) The Contractor shall inform the Contracting Officer of any such action.

(j) In addition to other remedies available to the Government, the Contractor's failure to comply with paragraph (g), (h), or (i) of this clause may render the Contractor subject to—

(1) Suspension of contract payments;

(2) Loss of award fee, consistent with the award fee plan, for the performance period in which the Government determined that the Contractor is in non-compliance;

(3) Termination of the contract for default or cause; and

(4) Suspension or debarment.

(k) The Contractor shall include the substance of this clause, including this paragraph (k), in all subcontracts that require performance outside the United States.

(End of clause)

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## DEPARTMENT OF DEFENSE

### 48 CFR Part 236

[DFARS Case 2003-D034]

#### Defense Federal Acquisition Regulation Supplement; Construction Contracting

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

**ACTION:** Proposed rule with request for comments.

**SUMMARY:** DoD is proposing to amend the Defense Federal Acquisition

Regulation Supplement (DFARS) to update policy on contracting for construction services. This proposed rule is a result of a transformation initiative undertaken by DoD to dramatically change the purpose and content of the DFARS.

**DATES:** Comments on the proposed rule should be submitted in writing to the address shown below on or before August 22, 2005, to be considered in the formation of the final rule.

**ADDRESSES:** You may submit comments, identified by DFARS Case 2003-D034, using any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

- Defense Acquisition Regulations Web Site: <http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm>. Follow the instructions for submitting comments.

- E-mail: [dfars@osd.mil](mailto:dfars@osd.mil). Include DFARS Case 2003-D034 in the subject line of the message.

- Fax: (703) 602-0350.

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

- Hand Delivery/Courier: Defense Acquisition Regulations Council, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202-3402.

All comments received will be posted to <http://emissary.acq.osd.mil/dar/dfars.nsf>.

**FOR FURTHER INFORMATION CONTACT:** Mr. Euclides Barrera, (703) 602-0296.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

DFARS Transformation is a major DoD initiative to dramatically change the purpose and content of the DFARS. The objective is to improve the efficiency and effectiveness of the acquisition process, while allowing the acquisition workforce the flexibility to innovate. The transformed DFARS will contain only requirements of law, DoD-wide policies, delegations of FAR authorities, deviations from FAR requirements, and policies/procedures that have a significant effect beyond the internal operating procedures of DoD or a significant cost or administrative impact on contractors or offerors. Additional information on the DFARS Transformation initiative is available at <http://www.acq.osd.mil/dpap/dfars/transf.htm>.

This proposed rule is a result of the DFARS Transformation initiative. The proposed DFARS changes—

- Delete text defining and addressing use of network analysis systems, as this

subject is addressed in the United Facilities Guide Specifications used by the military departments in specifying construction requirements.

- Delete text on distribution and use of contractor performance reports, handling of Government estimates of construction costs, use of bid schedules with additive or deductive items, and technical working agreements with foreign governments. Text on these subjects will be relocated to the new DFARS companion resource, Procedures, Guidance, and Information (PGI), available at <http://www.acq.osd.mil/dpap/dars/pgi>.

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 does not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the proposed rule deletes and relocates DFARS text on construction contracting, but makes no significant change to DoD contracting policy. Therefore, DoD has not performed an initial regulatory flexibility analysis. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2003-D034.

##### C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

##### List of Subjects in 48 CFR Part 236

Government procurement.

**Michele P. Peterson,**

*Editor, Defense Acquisition Regulations System.*

Therefore, DoD proposes to amend 48 CFR Part 236 as follows:

#### PART 236—CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

1. The authority citation for 48 CFR Part 236 continues to read as follows:

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

##### 236.102 [Amended]

2. Section 236.102 is amended by removing paragraph (4) and