

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 226 and 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

■ Accordingly, the interim rule amending 48 CFR parts 226 and 252, which was published at 68 FR 56561 on October 1, 2003, is adopted as a final rule with the following changes:

■ 1. The authority citation for 48 CFR parts 226 and 252 continues to read as follows:

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

PART 226—OTHER SOCIOECONOMIC PROGRAMS

226.104 [Amended]

■ 2. Section 226.104 is amended by removing the phrase “for which subcontracting opportunities may exist”.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

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

■ a. By revising the clause date to read “(SEP 2004)”; and

■ b. In paragraph (b) by revising entry “252.226–7001” to read as follows:

252.212–7001 Contract Terms and Conditions Required to Implement Statutes or Executive Orders Applicable to Defense Acquisitions of Commercial Items.

* * * * *

(b) * * *

252.226–7001 Utilization of Indian Organizations, Indian-Owned Economic Enterprises, and Native Hawaiian Small Business Concerns (SEP 2004) (Section 8021 of Public Law 107–248 and similar sections in subsequent DoD appropriations acts).

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■ 4. Section 252.226–7001 is amended as follows:

■ a. By revising the clause date to read “(SEP 2004)”; and

■ b. In paragraph (a) by revising the definition of “Indian”; and

■ c. By revising paragraph (g) to read as follows:

252.226–7001 Utilization of Indian Organizations, Indian-Owned Economic Enterprises, and Native Hawaiian Small Business Concerns.

* * * * *

(a) * * *

Indian means—

(1) Any person who is a member of any Indian tribe, band, group, pueblo, or community that is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs (BIA) in accordance with 25 U.S.C. 1452(c); and

(2) Any “Native” as defined in the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*).

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(g) The Contractor shall insert the substance of this clause, including this paragraph (g), in all subcontracts exceeding \$500,000.

[FR Doc. 04–21015 Filed 9–16–04; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

48 CFR Part 237

[DFARS Case 2003–D103]

Defense Federal Acquisition Regulation Supplement; Personal Services Contracts

AGENCY: 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 Sections 721 and 841 of the National Defense Authorization Act for Fiscal Year 2004. Section 721 provides permanent authority for DoD to enter into personal services contracts for health care at locations outside of DoD medical treatment facilities. Section 841 adds authority for DoD to enter into contracts for personal services that are to be performed outside the United States or that directly support the mission of a DoD intelligence or counter-intelligence organization or the special operations command.

DATES: *Effective date:* September 17, 2004.

Comment date: Comments on the interim rule should be submitted to the address shown below on or before November 16, 2004, to be considered in the formation of the final rule.

ADDRESSES: You may submit comments, identified by DFARS Case 2003–D103, using any of the following methods:

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

• Defense Acquisition Regulations Web site: <http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm>. Follow the instructions for submitting comments.

• E-mail: dfars@osd.mil. Include DFARS Case 2003–D103 in the subject line of the message.

• Fax: Primary: (703) 602–7887; Alternate: (703) 602–0350.

• Mail: Defense Acquisition Regulations Council, Attn: Ms. Teresa Brooks, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062.

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

All comments received will be posted to <http://emissary.acq.osd.mil/dar/dfars.nsf>.

FOR FURTHER INFORMATION CONTACT: Ms. Teresa Brooks, (703) 602–0326.

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule amends DFARS Subpart 237.1 to implement Sections 721 and 841 of the National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108–136).

Section 721 amends 10 U.S.C. 1091(a)(2) to provide permanent authority for DoD to enter into personal services contracts for health care at locations outside of DoD medical treatment facilities (such as military entrance processing stations). The law previously provided for this authority to expire on December 31, 2003.

Section 841 amends 10 U.S.C. 129b to add authority for DoD to enter into contracts for personal services that (1) are to be provided by individuals outside the United States to support DoD activities and programs outside the United States; (2) directly support the mission of a DoD intelligence or counter-intelligence organization; or (3) directly support the mission of the DoD special operations command. This authority applies if the services to be procured are urgent or unique and would not be practical to obtain by other means.

