

agrees with the contractor's assessment that the levy will jeopardize contract performance but does not believe that the lack of performance will impact national security, the Government will notify the contractor and will recommend that the contractor promptly contact the IRS to attempt to resolve the tax situation.

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 rule only applies to those contractors that have a delinquent tax debt. 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 subpart in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2004-D033.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.* Although the rule requires contractors to provide certain information to the Government when levies are imposed on DoD contract payments, the number of contractors that will be subject to this requirement is expected to be less than 10 per year.

D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist to publish an interim rule prior to affording the public an opportunity to comment. This interim rule establishes DoD policy regarding levies on contract payments. The IRS has begun implementing its legislative authority to levy up to 100 percent of contract payments, up to the amount of tax debt. Such levies could jeopardize contract performance and adversely affect national security. Therefore, it is necessary to ensure that all parties understand their rights and obligations related to the assessment of a levy. Comments received in response to this

interim rule will be considered in the formation of the final rule.

List of Subjects in 48 CFR Parts 237 and 252

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR parts 237 and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 237 and 252 continues to read as follows:

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

PART 232—CONTRACT FINANCING

■ 2. Subpart 232.71 is added to read as follows:

Subpart 232.71—Levies on Contract Payments

Sec.

232.7100 Scope of subpart.
232.7101 Policy and procedures.
232.7102 Contract clause.

232.7100 Scope of subpart.

This subpart prescribes policies and procedures concerning the effect of levies pursuant to 26 U.S.C. 6331(h) on contract payments. The Internal Revenue Service (IRS) is authorized to levy up to 100 percent of all payments made under a DoD contract, up to the amount of the tax debt.

232.7101 Policy and procedures.

(a) The contracting officer shall require the contractor to—

(1) Promptly notify the contracting officer when a levy that will jeopardize contract performance is imposed on a DoD contract; and

(2) Advise the contracting officer whether the inability to perform may adversely affect national security.

(b) The contracting officer shall promptly notify the Director, Defense Procurement and Acquisition Policy (DPAP), when the contractor's inability to perform will adversely affect national security or will result in significant additional costs to the Government. Follow the procedures at PGI 232.7101(b) for reviewing the contractor's rationale and submitting the required notification.

(c) The Director, DPAP, will promptly review the contractor's rationale and will notify the IRS, the contracting officer, and/or the payment office in accordance with the procedures at PGI 232.7101(c). The contracting officer shall then notify the contractor in accordance with paragraph (c) of the clause at 252.232-7010.

232.7102 Contract clause.

Use the clause at 252.232-7010, Levies on Contract Payments, in all solicitations and contracts.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 3. Section 252.232-7010 is added to read as follows:

252.232-7010 Levies on Contract Payments.

As prescribed in 232.7102, use the following clause:

Levies on Contract Payments (SEPT 2005)

(a) 26 U.S.C. 6331(h) authorizes the Internal Revenue Service (IRS) to continuously levy up to 100 percent of contract payments, up to the amount of tax debt.

(b) When a levy is imposed on a payment under this contract and the levy will jeopardize contract performance, the Contractor shall promptly notify the Procuring Contracting Officer and provide—

(1) The total dollar amount of the levy;

(2) A statement that the levy will jeopardize contract performance, including rationale and adequate supporting documentation; and

(3) Advice as to whether the inability to perform may adversely affect national security, including rationale and adequate supporting documentation.

(c) DoD shall promptly review the Contractor's assessment and provide a notification to the Contractor including—

(1) A statement as to whether DoD agrees that the levy jeopardizes contract performance; and

(2) If the levy jeopardizes contract performance and the lack of performance will adversely affect national security, the total amount of the monies collected that should be returned to the Contractor; or

(3) If the levy jeopardizes contract performance but will not impact national security, a recommendation that the Contractor promptly notify the IRS to attempt to resolve the tax situation.

(d) Any DoD determination under this clause is not subject to appeal under the Contract Disputes Act.

(End of clause)

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DEPARTMENT OF DEFENSE

48 CFR Parts 237 and 252

[DFARS Case 2005-D007]

Defense Federal Acquisition Regulation Supplement; Training for Contractor Personnel Interacting With Detainees

AGENCY: Department of Defense (DoD).

