

countries bordering the Arabian Gulf, see 236.273(a).

(b) For restriction on acquisition of steel for use in military construction projects, see 236.274.

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

■ 3. Section 236.274 is added to read as follows:

**236.274 Restriction on acquisition of steel for use in military construction projects.**

In accordance with section 108 of the Military Construction and Veterans Affairs Appropriations Act, 2009 (Pub. L. 110-329, Division E), do not acquire, or allow a contractor to acquire, steel for any construction project or activity for which American steel producers, fabricators, or manufacturers have been denied the opportunity to compete for such acquisition of steel.

■ 4. Section 236.570 is amended as follows:

- a. By redesignating paragraph (d) as paragraph (e); and
- b. By adding a new paragraph (d) to read as follows:

**236.570 Additional provisions and clauses.**

\* \* \* \* \*

(d) Use the clause at 252.236-7013, Requirement for Competition Opportunity for American Steel Producers, Fabricators, and Manufacturers, in solicitations and contracts that—

(1) Use funds appropriated by Title I of the Military Construction and Veterans Affairs Appropriations Act, 2009 (Pub. L. 110-329, Division E); and

(2) May require the acquisition of steel as a construction material.

\* \* \* \* \*

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

■ 5. Section 252.236-7013 is added to read as follows:

**252.236-7013 Requirement for competition opportunity for american steel producers, fabricators, and manufacturers.**

As prescribed in 236.570(d), use the following clause:

**REQUIREMENT FOR COMPETITION OPPORTUNITY FOR AMERICAN STEEL PRODUCERS, FABRICATORS, AND MANUFACTURERS (JAN 2009)**

(a) *Definition.* Construction material, as used in this clause, means an article, material, or supply brought to the construction site by the Contractor or a subcontractor for incorporation into the building or work.

(b) The Contractor shall provide American steel producers, fabricators, and manufacturers the opportunity to compete when acquiring steel as a construction material (e.g., steel beams, rods, cables, plates).

(c) The Contractor shall insert the substance of this clause, including this paragraph (c), in any subcontract that involves the acquisition of steel as a construction material.

(End of clause)

■ 6. Section 252.244-7000 is amended as follows:

- a. By revising the clause date;
- b. By redesignating paragraphs (b) through (d) as paragraphs (c) through (e) respectively; and
- c. By adding a new paragraph (b) to read as follows:

**252.244-7000 Subcontracts for commercial items and commercial components (DOD contracts).**

\* \* \* \* \*

**SUBCONTRACTS FOR COMMERCIAL ITEMS AND COMMERCIAL COMPONENTS (DOD CONTRACTS) (JAN 2009)**

\* \* \* \* \*

(b) 252.236-7013 Requirement for Competition Opportunity for American Steel Producers, Fabricators, and Manufacturers (Pub. L. 110-329, Division E, Section 108).

\* \* \* \* \*

[FR Doc. E9-677 Filed 1-14-09; 8:45 am]

**BILLING CODE 5001-08-P**

**DEPARTMENT OF DEFENSE**

**Defense Acquisition Regulations System**

**48 CFR Parts 225 and 252**

**RIN 0750-AF82**

**Defense Federal Acquisition Regulation Supplement; DoD Law of War Program (DFARS Case 2006-D035)**

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

**ACTION:** Final rule.

**SUMMARY:** DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to address requirements for DoD contractors to institute effective programs to prevent violations of the law of war by contractor personnel authorized to accompany U.S. Armed Forces deployed outside the United States.

**DATES:** *Effective Date:* January 15, 2009.

**FOR FURTHER INFORMATION CONTACT:** Ms. Angie Sawyer, Defense Acquisition Regulations System, OUSD (AT&L) DPAP (DARS), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301-3062. Telephone 703-602-8384; facsimile 703-602-7887. Please cite DFARS Case 2006-D035.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

This final rule amends the clause at DFARS 252.225-7040, Contractor Personnel Authorized To Accompany U.S. Armed Forces Deployed Outside the United States, to address requirements for DoD contractors to institute effective programs to prevent law of war violations by contractor personnel. The rule requires that deploying contractor personnel receive appropriate law of war training, and that contractor personnel report any violations of the law of war to the appropriate authorities. The DFARS rule is consistent with the policy in DoD Directive 2311.01E, DoD Law of War Program, dated May 9, 2006.

DoD published a proposed rule at 73 FR 1853 on January 10, 2008. Four sources submitted comments on the proposed rule. A discussion of the comments is provided below.

1. *Comment:* The limitation on the use of Web-based basic law of war training is overly restrictive (i.e., must be approved by the contracting officer). The training should be available at any time for completion via a Web-based source to prevent delays in meeting training requirements.

