

**Authority:** 90 Stat. 2958, 16 U.S.C. 472a; 98 Stat. 2213, 16 U.S.C. 618, 104 Stat. 714–726, 16 U.S.C. 620–620j, unless otherwise noted.

■ 2. Amend § 223.85 by revising paragraph (b) and adding paragraph (c) to read as follows:

**§ 223.85 Noncompetitive sale of timber.**

\* \* \* \* \*

(b) Extraordinary conditions, as provided for in 16 U.S.C. 472a(d), are defined to include the potential harm to natural resources, including fish and wildlife, and related circumstances arising as a result of the award or release of timber sale contracts pursuant to section 2001(k) of Public Law 104–19 (109 Stat. 246). Notwithstanding the provisions of paragraph (a) of this section or any other regulation in this part, for timber sale contracts that have been or will be awarded or released pursuant to section 2001(k) of Public Law 104–19 (109 Stat. 246), the Secretary of Agriculture may allow forest officers to, without advertisement, modify those timber sale contracts by substituting timber from outside the sale area specified in the contract for timber within the timber sale contract area.

(c) Extraordinary conditions, as provided for in 16 U.S.C. 472a(d), includes those conditions under which contracts for the sale or exchange of timber or other forest products must be suspended, modified, or terminated under the terms of such contracts to prevent environmental degradation or resource damage, or as the result of administrative appeals, litigation, court orders, or catastrophic events. Notwithstanding the provisions of paragraph (a) of this section or any other regulation in this part, when such extraordinary conditions exist on sales not addressed in paragraph (b) of this section, the Secretary of Agriculture may allow forest officers to, without advertisement, modify those contracts by substituting timber or other forest products from outside the contract area specified in the contract for timber or forest products within the area specified in the contract. When such extraordinary conditions exist, the Forest Service and the purchaser shall make good faith efforts to identify replacement timber or forest products of similar volume, quality, value, access, and topography. When replacement timber or forest products agreeable to both parties is identified, the contract will be modified to reflect the changes associated with the substitution, including a rate redetermination. Concurrently, both parties will sign an agreement waiving any future claims for damages associated with the deleted timber or forest products, except those

specifically provided for under the contract up to the time of the modification. If the Forest Service and the purchaser cannot reach agreement on satisfactory replacement timber or forest products, or the proper value of such material, either party may opt to end the search. Replacement timber or forest products must come from the same national forest as the original contract, and must meet agency requirements for compliance with applicable laws and regulations. Replacement timber or forest products must also come from an area included in an approved National Environmental Policy Act decision in which the appeals process has been exhausted. The value of replacement timber or forest products may not exceed the value of the material it is replacing by more than 10% or \$10,000, whichever is less as determined by standard Forest Service appraisal methods.

Dated: June 7, 2006.

**David P. Tenny,**

*Deputy Under Secretary, Natural Resources and Environment.*

[FR Doc. E6–9424 Filed 6–15–06; 8:45 am]

**BILLING CODE 3410–11–P**

## DEPARTMENT OF DEFENSE

### Defense Acquisition Regulations System

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

RIN 0750–AF25

#### Defense Federal Acquisition Regulation Supplement; Contractor Personnel Authorized to Accompany U.S. Armed Forces (DFARS Case 2005–D013)

**AGENCY:** Defense Acquisition Regulations System, 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 DoD policy regarding contractor personnel authorized to accompany U.S. Armed Forces deployed outside the United States. The rule addresses the status of contractor personnel as civilians accompanying the U.S. Armed Forces and the responsibilities of the combatant commander regarding the protection of contractor personnel.

**DATES:** *Effective date:* June 16, 2006.

*Comment date:* Comments on the interim rule should be submitted to the

address shown below on or before August 15, 2006, to be considered in the formation of the final rule.

**ADDRESSES:** You may submit comments, identified by DFARS Case 2005–D013, using any of the following methods:

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

○ E-mail: [dfars@osd.mil](mailto:dfars@osd.mil). Include DFARS Case 2005–D013 in the subject line of the message.

○ Fax: (703) 602–0350.

○ Mail: Defense Acquisition Regulations System, Attn: Ms. Amy Williams, OUSD(AT&L) DPAP (DARS), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062.

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

Comments received generally will be posted without change to <http://www.regulations.gov>, including any personal information provided.

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

#### **SUPPLEMENTARY INFORMATION:**

##### **A. Background**

This interim rule revises DFARS Subpart 225.74 and the clause at DFARS 252.225–7040 to implement the policy in DoD Instruction 3020.41, Contractor Personnel Authorized to Accompany the U.S. Armed Forces, dated October 3, 2005. DoD Instruction 3020.41 is available via the Internet at <http://www.dtic.mil/whs/directives/corres/html/302041.htm>.