ACTION: Interim rule with request for comments.

SUMMARY: DoD has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 1092 of the National Defense Authorization Act for Fiscal Year 2005. Section 1092 requires that DoD contractor personnel who interact with detainees receive training regarding the applicable international obligations and laws of the United States.

DATES: *Effective date:* September 1, 2005.

Comment date: Comments on the interim rule should be submitted to the address shown below on or before October 31, 2005, to be considered in the formation of the final rule.

ADDRESSES: You may submit comments, identified by DFARS Case 2005–D007, 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. Include DFARS Case 2005–D007 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

This interim rule adds policy at DFARS 237.171 and a contract clause at DFARS 252.237–7019, Training for Contractor Personnel Interacting with Detainees, to implement Section 1092 of the National Defense Authorization Act for Fiscal Year 2005 (Pub. L. 108–375). Section 1092 requires DoD to prescribe policies to ensure that members of the Armed Forces, and all persons acting on behalf of the Armed Forces or within facilities of the Armed Forces, treat persons detained by the U.S. Government in a humane manner consistent with the international obligations and laws of the United

States. These policies must include requirements for training of DoD contractor personnel interacting with detainees.

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 Government will provide the training required by the rule. DoD invites comments from small businesses and other interested parties. DoD also will consider comments from small entities concerning the affected DFARS subpart in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2005–D007.

C. Paperwork Reduction Act

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

D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense that urgent and compelling reasons exist to publish an interim rule prior to affording the public an opportunity to comment. This interim rule implements Section 1092 of the National Defense Authorization Act for Fiscal Year 2005 (Pub. L. 108–375), enacted on October 28, 2004. Section 1092 requires that DoD contractor personnel who interact with detainees receive appropriate training. Such training is needed to ensure that all persons acting on behalf of the Armed Forces treat persons detained by the U.S. Government in a humane manner consistent with the international obligations and laws of the United States. Comments received in response to this interim rule will be considered in the formation of the final rule.

List of Subjects in 48 CFR Parts 237 and 252

Government procurement.

Michele P. Peterson,
Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR Parts 237 and 252 are amended as follows:

■ 1. The authority citation for 48 CFR Parts 237 and 252 continues to read as follows:

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

PART 237—SERVICE CONTRACTING

■ 2. Sections 237.171 through 237.171–4 are added to read as follows:

237.171 Training for contractor personnel interacting with detainees.

237.171–1 Scope.

This section prescribes policies to prevent the abuse of detainees, as required by Section 1092 of the National Defense Authorization Act for Fiscal Year 2005 (Pub. L. 108–375).

237.171–2 Definition.

Detainee, as used in this section, is defined in the clause at 252.237–7019, Training for Contractor Personnel Interacting with Detainees.

237.171–3 Policy.

(a) Each DoD contract in which contractor personnel, in the course of their duties, interact with individuals detained by DoD on behalf of the U.S. Government shall include a requirement that such contractor personnel—

(1) Receive training regarding the international obligations and laws of the United States applicable to the detention of personnel; and

(2) Acknowledge receipt of the training.

(b) The combatant commander responsible for the area where the detention or interrogation facility is located will provide the training to contractor personnel. For information on combatant commander geographic areas of responsibility and point of contact information for each command, see PGI 237.171–3(b).

(c) See PGI 237.171–3(c) for additional guidance from the Secretary of Defense on implementation of Section 1092 of Public Law 108–375.

237.171–4 Contract clause.

Use the clause at 252.237–7019, Training for Contractor Personnel Interacting with Detainees, in solicitations and contracts for the acquisition of services if—

(a) The clause at 252.225–7040, Contractor Personnel Supporting a Force Deployed Outside the United States, is included in the solicitation or contract; or

(b) The services will be performed at a facility holding detainees, and contractor personnel in the course of their duties may be expected to interact with the detainees.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 3. Section 252.212–7001 is amended as follows:

- a. By revising the clause date to read “(SEPT 2005)”; and
- b. In paragraphs (b) and (c), by adding, in numerical order, new entries to read as follows:

252.212–7001 Contract terms and conditions required to implement statutes or Executive orders applicable to Defense acquisitions of commercial items.