*DoD Response:* Deployed contractor personnel must process through a deployment center, in accordance with paragraph (f) of the clause at DFARS 252.225-7040. DoD has provided training materials to all the pre-deployment training centers as the primary method of meeting basic training requirements. Web-based training is intended to substitute for live pre-deployment training only when determined to be appropriate by the contracting officer.

2. *Comment:* To ensure the availability of advanced training when needed, advanced training should be handled as an in-processing matter and should be provided at an in-theater/in-country central processing center for newly arriving contractor personnel.

*DoD Response:* Advanced training could be provided at in-processing, as long as the Judge Advocates or other Government counsel are involved. The DFARS rule has been amended to provide additional flexibility in meeting advanced law of war training requirements. However, government

counsel must review advanced training content in all cases to ensure that it is commensurate with the duties and responsibilities of the personnel to be trained.

3. *Comment:* DoD should develop standard training content to ensure consistency and accuracy.

*DoD Response:* DoD has developed standard basic training for dissemination, as described in the response to comment 1 above. However, for advanced training, different missions require different emphasis, making complete standardization infeasible.

4. *Comment:* This rule will have cost impacts associated with implementation, especially if the contractor loses time while waiting for advanced law of war training. Contractors should not be held accountable for compliance with law of war training requirements until such time as DoD has its training materials deployed.

*DoD Response:* DoD has already deployed the basic training module to the military training centers, and online training is also available for use when deemed appropriate by the contracting officer. The DFARS rule has been amended to permit flexibility in meeting advanced law of war training requirements, provided the training content is coordinated with government counsel.

5. *Comment:* The Rules for the Use of Force (RUF) and the Uniform Code of Military Justice (UCMJ) should be addressed as part of law of war training.

*DoD Response:* RUF training is already required by the clause at DFARS 252.225–7040. The basic and advanced training on the law of war will complement this training by addressing law of war issues pertaining to the use of force. RUF training should be provided by the contractor in accordance with the cognizant Commander's RUF guidance. UCMJ criminal liability for law of war violations is included in the training program. However, the UCMJ applies to contractor employees, along with the Military Extraterritorial Jurisdiction Act, in a broader context than law of war violations. The contractor is responsible for ensuring that its employees are properly trained on all aspects of their criminal and civil liability.

6. *Comment:* The word "prevent" should be changed to the phrase "minimize the possibility of," in the context of requiring contractors to implement a program to prevent law of war violations.

*DoD Response:* The word "prevent" is consistent with both DoD Directive

2311.01E and treaty obligations under international law.

7. *Comment:* What metrics will be used to determine if a contractor has an effective training program to prevent law of war violations?

*DoD Response:* The goal is to prevent law of war violations. Contractors should adopt training, control measures, and reporting procedures to that end. Basic training is Government resourced. Advanced training will be provided as specified in the contract.

8. *Comment:* The rule will impose a mandatory requirement on contractor personnel to report violations directly to Commanders, bypassing other complaint channels. Such reporting by individuals should be optional.

*DoD Response:* Contractor reporting of law of war violations is required by DoD Directive 2311.01E. The clause at DFARS 252.225–7040 has been amended to permit contractor personnel to report violations to authorities other than the Combatant Commander.

9. *Comment:* The requirement for contractor personnel to report law of war violations will amount to unenforceable "good faith" reporting. Contractors instead should be required to submit a daily or weekly log of activity on any violations as a way to enforce reporting.

*DoD Response:* DoD does not agree with the recommended change. Creating a daily or weekly log would cause an unnecessary recordkeeping requirement for contractors.

10. *Comment:* Requiring reporting by individuals requires contractor personnel to make legal judgments about the conduct of other contractor personnel and about the credibility of information that they may not be equipped to make.

*DoD Response:* DoD does not agree that this requirement calls for contractor personnel to make legal judgments. The basic law of war training is designed to educate contractor personnel on the law of war and on how to recognize suspected law of war violations. The legal analysis and credibility determinations will be made by the Commander, with the advice of Counsel, when deciding to report the incident to higher headquarters. For purposes of the DFARS clause, contractor personnel must report all suspected law of war violations, not only those violations that may have been committed by contractor personnel.

11. *Comment:* DoD should establish an Office of Primary Responsibility to assist contractors with law of war issues.

*DoD Response:* DoD does not believe that establishing an Office of Primary Responsibility is necessary. Contractors should follow normal procedures by requesting any needed clarification from the contracting officer, who in turn can request assistance from a Judge Advocate or other Government counsel.

12. *Comment:* Paragraph (d) of the clause at 252.225–7040 should include a cross-reference to paragraph (a) of the clause, which defines the law of war.

*DoD Response:* The cross-reference is unnecessary. Paragraph (a) of the clause makes it clear that the definitions in that paragraph apply wherever the defined terms are used throughout the clause.

13. *Comment:* "Third country national laws" should be removed from 252.225–7040(d)(1)(i).

