DEPARTMENT OF DEFENSE

Defense Acquisition Regulation System

48 CFR Parts 237 and 252

[DFARS Case 2005–D007]

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

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 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 8, 2006.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, Defense Acquisition Regulations System, OUSD (AT&L) DPAP (DARS), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0328; facsimile (703) 602–0350. Please cite DFARS Case 2005–D007.

SUPPLEMENTARY INFORMATION:

A. Background

DoD published an interim rule at 70 FR 52032 on September 1, 2005, 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 DoD contractor personnel interacting with detainees receive training regarding the international obligations and laws of the United States applicable to the detention of personnel. One industry association submitted comments on the interim rule. A discussion of the comments is provided below.

1. Comment: Definitions

The respondent recommended addition of a definition of the term ''personnel interacting with detainees'' in section 237.171–2, consistent with the definition in the contract clause.

DoD Response. Section 237.171–2 of the final rule includes a definition of ''personnel interacting with detainees'' as well as a definition of ''combatant commander,'' since that term is also used within 237.171.

2. Comment: Policy

a. *Clarification of the Role of Combatant Commander.* The respondent recommended clarification of four separate and distinct responsibilities of the combatant commander: Develop the training curriculum; determine and provide an appropriate place for the training; conduct the training; and issue a training receipt. The respondent provided a proposed rewrite of 237.171–3(a) and (b) to address these responsibilities.

DoD Response. DoD has revised 237.171–3(a) and (b) to clarify responsibilities as follows:

• Paragraph (a) introductory text—DoD has replaced the phrase ''individuals detained by DoD on behalf of the U.S. Government'' with the word ''detainees'' for consistency with the terminology used throughout the rule. DoD has not adopted the respondent's recommendation to further amend 237.171–3 to more specifically describe the contracts that are subject to the rule's requirements, since the clause prescription at 237.171–4 adequately describes the criteria for application of the policy.

• Paragraph (a)(1)—DoD has clarified that the training will be provided by the Government. DoD has not adopted the respondent's recommendation to state that the training will be conducted by U.S. Government personnel, since the training might be conducted by a Government contractor.

• Paragraph (a)(2)—DoD has revised the requirement for contractor personnel to ''Acknowledge receipt of the training'' to a requirement for contractor personnel to ''Provide a copy of the training receipt document to the contractor.'' Although the law requires that the Commander of detention facilities provide training and documented receipt of receiving training, it also requires that each contract in which contractor personnel will interact with detainees include a requirement that such contractor personnel have received training, and documented acknowledgement of receiving training. Taken alone, this second requirement might be interpreted to mean that the contractor personnel must document acknowledgement of receiving training. It is more reasonable, in view of the first requirement, to interpret the law to mean that the contractor personnel must receive the documented acknowledgement of receiving training from the training provider. The receipt generated may not require any acknowledgement as a condition for issuance. The receipt itself represents an acknowledgement that the training was received. Further, it may not be U.S. Government personnel that issue the receipt. For example, the receipt might be automatically issued upon completion of a computer-hosted training module.

• Paragraph (b)—DoD has revised paragraph (b) to clarify that the combatant commander will ''arrange for'' the training (rather than ''provide'' the training). The combatant commander most likely will not be the specific person performing the training. DoD considers it unnecessary for the DFARS to specify that the training is to be determined appropriate by the combatant commander or that the combatant commander determines the geographic location of the training. This is implied in the concept of Government-provided training that is arranged by the combatant commander. Furthermore, location may not be an issue, as in the case of computer-based training.

b. *PGI Guidance/DoD Policy Memorandum.* The respondent stated that the interim rule directed the reader to PGI 237.171–3(c) for additional guidance, but does not actually provide guidance, only a copy of the memorandum issued by the Secretary of Defense. The respondent recommended inclusion of specific relevant guidance or deletion of the reference.

DoD Response. The reference at DFARS 237.171–3(c) has been deleted. However, the policy memorandum has been retained in PGI for informational purposes.

c. *Standardized Training.* The respondent recommended that the final rule, PGI, or additional departmental guidance provide standardized training, based on the belief that there is a core of training that should be the same everywhere, with the addition of appropriate training to accommodate variations in religious, social, and national customs applicable to a particular facility or detainee.

