



ACQUISITION AND  
TECHNOLOGY

OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON  
WASHINGTON, DC 20301-3000

March 27, 1998

DP (DAR)

In reply refer to  
DFARS Case: 97-D325  
D. L. 98-007

MEMORANDUM FOR DIRECTORS OF DEFENSE AGENCIES  
DEPUTY FOR ACQUISITION AND BUSINESS MANAGEMENT,  
ASN (RD&A) / ABM  
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE  
(CONTRACTING), SAF/AQC  
DEPUTY ASSISTANT SECRETARY OF THE ARMY (PROCUREMENT)  
DEPUTY DIRECTOR (ACQUISITION), DEFENSE LOGISTICS AGENCY

SUBJECT: List of Firms Not Eligible for Defense Contracts

We have amended the Defense Federal Acquisition Regulation Supplement (DFARS) to implement the requirements of Section 843 of the National Defense Authorization Act for Fiscal Year 1998 (Pub. L. 105-85). Section 843 requires that the Secretary of Defense maintain a list of all firms that are subject to the prohibition at 10 U.S.C. 2327 on entering into a contract with a firm that is owned or controlled by the government of a terrorist country, and that contractors be prohibited from entering into subcontracts with firms on the list unless there is a compelling reason to do so.

The attached interim DFARS rule is effective immediately and will be included in a future Defense Acquisition Circular.

Eleanor R. Spector  
Director, Defense Procurement

Attachment

cc: DSMC, Ft. Belvoir



DFARS Case 97-D325, List of Firms Not Eligible for Defense  
Contracts

Interim rule.

Additions are [bold and bracketed.]

---

209.104 Standards.

209.104-1 General standards.

\* \* \* \* \*

(g) (i) *Ownership or control by the government of a terrorist country.*

(A) Under 10 U.S.C. 2327(b), a contracting officer shall not award a contract [of \$100,000 or more] to a firm or to a subsidiary of a firm when a foreign government--

(1) Either directly or indirectly, has a significant interest--

(i) In the firm; or

(ii) In the subsidiary [or the firm that owns the subsidiary]; and

(2) Has been determined by the Secretary of State under 50 U.S.C. App. 2405(j)(1)(A) to be a government of a country that has repeatedly provided support for acts of international terrorism.

(B) The Secretary of Defense may waive the prohibition in paragraph (g) (i) (A) of this subsection in accordance with 10 U.S.C. 2327(c). This waiver authority may not be delegated.

\* \* \* \* \*

209.104-70 Solicitation provisions.

(a) Use the provision at 252.209-7001, Disclosure of Ownership or Control by the Government of a Terrorist Country, in all solicitations expected to result in contracts of \$100,000 or more. [Any disclosure that the government of a terrorist country has a significant interest in an offeror or a subsidiary of an offeror shall be forwarded through the head of the agency to the Director, Defense Procurement, ATTN: OUSD(A&T)DP/FC, 3060 Defense Pentagon, Washington, DC 20301-3060.]

\* \* \* \* \*

[209.405-2 Restrictions on subcontracting.

(a) The contracting officer shall not consent to any subcontract with a firm, or a subsidiary of a firm, that is identified by the Secretary of Defense as being owned or controlled by the government of a terrorist country unless the agency head states in writing the compelling reasons for the subcontract.]

\* \* \* \* \*

[209.409 Solicitation provision and contract clause.

Use the clause at 252.209-7004, Subcontracting with Firms That Are Owned or Controlled by the Government of a Terrorist Country, in solicitations and contracts with a value of \$100,000 or more.]

\* \* \* \* \*

252.209-7001 Disclosure of Ownership or Control by the Government of a Terrorist Country.

As prescribed in 209.104-70(a), use the following provision:

DISCLOSURE OF OWNERSHIP OR CONTROL BY THE GOVERNMENT OF A TERRORIST COUNTRY ([MAR 1998]SEP-1994)

(a) *Definitions.*

As used in this provision-

- (1) "Government of a terrorist country" includes the state and the government of a terrorist country, as well as any political subdivision, agency, or instrumentality thereof.
- (2) "Terrorist country" means a country determined by the Secretary of State, under section 6(j)(1)(A) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)(i)(A)), to be a country the government of which has repeatedly provided support for acts of international terrorism. As of the date of this provision, terrorist countries include: Cuba, Iran, Iraq, Libya, North Korea, Sudan, and Syria.
- (3) "Significant interest" means-
  - (i) Ownership of or beneficial interest in 5 percent or more of the firm's or subsidiary's securities. Beneficial interest includes holding 5 percent or more of any class of the firm's securities in "nominee shares," "street names," or some other method of

holding securities that does not disclose the beneficial owner;

- (ii) Holding a management position in the firm, such as a director or officer;
- (iii) Ability to control or influence the election, appointment, or tenure of directors or officers in the firm;
- (iv) Ownership of 10 percent or more of the assets of a firm such as equipment, buildings, real estate, or other tangible assets of the firm; or
- (v) Holding 50 percent or more of the indebtedness of a firm.

(b) *Prohibition on award.*

In accordance with 10 U.S.C. 2327, no contract may be awarded to a firm or a subsidiary of a firm if the government of a terrorist country has a significant interest in the firm or subsidiary **[or, in the case of a subsidiary, the firm that owns the subsidiary,]** unless a waiver is granted by the Secretary of Defense.

(c) *Disclosure.*

If the government of a terrorist country has a significant interest in the Offeror or a subsidiary of the Offeror, the Offeror shall disclose such interest in an attachment to its offer. If the Offeror is a subsidiary, it shall also disclose any significant interest the government of a terrorist country has in any firm that owns or controls the subsidiary. The disclosure shall include-

- (1) Identification of each government holding a significant interest; and
- (2) A description of the significant interest held by each government.

(End of provision)

\* \* \* \* \*

**[252.209-7004 Subcontracting with Firms That Are Owned or Controlled by the Government of a Terrorist Country.**

**As prescribed in 209.409, use the following clause:**

**SUBCONTRACTING WITH FIRMS THAT ARE OWNED OR CONTROLLED BY THE GOVERNMENT OF A TERRORIST COUNTRY (MAR 1998)**

(a) Unless the Government determines that there is a compelling reason to do so, the Contractor shall not enter into any subcontract in excess of \$25,000 with a firm, or a subsidiary of a firm, that is identified, on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs, as being ineligible for the award of Defense contracts or subcontracts because it is owned or controlled by the government of a terrorist country.

(b) A corporate officer or a designee of the Contractor shall notify the Contracting Officer, in writing, before entering into a subcontract with a party that is identified, on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs, as being ineligible for the award of Defense contracts or subcontracts because it is owned or controlled by the government of a terrorist country. The notice must include the name of the proposed subcontractor and the compelling reason(s) for doing business with the subcontractor notwithstanding its inclusion on the List of Parties Excluded From Federal Procurement and Nonprocurement Programs.

(End of clause)]