The DFARS changes address the following areas:

##### *1. Contractor participation in hostilities*

Prior to this interim rule, paragraph (b) of the clause at DFARS 252.225–7040 prohibited contractor personnel from using force or otherwise directly participating in acts likely to cause actual harm to enemy armed forces. The interim rule revises the clause to provide for contractor personnel other than private security contractor personnel to use deadly force against enemy armed forces only in self-defense. Private security contractor personnel are also authorized to use deadly force when necessary to execute their security mission to protect assets/persons, consistent with the mission statement contained in their contract. It is the responsibility of the combatant commander to ensure that private security contract mission statements do not authorize the performance of any inherently Governmental military functions, such as preemptive attacks,

or any other types of attacks. Otherwise, civilians who accompany the U.S. Armed Forces lose their law of war protection from direct attack if and for such time as they take a direct part in hostilities.

## 2. Government support

Prior to this interim rule, paragraph (c) of the clause at 252.225-7040 required the combatant commander to develop a security plan for protection of contractor personnel through military means unless the terms of the contract placed the responsibility with another party. In accordance with DoD Instruction 3020.41, paragraph 6.3.4., this interim rule revises the clause to limit the requirement for the combatant commander to develop such a security plan to those locations where there is not sufficient or legitimate civil authority and the combatant commander decides that it is in the interests of the Government to provide security.

Paragraph (c)(3) of the clause at 252.225-7040 requires the contractor to provide support for its personnel, except as otherwise specified in the contract. This interim rule adds text at 225.7402-3(b) to state that the Government will provide logistical or security support only when the appropriate agency official, in accordance with agency guidance, determines that Government provision of such support is needed to ensure continuation of essential contractor services and that the contractor cannot obtain adequate support from other sources. This interim rule also adds text at 225.7402-3(c)(4) to require that the contract specify whether the support is to be provided on a reimbursable basis, citing the authority for the reimbursement.

## 3. Authorized to accompany the U.S. Armed Forces

The phrase "supporting a force" is replaced with "authorized to accompany U.S. Armed Forces" throughout the rule.

## 4. Other military operations

The scope of the DFARS policy is changed, from "other military operations or exercises designated by the combatant commander," to "other military operations" and "military exercises designated by the combatant commander." A definition of "other military operations" is added to paragraph (a) of the clause at 252.225-7040.

## 5. Not active duty

Paragraph (b)(4) is added to the clause at 252.225-7040 to clarify that service performed by contractor personnel subject to the clause is not active duty or service under 38 U.S.C. 106.

## 6. Letter of Authorization and Common Access Card

Paragraph (c)(4) is added to the clause at 252.225-7040 to address requirements for contractor personnel to have a letter of authorization, for consistency with the policy at 225.7402-3(d). Also, text has been added to paragraph (e)(1)(iii) of the clause to address requirements for Common Access Cards issued to deploying personnel to contain the access permissions allowed by the letter of authorization.

## 7. Training

Paragraphs (e)(1)(v) and (vi) are added to the clause at 252.225-7040 to address additional pre-deployment training requirements relating to personal security and isolated personnel.

## 8. Military Extraterritorial Jurisdiction Act and other applicable statutes

Paragraph (e)(2) is added to the clause at 252.225-7040 to address the requirement for the contractor to notify its personnel that—

- The Military Extraterritorial Jurisdiction Act (18 U.S.C. 3621, *et seq.*) and some other statutes may apply to contractor personnel who commit offenses outside the United States; and
- When there is a formal declaration of war by Congress, contractor personnel authorized to accompany U.S. Armed Forces may be subject to prosecution under the Uniform Code of Military Justice.

## 9. Deployment centers

Paragraph (f)(1) of the clause at 252.225-7040 is amended to clarify that the deployment center must ensure that all deployment requirements are met.

## 10. Personnel data list

Paragraph (g)(1) of the clause at 252.225-7040 is revised to clarify requirements for the contractor to establish and maintain a personnel data list.

## 11. Military clothing and protective equipment

Paragraph (i) of the clause at 252.225-7040 is amended to clarify requirements relating to military clothing and protective equipment.

## 12. Weapons

Paragraph (j) of the clause at 252.225-7040 is revised to clarify requirements relating to situations where contractor personnel are authorized to carry weapons. A statement has also been added to clarify that the liability for use of any weapon by contractor personnel rests solely with the contractor and the contractor employee using such weapon.