* * * * *

(b) * * *

252.237–7019 Training for Contractor Personnel Interacting with Detainees (AUG 2005) (Section 1092 of Pub. L. 108–375).

* * * * *

(c) * * *

252.237–7019 Training for Contractor Personnel Interacting with Detainees (AUG 2005) (Section 1092 of Pub. L. 108–375).

* * * * *

■ 4. Section 252.237–7019 is added to read as follows:

252.237–7019 Training for Contractor Personnel Interacting with Detainees.

As prescribed in 237.171–4, use the following clause:

Training for Contractor Personnel Interacting With Detainees (SEPT 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.

Detainee means a person in the custody or under the physical control of the Department of Defense on behalf of the United States Government as a result of armed conflict or other military operation by United States armed forces.

Personnel interacting with detainees means personnel who, in the course of their duties, are expected to interact with detainees.

(b) *Training requirement.* This clause implements Section 1092 of the National Defense Authorization Act for Fiscal Year 2005 (Pub. L. 108–375).

(1) The Combatant Commander responsible for the area where a detention or interrogation facility is located will provide training for contractor personnel interacting with detainees. The training will address the international obligations and laws of the United States applicable to the detention of personnel, including the Geneva Conventions. The Combatant Commander will issue a training receipt document to personnel who have completed the training.

(2)(i) The Contractor shall arrange for its personnel interacting with detainees to—

(A) Receive the training specified in paragraph (b)(1) of this clause prior to interacting with detainees and annually thereafter; and

(B) Acknowledge receipt of the training through acknowledgment of the training

receipt document specified in paragraph (b)(1) of this clause.

(ii) To make these arrangements, the following points of contact apply:

[Contracting Officer to insert applicable point of contact information cited in PGI 237.171–3(b).]

(3) The Contractor and its personnel interacting with detainees shall retain a copy of the training receipt document(s) issued and acknowledged in accordance with paragraphs (b)(1) and (2) of this clause until the contract is closed.

(c) *Subcontracts.* The Contractor shall include the substance of this clause, including this paragraph (c), in all subcontracts that may require contractor personnel to interact with detainees in the course of their duties.

(End of clause)

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DEPARTMENT OF DEFENSE

48 CFR Part 242

[DFARS Case 2004–D007]

Defense Federal Acquisition Regulation Supplement; Assignment of Contract Administration—Exception for Defense Energy Support Center

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to reflect a memorandum of agreement between the Defense Contract Management Agency and the Defense Energy Support Center that provides for the Defense Energy Support Center to perform contract administration functions for all contracts it awards. This arrangement eliminates duplication of effort in the bulk fuel quality management program.

DATES: Effective September 1, 2005.

FOR FURTHER INFORMATION CONTACT: Ms. Deborah Tronic, Defense Acquisition Regulations Council, OUSD (AT&L) DPAP (DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0289; facsimile (703) 602–0350. Please cite DFARS Case 2004–D007.

SUPPLEMENTARY INFORMATION:

A. Background

DFARS 242.202(a)(i) specifies that, with certain exceptions, DoD activities shall not retain any contract for administration that requires performance of contract administration functions at or near contractor facilities. This final rule adds a new exception to the policy at DFARS 242.202(a)(i) to

reflect a memorandum of agreement between the Defense Contract Management Agency and the Defense Energy Support Center, which provides for the Defense Energy Support Center to perform contract administration functions for all contracts it awards. This arrangement eliminates duplication of effort in the bulk fuel quality management program.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

This rule will not have a significant cost or administrative impact on contractors or offerors, or a significant effect beyond the internal operating procedures of DoD. Therefore, publication for public comment is not required. However, DoD will consider comments from small entities concerning the affected DFARS subpart in accordance with 5 U.S.C. 610. Such comments should cite DFARS Case 2004–D007.

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 242

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

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

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

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

PART 242—CONTRACT ADMINISTRATION AND AUDIT SERVICES

■ 2. Section 242.202 is amended as follows:

■ a. In paragraph (a)(i)(P) by removing at the end “and”;

■ b. In paragraph (a)(i)(Q) by removing the period and adding “; and”;

■ c. By adding paragraph (a)(i)(R) to read as follows:

242.202 Assignment of contract administration.

(a)(i) * * *