*DoD Response:* This change is outside the scope of this rule, which is focused on implementing law of war training in accordance with DoD Directive 2311.01E.

14. *Comment:* The Geneva and Hague Conventions should be specifically addressed in 252.225–7040(d)(1)(ii), as they are integral to the law of war.

*DoD Response:* This level of specificity should be and is addressed in basic law of war training and is not necessary for inclusion in the DFARS clause.

15. *Comment:* The rule should include a requirement for all contractors to be notified of the Geneva/Hague status and designation noted on the letters of agreement.

*DoD Response:* This requirement should be handled as part of in-processing procedures and is not necessary for inclusion in the DFARS.

16. *Comment:* At 252.225–7040(e)(1)(vii)(A), the phrase "all deploying personnel" should be replaced with "all contractors accompanying armed forces."

*DoD Response:* For consistency with DoD Directive 2311.01E and the rest of the clause, the phrase has been changed to "Contractor personnel authorized to accompany U.S. Armed Forces deployed outside the United States."

17. *Comment:* At 252.225–7040(h)(3), the phrase "installation to which they are assigned" should be changed to "installation where they reside," because contractors are not assigned to installations.

*DoD Response:* The phrase "installation to which they are assigned" has been excluded from the final rule.

18. *Comment:* "Applicable United States, host country and third country national laws" should be added to 252.225–7040(h)(3)(i).

*DoD Response:* This recommended change is outside the scope of this rule, which is focused on implementing law of war training in accordance with DoD Directive 2311.01E.

19. *Comment:* At 252.225–7040(h)(3)(ii), the phrase “military operations other than war” should be changed to “declared contingency operations” to reflect latest terminology.

*DoD Response:* The phrase has been revised to read “during any other military operations.”

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 requirement to institute an effective program to prevent law of war violations need not be a costly endeavor, and it can be tailored to the size of the company. Basic law of war training will be provided by the Government. Advanced law of war training requirements will be specified in the solicitation and contract to permit contractors to receive appropriate reimbursement of any training costs.

## 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 225 and 252

Government procurement.

### Michele P. Peterson,

*Editor, Defense Acquisition Regulations System.*

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

■ 1. The authority citation for 48 CFR parts 225 and 252 continues to read as follows:

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

## PART 225—FOREIGN ACQUISITION

### 225.7402–4 [Redesignated as 225.7402–5]

■ 2. Section 225.7402–4 is redesignated as 225.7402–5.

■ 3. A new section 225.7402–4 is added to read as follows:

### 225.7402–4 Law of war training.

(a) *Basic training.* Basic law of war training is required for all contractor personnel authorized to accompany U.S. Armed Forces deployed outside the United States. The basic training normally will be provided through a military-run training center. The contracting officer may authorize the use of an alternate basic training source, provided the servicing DoD legal advisor concurs with the course content. An example of an alternate source of basic training is the Web-based training provided by the Defense Acquisition University at <https://acc.dau.mil/CommunityBrowser.aspx?id=18014&lang=en-US>.

(b) *Advanced law of war training.* (1) The types of personnel that must obtain advanced law of war training include the following:

- (i) Private security contractors.
- (ii) Security guards in or near areas of military operations.
- (iii) Interrogators, linguists, interpreters, guards, report writers, information technology technicians, or others who will come into contact with enemy prisoners of war, civilian internees, retained persons, other detainees, terrorists, or criminals who are captured, transferred, confined, or detained during or in the aftermath of hostilities.
- (iv) Other personnel when deemed necessary by the contracting officer.

(2) If contractor personnel will be required to obtain advanced law of war training, the solicitation and contract shall specify—

- (i) The types of personnel subject to advanced law of war training requirements;
- (ii) Whether the training will be provided by the Government or the contractor;
- (iii) If the training will be provided by the Government, the source of the training; and
- (iv) If the training will be provided by the contractor, a requirement for coordination of the content with the servicing DoD legal advisor to ensure that training content is commensurate with the duties and responsibilities of the personnel to be trained.

(v) If the training will be provided by the contractor, a requirement for coordination of the content with the servicing DoD legal advisor to ensure that training content is commensurate with the duties and responsibilities of the personnel to be trained.

## PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 4. Section 252.225–7040 is amended as follows:

- a. By revising the introductory text and the clause date;
- b. In paragraph (a), by adding, in alphabetical order, a definition of “Law of war”;

- c. By revising paragraph (d) and paragraph (e)(1) introductory text; and
- d. By adding paragraphs (e)(1)(vii) and (h)(3) to read as follows:

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

As prescribed in 225.7402–5(a), use the following clause:

CONTRACTOR PERSONNEL  
AUTHORIZED TO ACCOMPANY U.S.  
ARMED FORCES DEPLOYED OUTSIDE  
THE UNITED STATES (JAN 2009)

(a) \* \* \*

*Law of war* means that part of international law that regulates the conduct of armed hostilities. The law of war encompasses all international law for the conduct of hostilities binding on the United States or its individual citizens, including treaties and international agreements to which the United States is a party, and applicable customary international law.