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 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., because application of the rule is limited to personal services contracts for (1) health care at locations outside of DoD medical treatment facilities, or (2) urgent or unique services that are to be performed outside the United States, or are in direct support of intelligence missions, when it would not be practical for DoD to obtain these services by other means. 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 subpart in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2003-D103.

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.

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 Sections 721 and 841 of the National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108-136). Section 721 provides permanent authority for DoD to enter into personal services contracts for health care at locations outside of DoD medical treatment facilities. Section 841 adds authority for DoD to enter into contracts for urgent or unique personal services that (1) are to be provided by individuals outside the United States to support DoD activities and programs outside the United States; (2) directly support the mission of a DoD intelligence or counter-intelligence organization; or (3) directly support the mission of the DoD special operations command. Sections 721 and 841 became effective upon enactment on November 24, 2003. Comments received in response to this interim rule will be considered in the formation of the final rule.

List of Subjects in 48 CFR Part 237

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR part 237 is amended as follows:

1. The authority citation for 48 CFR part 237 continues to read as follows:

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

PART 237—SERVICE CONTRACTING

2. Section 237.104 is amended as follows:

a. In paragraph (b)(i) introductory text, in the first sentence, by removing "Public Law 101-165, section 9002" and adding in its place "10 U.S.C. 129b";

b. In paragraph (b)(ii)(A)(1) by removing "and";

c. By redesignating paragraph (b)(ii)(A)(2) as paragraph (b)(ii)(A)(3);

d. By adding a new paragraph (b)(ii)(A)(2);

e. By revising paragraph (b)(ii)(C); and

f. By adding paragraphs (b)(iii) and (b)(iv) to read as follows:

237.104 Personal services contracts.

- (b) * * *
(ii) * * *
(A) * * *

(2) Health care services at locations outside of medical treatment facilities (such as the provision of medical screening examinations at military entrance processing stations); and

* * * * *

(C) Approval requirements for—

(1) Direct health care personal services contracts (see paragraphs (b)(ii)(A)(1) and (2) of this section) and a pay cap are in DoDI 6025.5, Personal Services Contracts for Health Care Providers.

(i) A request to enter into a personal services contract for direct health care services must be approved by the commander of the medical/dental treatment facility where the services will be performed.

(ii) A request to enter into a personal services contract for a location outside of a medical treatment facility must be approved by the chief of the medical facility who is responsible for the area in which the services will be performed.

(2) Services of clinical counselors, family advocacy program staff, and victim's services representatives (see paragraph (b)(ii)(A)(3) of this section), shall be in accordance with agency procedures.

* * * * *

(iii) (A) In accordance with 10 U.S.C. 129b(d), an agency may enter into a personal services contract if—

(1) The personal services—
(i) Are to be provided by individuals outside the United States, regardless of their nationality;

(ii) Directly support the mission of a defense intelligence component or counter-intelligence organization of DoD; or

(iii) Directly support the mission of the special operations command of DoD; and

(2) The head of the contracting activity provides written approval for the proposed contract. The approval shall include a determination that addresses the following:

(i) The services to be procured are urgent or unique;

(ii) It would not be practical to obtain such services by other means; and

(iii) For acquisition of services in accordance with paragraph (b)(iii)(A)(1)(i) of this section, the services to be acquired are necessary and appropriate for supporting DoD activities and programs outside the United States.

(B) The contracting officer shall ensure that the applicable requirements of paragraph (b)(iii)(A)(2) of this section have been satisfied and shall include the approval documentation in the contract file.

(iv) The requirements of 5 U.S.C. 3109, Employment of Experts and Consultants; Temporary or Intermittent, do not apply to contracts entered into in accordance with paragraph (b)(iii) of this section.

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[FR Doc. 04-21018 Filed 9-16-04; 8:45 am]

BILLING CODE 5001-08-P

DEPARTMENT OF DEFENSE

48 CFR Part 252

[DFARS Case 2003-D098]

Defense Federal Acquisition Regulation Supplement; Definition of Terrorist Country

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to remove Iraq from the list of terrorist countries subject to a prohibition on DoD contract awards. This change is a result of the President's May 7, 2003, determination to suspend sanctions against Iraq.