



This document is scheduled to be published in the Federal Register on 01/29/2015 and available online at <http://federalregister.gov/a/2015-01433>, and on FDsys.gov

(Billing Code 5001-06)

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 212, 225, and 252

RIN 0750-AI31

Defense Federal Acquisition Regulation Supplement: Defense Contractors Performing Private Security Functions (DFARS Case 2014-D008)

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

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to address DoD-unique requirements for defense contractors performing private security functions outside the United States.

DATES: Effective [Insert date of publication in the FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Ms. Jennifer Hawes, telephone 571-372-6115.

SUPPLEMENTARY INFORMATION:

I. Background

DoD published a proposed rule in the Federal Register at 79 FR 35713 on June 24, 2014, to prescribe a new clause for use in solicitations and contracts, including solicitations and

contracts for the acquisition of commercial items, when defense contractors are performing private security functions outside the United States in covered operations. No public comments were submitted in response to the proposed rule. The final rule reflects two changes to clarify terminology used in the proposed rule.

II. Discussion

This final rule adds a new section at DFARS 225.302 titled Contractors Performing Private Security Functions Outside the United States. The new section provides a prescription for new DFARS clause 252.225-7039, Defense Contractors Performing Private Security Functions. The new clause requires covered contractors to—

- Register in the Synchronized Predeployment and Operational Tracker (SPOT) system all weapons, armored vehicles, helicopters, and other vehicles used or operated by personnel performing private security functions; and
- Comply with ANSI/ASIS PSC.1-2012, American National Standard, Management System for Quality of Private Security Operations—Requirements with Guidance. Contracting officers were already incorporating the requirement to comply with the ANSI/ASIS PSC.1-2012 if the acquisition required performance of private security functions, based on a checklist provided at DFARS

Procedures, Guidance, and Information 225.7401. This requirement is more appropriately included in a clause.

The new clause, DFARS 252.225-7039, is also added to the list at DFARS 212.301 of clauses and provisions for the acquisition of commercial items.

The final rule makes the following changes to clarify terminology used in the proposed rule. The final rule removes the reference to "humanitarian or peace operations" from the proposed rule clause prescription at DFARS 225.302-6 and the proposed clause at DFARS 252.225-7039 and replaces it with "peace operations, consistent with Joint Publication 3-07.3." Humanitarian or peacekeeping operations are a subcategory of peace operations as defined in the Joint Publication 3-07.3. Consistent with this change, the definition of "peace operation" is also being removed from DFARS 225.302 and the associated clause at DFARS 252.225-7039.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and

benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

A final regulatory flexibility analysis has been prepared consistent with the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, and is summarized as follows:

This rule is needed to provide DoD-unique requirements for implementation and supplementation of Federal Acquisition Regulation (FAR) clause 52.225-26, Contractors Performing Private Security Functions Outside the United States. FAR 52.225-26 implements section 862 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2009 (Pub. L. 110-181), sections 831 and 832 of the NDAA for FY 2011 (Pub. L. 111-383), and the Memorandum of Understanding signed by DoD, the Department of State, and the United States Agency for International Development.

The objective of the rule is to ensure that DoD contractors performing private security functions in covered operations comply with the DoD-unique Synchronized Predeployment and Operational Tracker (SPOT) System registration requirements and

ANSI/ASIS PSC.1-2012, American National Standard, Management System for Quality of Private Security Operations—Requirements with Guidance.

No comments were received from the public regarding the initial regulatory flexibility analysis.

According to the Armed Contractor Oversight Directorate for United States Forces-Afghanistan, as of September 1, 2014, current operations include 2,355 contractors performing private security functions. It is not known how many of those firms were small businesses; however, any impact on small business firms will be minor because these are not new requirements.

The requirement to enter data on weapons, armored vehicles, helicopters, and other military vehicles into SPOT was in the Defense Federal Acquisition Regulation Supplement (DFARS) until the registration requirement was transitioned into the FAR in July 2013 (but without specifying use of SPOT). The new DFARS clause 252.225-7039, Defense Contractors Performing Private Security Functions, specifies that the system to use is SPOT. In addition, contracting officers were already incorporating the requirement to comply with ANSI/ASIS PSC.1-2012 if the acquisition required performance of private security functions based on a checklist provided at DFARS Procedures, Guidance, and Information (PGI) 225.7401.

There are no new projected reporting, recordkeeping, or other compliance requirements projected for this rule.

No alternatives to the rule have been identified.

V. Paperwork Reduction Act

The rule contains information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C chapter 35); however, these changes to the DFARS do not impose additional information collection requirements to the paperwork burden previously approved under OMB Clearance Number 0704-0460, entitled Synchronized Predeployment and Operational Tracker (SPOT) System.

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

Government procurement.

Manuel Quinones,

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. 1303 and 48 CFR chapter 1.

PART 212—ACQUISITION OF COMMERCIAL ITEMS

2. In section 212.301, redesignate paragraphs (f)(viii)(X) through (AA) as paragraphs (f)(viii)(Y) through (BB) and add a new paragraph (f)(viii)(X) to read as follows:

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

(f) * * *

(viii) * * *

(X) Use the clause at 252.225-7039, Defense Contractors Performing Private Security Functions Outside the United States, as prescribed in 225.302-6, to comply with section 2 of Pub. L. 110-181, as amended.

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PART 225—FOREIGN ACQUISITION

3. Add sections 225.302 and 225.302-6 to subpart 225.3 to read as follows:

225.302 Contractors performing private security functions outside the United States.

225.302-6 Contract clause.

Use the clause at 252.225-7039, Defense Contractors Performing Private Security Functions Outside the United States, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, when private security functions are to be performed outside the United States in-

- (1) Contingency operations;
- (2) Combat operations, as designated by the Secretary of Defense;
- (3) Other significant military operations (as defined in 32 CFR part 159), designated by the Secretary of Defense, and only upon agreement of the Secretary of Defense and the Secretary of State;
- (4) Peace operations, consistent with Joint Publication 3-07.3; or
- (5) Other military operations or military exercises, when designated by the Combatant Commander.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Add section 252.225-7039 to read as follows:

252.225-7039 Defense Contractors Performing Private Security Functions Outside the United States.

As prescribed in 225.302-6, insert the following clause:

**DEFENSE CONTRACTORS PERFORMING PRIVATE SECURITY FUNCTIONS
OUTSIDE THE UNITED STATES (JAN 2015)**

- (a) *Requirements.* The Contractor shall—
 - (1) Register in the Synchronized Predeployment and Operational Tracker (SPOT)—
 - (i) Weapons to be carried by or available to be used by personnel performing private security functions; and

(ii) Armored vehicles, helicopters, and other vehicles operated by personnel performing private security functions; and

(2) Comply with ANSI/ASIS PSC.1-2012, American National Standard, Management System for Quality of Private Security Company Operations—Requirements with Guidance (located at www.acq.osd.mil/log/PS/p_vault/item_1997-PSC_1_STD.PDF).

(b) *Subcontracts.* The Contractor shall include the substance of this clause, including this paragraph (b), in subcontracts, including subcontracts for commercial items, when private security functions will be performed outside the United States in areas of—

(1) Contingency operations;

(2) Combat operations, as designated by the Secretary of Defense;

(3) Other significant military operations (as defined in 32 CFR part 159), designated by the Secretary of Defense upon agreement of the Secretary of State;

(4) Peace operations, consistent with Joint Publication 3-07.3; or

(5) Other military operations or military exercises, when designated by the Combatant Commander.

(End of clause)

[FR Doc. 2015-01433 Filed 01/28/2015 at 8:45 am; Publication

Date: 01/29/2015]