DoD Response. It is outside the scope of authority of the DFARS and PGI to require a common core of training. The Secretary of Defense has assigned the responsibility for development of training to the combatant commanders. Furthermore, it may be impracticable to require combatant commanders to have identical, standardized training. Each combatant commander should have the prerogative and flexibility to decide what training is appropriate for the command.

d. *Standardized Format for Training Certificates.* The respondent recommended that the final rule or PGI provide a standardized format for the training certificate and a standard form for acknowledgement (not a certification).

DoD Response. DoD does not agree that a standard training certificate is necessary, since preparation of a certificate should be a relatively simple task to be accomplished in conjunction with development of the appropriate training. Neither the interim nor the final DFARS rule includes a requirement for certification by contractor employees, and the final rule excludes the interim rule requirement for acknowledgement by contractor personnel. Contractor personnel need only provide the training receipt to the contractor.

e. *Transferability of Training.* The respondent recommended that the final rule provide policy guidance that would permit a geographic combatant commander to waive the training requirement for any contractor employee who has already received appropriate training within the past year, including policy addressing the transferability of training, even if at a different facility within a single combatant commander's area of responsibility or when there may be a different combatant commander. This is intended to facilitate cross-utilization of contractor employees.

DoD Response. If the contractor employee has documented receipt of training within the past year, it is at the discretion of the combatant commander whether this training is adequate for the particular area and facility to which the employee has transferred. The transferability of training could vary significantly, depending on individual circumstances.

f. *Allowability of Costs.* The respondent recommended that the final rule address the policy that contractor and employee expenses incurred in making the employee available for and taking the Government-provided training is an allowable cost on cost-reimbursement contracts.

DoD Response. It is unnecessary to specifically identify these contractor training costs as allowable. FAR Part 31 adequately sets forth the cost principles on allowability of costs.

3. Contract Clause

a. *Responsibilities of Combatant Commander.* The respondent had the same concerns regarding clarification of the responsibilities of the combatant commander that have been addressed in the discussion of Comment 2.a. above.

b. *Arranging Training.* The respondent was concerned that the ability to execute this contractual obligation is outside the control of the contractor, and recommended that the contracting officer be required to arrange the training.

DoD Response. The combatant commander will arrange for the training to be provided, and the contractor must make its employees available to receive the training. It would be impractical for the contracting officer to become involved in scheduling the required training. For efficiency, this responsibility should be shared by the combatant commander organization and the contractor.

c. *Acknowledging Training.* The respondent considered the requirement for the contractor to arrange for its personnel to acknowledge receipt of the training to be unclear and confusing, was concerned that the text at DFARS 237.171–3 imposes the acknowledgement requirement only on the employee, and recommended that DoD rely on company practices to get the information to the contractor.

DoD Response. DoD has removed the acknowledgment requirement from the final rule and has replaced it with a requirement for contractor retention of the training receipt for a specified period. It is the responsibility of the contractor to impose the requirement on its employees and to implement procedures for ensuring that training receipts are provided by employees.

d. *Record Retention.* The respondent did not object to a record retention requirement, but considered that the requirement should be imposed only on the contractor, not on the contractor employee. In addition, the respondent recommended an alternative record retention period of 3 years after all work on the contract has been performed.

DoD Response. DoD has included the recommended changes in the final rule.

e. *Flowdown.* The respondent had concerns about requirements for flowdown of the clause to subcontracts, and the responsibility of the prime contractor versus the responsibility of the subcontractor.

DoD Response. The language in paragraph (c) of the contract clause is the standard language used in FAR/DFARS clauses requiring flowdown to subcontractors. Paragraph (c) requires the contractor to include the ''substance'' of the clause in its subcontracts. This wording allows the contractor to adjust the terminology appropriately to reflect the relationship between the contractor and its subcontractor. The clause does not require that subcontractors flow the paperwork up to the prime contractor.

f. *Waiver Authority.* The respondent recommended a policy that provides temporary waiver authority to the contracting officer or the geographic combatant commander if training cannot be developed in a timely manner in advance of contractor personnel interacting with detainees, in order to meet contract requirements.

DoD Response. The law does not require advance training, but it should be strongly encouraged. Therefore, DoD has amended paragraph (b)(2)(i) of the contract clause to require training ''as soon as possible if, for compelling reasons, the Contracting Officer authorizes interaction with detainees prior to receipt of such training.''

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 the Government will provide the training required by the rule.

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 Parts 237 and 252

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

■ Accordingly, the interim rule amending 48 CFR Parts 237 and 252, which was published at 70 FR 52032 on September 1, 2005, is adopted as a final rule with the following changes:

■ 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 237.171–2 and 237.171–3 are revised to read as follows:

237.171–2 Definition.