\* \* \* \* \*

(d) *Compliance with laws and regulations.* (1) 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—

- (i) United States, host country, and third country national laws;
- (ii) Provisions of the law of war, as well as any other applicable treaties and international agreements;
- (iii) United States regulations, directives, instructions, policies, and procedures; and
- (iv) 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.

(2) The Contractor shall institute and implement an effective program to prevent violations of the law of war by its employees and subcontractors, including law of war training in accordance with paragraph (e)(1)(vii) of this clause.

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

\* \* \* \* \*

(vii) Personnel have received law of war training as follows:

(A) Basic training is required for all Contractor personnel authorized to accompany U.S. Armed Forces deployed outside the United States. The basic training will be provided through—

- (1) A military-run training center; or
- (2) A Web-based source, if specified in the contract or approved by the Contracting Officer.

(B) Advanced training, commensurate with their duties and responsibilities, may be required for some Contractor personnel as specified in the contract.

\* \* \* \* \*

(h) \* \* \*

(3) Contractor personnel shall report to the Combatant Commander or a designee, or through other channels such as the military police, a judge advocate, or an inspector general, any suspected or alleged conduct for which there is credible information that such conduct—

(i) Constitutes violation of the law of war; or

(ii) Occurred during any other military operations and would constitute a violation of the law of war if it occurred during an armed conflict.

\* \* \* \* \*

[FR Doc. E9-680 Filed 1-14-09; 8:45 am]

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## DEPARTMENT OF DEFENSE

### Defense Acquisition Regulations System

#### 48 CFR Part 237

RIN 0750-AF64

#### Defense Federal Acquisition Regulation Supplement; Security-Guard Functions (DFARS Case 2006-D050)

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

**ACTION:** Final rule.

**SUMMARY:** DoD has adopted as final, without change, an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 343 of the National Defense Authorization Act for Fiscal Year 2008. Section 343 extended, through September 30, 2012, the period during which contractor performance of security-guard functions at military installations or facilities is authorized to fulfill additional requirements resulting from the terrorist attacks on the United States on September 11, 2001.

**DATES:** *Effective Date:* January 15, 2009.

**FOR FURTHER INFORMATION CONTACT:** Mr. Michael Benavides, Defense Acquisition Regulations System, OUSD (AT&L) DPAP (DARS), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301-3062. Telephone 703-602-1302; facsimile 703-602-7887. Please cite DFARS Case 2006-D050.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

DoD published an interim rule at 73 FR 53156 on September 15, 2008, to implement Section 343 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110-181). Section

343 extended, through September 30, 2012, the period during which contractor performance of security-guard functions at military installations or facilities is authorized to fulfill additional requirements resulting from the terrorist attacks on the United States on September 11, 2001, provided the total number of personnel employed to perform such functions does not exceed specified limits.

DoD received no comments on the interim rule. Therefore, DoD has adopted the interim rule as a final rule without change.

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.* Although the rule may provide opportunities for small business concerns to receive contracts for the performance of security-guard functions at military installations or facilities, the economic impact is not expected to be substantial.

##### 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 237

Government procurement.

**Michele P. Peterson,**

*Editor, Defense Acquisition Regulations System.*

##### Interim Rule Adopted as Final Without Change

■ Accordingly, the interim rule amending 48 CFR part 237, which was published at 73 FR 53156 on September 15, 2008, is adopted as a final rule without change.

[FR Doc. E9-665 Filed 1-14-09; 8:45 am]

BILLING CODE 5001-08-P

## DEPARTMENT OF DEFENSE

### Defense Acquisition Regulations System

#### 48 CFR Part 252

RIN 0750-AG18

#### Defense Federal Acquisition Regulation Supplement; Removal of North Korea From the List of Terrorist Countries (DFARS Case 2008-D036)

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

**ACTION:** Final rule.

**SUMMARY:** DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to remove North Korea from the list of terrorist countries subject to a prohibition on DoD contract awards. This change is a result of the State Department's removal of North Korea from the list of countries designated as state sponsors of terrorism.

**DATES:** *Effective Date:* January 15, 2009.

**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 703-602-7887. Please cite DFARS Case 2008-D036.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

The provision at DFARS 252.209-7001, Disclosure of Ownership or Control by the Government of a Terrorist Country, implements 10 U.S.C. 2327, which prohibits DoD from entering into a contract with a firm that is owned or controlled by the government of a country that has been determined by the Secretary of State to repeatedly provide support for acts of international terrorism. This final rule removes North Korea from the terrorist countries listed in the provision at DFARS 252.209-7001, since the Secretary of State has removed North Korea from the list of designated state sponsors of terrorism.

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,