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**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:** Proposed rule.

**SUMMARY:** DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to address DoD-unique requirements for defense contractors performing private security functions outside the United States.

**DATES:** Comment date: Comments on the proposed rule should be submitted in writing to the address shown below on or before **[Insert date 60 days after date of publication in the FEDERAL REGISTER]**, to be considered in the formation of a final rule.

**ADDRESSES:** Submit comments identified by DFARS Case 2014-D008, using any of the following methods:

- o Regulations.gov: <http://www.regulations.gov>. Submit comments via the Federal eRulemaking portal by entering "DFARS Case 2012-D008" under the heading "Enter keyword or ID" and

selecting "Search." Select the link "Submit a Comment" that corresponds with "DFARS Case 2014-D008." Follow the instructions provided at the "Submit a Comment" screen. Please include your name, company name (if any), and "DFARS Case 2014-D008" on your attached document.

- o Email: [osd.dfars@mail.mil](mailto:osd.dfars@mail.mil). Include DFARS Case 2014-D008 in the subject line of the message.

- o Fax: 571-372-6094.

- o Mail: Defense Acquisition Regulations System, Attn: Ms. Jennifer Hawes, OUSD(AT&L)DPAP/DARS, Room 3B941, 3060 Defense Pentagon, Washington, DC 20301-3060.

Comments received generally will be posted without change to <http://www.regulations.gov>, including any personal information provided. To confirm receipt of your comment(s), please check [www.regulations.gov](http://www.regulations.gov), approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

**FOR FURTHER INFORMATION CONTACT:** Ms. Jennifer Hawes, Defense Acquisition Regulations System, OUSD(AT&L)DPAP/DARS, Room 3B941, 3060 Defense Pentagon, Washington, DC 20301-3060. Telephone 571-372-6115.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

DoD is proposing to amend the DFARS to prescribe a 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.

DoD Instruction 3020.50, Private Security Contractors, was originally published on July 22, 2009, pursuant to section 862 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2008, as amended by section 853 of the NDAA for FY 2009. Change 1 of the Instruction was published on August 1, 2011, and reflects additional requirements levied under section 832 of the NDAA for FY 2008. DoD requirements encompass requirements set forth in 32 CFR 159, however they are broader than requirements set forth in FAR 25.302-3, and its implementing clause, 52.225-26, Contractors Performing Private Security Functions Outside the United States. This proposed rule will address these broader requirements by ensuring coverage in-

- Contingency operations;
- Combat operations, as designated by the Secretary of Defense;
- Other significant military operations, as designated by the Secretary of Defense, and only upon agreement of the Secretary of Defense and the Secretary of State;
- Humanitarian or peace operations; and

- Other military operations or military exercises, when designated by the Combatant Commander.

This rule provides DoD-unique requirements for implementation and supplementation of the FAR requirements, i.e., use of the Synchronized Predeployment and Operational Tracker (SPOT) System and compliance with ANSI/ASIS PSC.1-2012, American National Standard, Management System for Quality of Private Security Operations—Requirements with Guidance.

## **II. Discussion and Analysis**

The proposed rule would add a new section, DFARS 225.302, titled "Contractors performing private security functions outside the United States," which provides a definition for "peace operation" and adds a prescription for the new proposed clause. This clause is also added to the list at DFARS 212.301 of clauses and provisions for the acquisition of commercial items.

The new proposed clause DFARS 252.225-7039, Defense Contractors Performing Private Security Functions, requires 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.

### **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**

DoD does not expect this rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. However, DoD has prepared an Initial Regulatory Flexibility Analysis, which is summarized as follows:

The reason for this proposed rule is to address DoD-unique requirements relating to the implementation of the requirements at FAR 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 (Publ. L. 110-181 and sections 831 and 832 of the NDAA for FY 2011 (Pub. L. 111-383), and the MOU signed by DoD, State, and USAID. This rule provides DoD-unique requirements for implementation and supplementation of the FAR requirements, i.e., use of the Synchronized Predeployment and Operational Tracker (SPOT) System and compliance with ANSI/ASIS PSC.1-2012, American National Standard, Management System for Quality of Private Security Operations—Requirements with Guidance.

In FY 2010, DoD awarded 1,051 contracts for performance in Afghanistan. Of those actions, 231 contracts were awarded to small business firms. It is not known how many of those contracts involved the requirements for contractor personnel to perform private security functions. As DoD personnel exit these areas, the total number of contracts will decrease.

The 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 DFARS until the registration

requirement was transitioned into the FAR in July 2013 (but without specifying use of SPOT). This new DFARS clause specifies that the system to use is SPOT. The DFARS Procedures, Guidance, and Information (PGI) had already provided in a checklist at 225.7401 that contracting officers shall incorporate and require compliance with the standard ANSI/ASIS PSC.1-2012 if the acquisition requires performance of private security functions.

This rule does not add new reporting, recordkeeping, or other compliance requirements.

The rule does not duplicate, overlap, or conflict with any other Federal rules.

DoD has not identified any alternatives that would lessen the already minimal burden on small entities and still meet the objectives of the rule.

DoD invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD will also consider comments from small entities concerning the existing regulations in subparts affected by the rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C 610 (DFARS Case 2014-D008), in correspondence.

## **V. Paperwork Reduction Act**

The information collection requirements in this rule that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35) are already covered by OMB Clearance Number 0704-0460, Synchronized Predeployment and Operational Tracker (SPOT) System, which is approved through August 31, 2016, for 150,000 burden hours.

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

Government procurement.

**Amy G. Williams,**

Deputy, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 212, 225, and 252 are proposed to be amended as follows:

1. The authority citation for 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)(xlv) through (lxx) as paragraphs (f)(xlvi) through (lxxi) and add a new paragraph (f)(xlv) to read as follows:

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

(f) \* \* \*

(xlv) 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.

\* \* \* \* \*

**PART 225—FOREIGN ACQUISITION**

3. Add sections 225.302, 225.302-2, and 225.302-6 to subpart 225.3 to read as follows:

**225.302 Contractors performing private security functions outside the United States.**

**225.302-2 Definitions.**

Peace operation, as used in this section, means a military mission to contain conflict, redress the peace, and shape the environment to support reconciliation and rebuilding and facilitate the transition to legitimate governance.

**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) Humanitarian or peace operations; 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 (DATE)**

(a) Definition. Peace operation, as used in this clause, means a military mission to contain conflict, redress the peace, and shape the environment to support reconciliation and rebuilding and facilitate the transition to legitimate governance.

(b) 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](http://www.acq.osd.mil/log/PS/p_vault/item_1997-PSC_1_STD.PDF)).

(c) Subcontracts. The Contractor shall include the substance of this clause, including paragraph (b) of this clause, 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) Humanitarian or peace operations; or

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

(End of clause)

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