## 13. Personnel recovery

Paragraph (n) of the clause at 252.225-7040 is amended to include additional terms ("isolated" and "detained") to cover all situations in which an employee might need to be recovered.

## 14. Changes

Paragraph (p) of the clause at 252.225-7040 is amended to include "place of performance" as a condition that is subject to change, in addition to those authorized by the Changes clause. Although paragraph (c) of the clause already addresses site changes, the term "place of performance" has a broader applicability, since the term "site" is normally associated with construction contracts.

This rule was subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

## B. Regulatory Flexibility Act

This rule is not expected 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 application of the rule is limited to those contracts that involve contractor personnel authorized to accompany U.S. Armed Forces deployed 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 2005-D013.

## 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.* Although the contract clause requires contractors to maintain certain information regarding their personnel, DoD believes

that this requirement is usual and customary and does not exceed what a contractor would maintain in the normal course of business.

#### **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 DoD Instruction 3020.41, Contractor Personnel Authorized to Accompany the U.S. Armed Forces, dated October 3, 2005. Existing DFARS requirements prohibit contractor personnel from using force or otherwise directly participating in acts likely to cause actual harm to enemy armed forces. In accordance with DoD Instruction 3020.41, this interim rule revises the DFARS to provide for contractor personnel to use deadly force against enemy armed forces in self-defense or in the performance of a contract for private security services. 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 212, 225, and 252**

Government procurement.

#### **Michele P. Peterson,**

*Editor, Defense Acquisition Regulations System.*

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

■ 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.

#### **PART 212—ACQUISITION OF COMMERCIAL ITEMS**

■ 2. Section 212.301 is amended by revising paragraph (f)(vii) 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 Authorized to Accompany U.S. Armed Forces Deployed Outside the United States, as prescribed in 225.7402–4.

\* \* \* \* \*

#### **PART 225—FOREIGN ACQUISITION**

■ 3. Sections 225.7402 through 225.7402–4 are revised to read as follows:

##### **225.7402 Contractor personnel authorized to accompany U.S. Armed Forces deployed outside the United States.**

###### **225.7402–1 Scope.**

This section applies to contracts that involve contractor personnel authorized to accompany U.S. Armed Forces deployed outside the United States in—

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

###### **225.7402–2 Definitions.**

*Combatant commander, other military operations, and theater of operations*, as used in this section, have the meaning given in the clause at 252.225–7040, Contractor Personnel Authorized to Accompany U.S. Armed Forces 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 agency shall provide logistical or security support only when the appropriate agency official, in accordance with agency guidance, determines in coordination with the combatant commander that—

(1) Government provision of such support is needed to ensure continuation of essential contractor services; and

(2) The contractor cannot obtain adequate support from other sources.

(c) 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 Authorized to Accompany U.S. Armed Forces 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 any other Government support to be provided, and whether this support is provided on a reimbursable basis, citing the authority for the reimbursement.

(d) 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(d).

###### **225.7402–4 Contract clauses.**

(a) Use the clause at 252.225–7040, Contractor Personnel Authorized to Accompany U.S. Armed Forces Deployed Outside the United States, in solicitations and contracts when contract performance requires that contractor personnel accompany U.S. Armed Forces deployed outside the United States in—

- (1) Contingency operations;
- (2) Humanitarian or peacekeeping operations;
- (3) Other military operations; or
- (4) Military 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).

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

■ 4. Section 252.225–7040 is revised to read as follows:

##### **252.225–7040 Contractor Personnel Authorized to Accompany U.S. Armed Forces Deployed Outside the United States.**

As prescribed in 225.7402–4(a), use the following clause: Contractor Personnel Authorized to Accompany U.S. Armed Forces Deployed Outside The United States (JUN 2006)

(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.

*Other military operations* means a range of military force responses that can be projected to accomplish assigned tasks. Such operations may include one or a combination of the following: Civic action, humanitarian assistance, civil affairs, and other military activities to develop positive relationships with other countries; confidence building and other measures to reduce military tensions; military presence; activities to convey messages to adversaries; military

deceptions and psychological operations; quarantines, blockades, and harassment operations; raids; intervention operations; armed conflict involving air, land, maritime, and strategic warfare operations; support for law enforcement authorities to counter international criminal activities (terrorism, narcotics trafficking, slavery, and piracy); support for law enforcement authorities to suppress domestic rebellion; and support for insurgency, counterinsurgency, and civil war in foreign countries.

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

(b) *General.*

(1) This clause applies when Contractor personnel are authorized to accompany U.S. Armed Forces deployed outside the United States in—

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

(2) Contract performance in support of U.S. Armed Forces deployed outside the United States 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 civilians accompanying the U.S. Armed Forces.