Combatant commander, *detainee*, and *personnel interacting with detainees*, as used in this section, are 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 detainees shall include a requirement that such contractor personnel—

(1) Receive Government-provided training regarding the international obligations and laws of the United States applicable to the detention of personnel, including the Geneva Conventions; and

(2) Provide a copy of the training receipt document to the contractor.

(b) The combatant commander responsible for the area where the detention or interrogation facility is located will arrange for the training and a training receipt document to be provided 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).

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.212–7001 [Amended]

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

■ a. By revising the clause date to read ''(SEP 2006)''; and

■ b. In paragraphs (b)(18) and (c)(2) by removing ''(SEP 2005)'' and adding in its place ''(SEP 2006)''.

■ 4. Section 252.237–7019 is amended by revising the clause date and paragraphs (b) and (c) 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 (SEP 2006)

* * * * *

(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 arrange for training to be provided to 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 arrange for a training receipt document to be provided 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—

(1) Prior to interacting with detainees, or as soon as possible if, for compelling reasons, the Contracting Officer authorizes interaction with detainees prior to receipt of such training; and

(2) Annually thereafter; and

(B) Provide a copy of the training receipt document specified in paragraph (b)(1) of this clause to the Contractor for retention.

(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 shall retain a copy of the training receipt document(s) provided in accordance with paragraphs (b)(1) and (2) of this clause until the contract is closed, or 3 years after all work required by the contract has been completed and accepted by the Government, whichever is sooner.

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

* * * * *

[FR Doc. E6–14897 Filed 9–7–06; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 060314069–6069–01; I.D. 083106A]

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Atlantic Sea Scallop Fishery; Closure of the Closed Area II Scallop Access Area to Scallop Vessels

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA).

ACTION: Temporary rule; closure.

SUMMARY: NMFS announces the closure of the Closed Area II Scallop Access Area (CAII) to scallop vessels until February 28, 2007. This closure, effective 0001 hours on September 6, 2006, is based on a determination by the Regional Administrator, Northeast Region, NMFS (RA), that scallop vessels are projected to catch the yellowtail flounder (YT) bycatch total allowable catch (TAC) for CAII by September 6, 2006. Upon closure, scallop vessels are prohibited from being in CAII until February 28, 2007. This action is being taken to prevent the scallop fleet from exceeding the YT TAC allocated to CAII during the 2006 fishing year in accordance with the regulations implemented under the Atlantic Sea Scallop Fishery Management Plan (FMP), Northeast (NE) Multispecies FMP and the Magnuson-Stevens Fishery Conservation and Management Act.

DATES: The closure of CAII to all scallop vessels is effective 0001 hr local time, September 6, 2006, until February 28, 2007.

FOR FURTHER INFORMATION CONTACT: Ryan Silva, Fishery Management Specialist, (978) 281–9326, fax (978) 281–9135.

SUPPLEMENTARY INFORMATION: Commercial scallop vessels fishing in scallop access areas are allocated 9.8 percent of the annual YT TACs established in the Northeast (NE) Multispecies FMP. Given current fishing effort by scallop vessels in CAII, the RA has made a determination that the CAII YT TAC is projected to be taken by September 6, 2006. Pursuant to 50 CFR 648.60(a)(5)(ii)(C) and 648.85(c)(3)(ii), this **Federal Register** notice notifies scallop vessel owners that, effective 0001 hours on September 6, 2006, scallop vessels are prohibited from being in CAII until February 28, 2007.

If a vessel with a limited access scallop permit has an unused trip(s) into CAII closed by the YT TAC, it will be allocated 5.4 additional open areas DAS for each unused trip. If a vessel has an unused compensation trip(s), it will be allocated additional open area DAS based on estimated catch rates for CAII. The conversion rate from access area DAS to open area DAS for CAII is 0.45 per open area DAS. An access area DAS is equal to 682 kg (1,500 lb). A separate letter will be sent to notify vessel owners of their allocations for unused complete and/or compensation trips in CAII.

Classification

This action is required by 50 CFR part 648 and is exempt from review under Executive Order 12866.

This action closes CAII to scallop vessels until February 28, 2007. The regulations at 50 CFR 648.60(a)(5)(ii)(C) and 648.85(c)(3)(ii) require such action to ensure that scallop vessels do not