(i) Except as provided in paragraph (b)(3)(ii) of this clause, Contractor personnel are not authorized to use deadly force against enemy armed forces other than in self-defense.

(ii) Private security Contractor personnel are authorized to use deadly force only when necessary to execute their security mission to protect assets/persons, consistent with the mission statement contained in their contract.

(iii) Civilians who accompany the U.S. Armed Forces lose their law of war protection from direct attack if and for such time as they take a direct part in hostilities.

(4) Service performed by Contractor personnel subject to this clause is not active duty or service under 38 U.S.C. 106 note.

(c) *Support.* (1)(i) The Combatant Commander will develop a security plan for protection of Contractor personnel in locations where there is not sufficient or legitimate civil authority, when the Combatant Commander decides it is in the interests of the Government to provide security because—

(A) The Contractor cannot obtain effective security services;

(B) Effective security services are unavailable at a reasonable cost; or

(C) Threat conditions necessitate security through military means.

(ii) The Contracting Officer shall include in the contract the level of protection to be provided to Contractor personnel.

(iii) In appropriate cases, the Combatant Commander may provide security through military means, commensurate with the level of security provided DoD civilians.

(2)(i) Generally, all Contractor personnel authorized to accompany the U.S. Armed Forces in the theater of operations may be provided 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.

(4) Contractor personnel must have a letter of authorization issued by the Contracting Officer in order to process through a deployment center or to travel to, from, or within the theater of operations. The letter of authorization also will identify any additional authorizations, privileges, or Government support that Contractor personnel are entitled to under this contract.

(d) *Compliance with laws and regulations.* The Contractor shall comply with, and shall ensure that its personnel authorized to accompany U.S. Armed Forces 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, including those relating to force protection, security, health, safety, or relations and interaction with local nationals.

(e) *Pre-deployment requirements.* (1) The Contractor shall ensure that the following requirements are met prior to deploying personnel in support of U.S. Armed Forces. Specific requirements for each category may be specified in the statement of work or elsewhere in the contract.

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

(ii) 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.

(iii) 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, or other appropriate DoD identity credential, from the deployment center. Any Common Access Card issued to deploying personnel shall contain the access permissions allowed by the letter of authorization issued in accordance with paragraph (c)(4) of this clause.

(iv) Special area, 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.

(v) All personnel have received personal security training. At a minimum, the training shall—

(A) Cover safety and security issues facing employees overseas;

(B) Identify safety and security contingency planning activities; and

(C) Identify ways to utilize safety and security personnel and other resources appropriately.

(vi) All personnel have received isolated personnel training, if specified in the contract.

(2) The Contractor shall notify all personnel who are not a host country national, or who are not ordinarily resident in the host country, that—

(i) Such employees, and dependents residing with such employees, who engage in conduct outside the United States that would constitute an offense punishable by imprisonment for more

than one year if the conduct had been engaged in within the special maritime and territorial jurisdiction of the United States, may potentially be subject to the criminal jurisdiction of the United States in accordance with the Military Extraterritorial Jurisdiction Act of 2000 (18 U.S.C. 3621, et seq.);

(ii) Pursuant to the War Crimes Act (18 U.S.C. 2441), Federal criminal jurisdiction also extends to conduct that is determined to constitute a violation of the law of war when committed by a civilian national of the United States;

(iii) Other laws may provide for prosecution of U.S. nationals who commit offenses on the premises of U.S. diplomatic, consular, military or other U.S. Government missions outside the United States (18 U.S.C. 7(9)); and

(iv) When there is a formal declaration of war by Congress, Contractor personnel authorized to accompany U.S. Armed Forces may be subject to prosecution under the Uniform Code of Military Justice.

(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, including the requirements specified in paragraph (e)(1) of this clause;

(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) In accordance with DoD Instruction 3020.41, Contractor Personnel Authorized to Accompany the U.S. Armed Forces, 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. Armed Forces as specified in paragraph (b)(1) of this clause. The list shall include each individual's general location in the theater of operations. 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 for 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 are prohibited from wearing military clothing unless specifically authorized in writing by the Combatant Commander. If authorized to wear military clothing, Contractor personnel must—

(i) Wear distinctive patches, arm bands, nametags, or headgear, in order to be distinguishable from military personnel, consistent with force protection measures; and

(ii) Carry the written authorization with them at all times.

(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 equipment.

(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, in accordance with DoD Instruction 3020.41, paragraph 6.3.4.1 or, if the contract is for security services, paragraph 6.3.5.3. The Combatant Commander will determine whether to authorize in-theater Contractor personnel to carry weapons and what weapons and ammunition will be allowed.

(2) If the Contracting Officer, subject to the approval of the Combatant Commander, authorizes the carrying of weapons—

(i) The Contracting Officer may authorize the Contractor to issue Contractor-owned weapons and ammunition to specified employees; or

(ii) The [Contracting Officer to specify the appropriate individual, e.g., Contracting Officer's Representative, Regional Security Officer] may issue Government-furnished weapons and ammunition to the Contractor for issuance to specified Contractor employees.

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

(i) Are adequately trained to carry and use them—

(A) Safely;

(B) With full understanding of, and adherence to, the rules of the use of force issued by the Combatant Commander; and

(C) In compliance with applicable agency policies, agreements, rules, regulations, and other applicable law;

(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.

(4) Whether or not weapons are Government-furnished, all liability for the use of any weapon by Contractor personnel rests solely with the Contractor and the Contractor employee using such weapon.

(5) 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 isolated, missing, detained, captured, or abducted.

(2) In the case of isolated, missing, detained, 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 accompanying the U.S. Armed 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 the place of performance or 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 when subcontractor personnel are authorized to accompany U.S. Armed Forces deployed outside the United States in—

- (1) Contingency operations;
- (2) Humanitarian or peacekeeping operations;
- (3) Other military operations; or
- (4) Military exercises designated by the Combatant Commander.

(End of clause)

[FR Doc. E6-9499 Filed 6-15-06; 8:45 am]

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## DEPARTMENT OF DEFENSE

### Defense Acquisition Regulations System

[DFARS Case 2004-D031]

#### 48 CFR Part 219

### Defense Federal Acquisition Regulation Supplement; Sole Source 8(a) Awards to Small Business Concerns Owned by Native Hawaiian Organizations

**AGENCY:** Defense Acquisition Regulations System, Department of Defense (DoD).

**ACTION:** Final rule.

**SUMMARY:** DoD has adopted as final, with changes, an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement DoD appropriations act provisions permitting the award of sole source contracts to small business concerns owned by Native Hawaiian Organizations. The rule applies to manufacturing contracts exceeding \$5,000,000 and non-manufacturing contracts exceeding \$3,000,000 that are awarded under the Small Business Administration's 8(a) Program.

**DATES:** *Effective Date:* June 16, 2006.

**FOR FURTHER INFORMATION CONTACT:** Ms. Deborah Tronic, Defense Acquisition Regulations System, OUSD(AT&L)DPAP(DARS), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301-3062. Telephone (703) 602-0289; facsimile (703) 602-0350. Please cite DFARS Case 2004-D031.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

DoD published an interim rule at 70 FR 43072 on July 26, 2005, to implement Section 8021 of the DoD Appropriations Act for Fiscal Year 2004 (Pub. L. 108-87) and Section 8021 of the DoD Appropriations Act for Fiscal Year 2005 (Pub. L. 108-287). In addition to providing funding for the DoD Indian Incentive Program, these statutes required that small business concerns owned by Native Hawaiian Organizations be provided the same status as Indian tribes and Alaska Native Corporations with regard to sole source contract awards under the Small Business Administration's 8(a) Program. The interim rule amended DFARS 219.805-1 to reflect this requirement.

Three sources submitted comments on the interim rule. All three supported the rule and recommended that the rule be made permanent. DoD has adopted the interim rule as a final rule, with additional changes to reflect the provisions of Section 8020 of the DoD Appropriations Act for Fiscal Year 2006 (Pub. L. 109-148). Section 8020 established a permanent requirement for provision of Native Hawaiian Organizations with the same status as Indian tribes and Alaska Native Corporations under the 8(a) 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

DoD has prepared a final regulatory flexibility analysis consistent with 5 U.S.C. 604. A copy of the analysis may be obtained from the point of contact specified herein. The analysis is summarized as follows:

This rule amends the DFARS to implement DoD appropriations act provisions permitting the award of sole source contracts to small business concerns owned by Native Hawaiian Organizations. The rule applies to manufacturing contracts exceeding \$5,000,000 and non-manufacturing contracts exceeding \$3,000,000 that are awarded under the Small Business Administration's 8(a) Program. The objective of the rule is to provide small business concerns owned by Native Hawaiian Organizations the same status that is provided to Indian tribes and Alaska Native Corporations under the 8(a) Program. Awards to these entities are exempt from the competition requirements that otherwise would apply to award of manufacturing contracts exceeding \$5,000,000 and non-manufacturing contracts exceeding \$3,000,000 under the Program. The rule will benefit small business concerns owned by Native Hawaiian Organizations, by permitting sole source contract awards to these concerns.

##### 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.*