

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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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.

EFFECTIVE DATE: September 17, 2004.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, Defense Acquisition Regulations Council, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301-3062. Telephone (703) 602-0328; facsimile (703) 602-0350. Please cite DFARS Case 2003-D098.

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 repeatedly provided support for acts of international terrorism. This final rule amends the provision at DFARS 252.209-7001 to remove Iraq from the list of countries subject to the prohibition. This change is a result of the President's May 7, 2003, determination to suspend all sanctions against Iraq that apply to countries that have supported terrorism (Presidential Determination 2003-23, 68 FR 26459, May 16, 2003).

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, publication for public comment is not required. However, DoD will consider comments from small entities concerning the affected DFARS subpart in accordance with 5 U.S.C. 610. Such comments should cite DFARS Case 2003-D098.

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 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

■ Therefore, 48 CFR part 252 is amended as follows:

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

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

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 2. Section 252.209-7001 is amended by revising the clause date and the last sentence of paragraph (a)(2) to read as follows:

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

* * * * *

Disclosure of Ownership or Control by the Government of a Terrorist Country (SEP 2004)

(a) * * *

(2) * * * As of the date of this provision, terrorist countries subject to this provision include: Cuba, Iran, Libya, North Korea, Sudan, and Syria.

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA 1998-4367]

RIN 2127-AH92

Federal Motor Vehicle Safety Standards; Lamps, Reflective Devices, and Associated Equipment

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Withdrawal of rulemaking.

SUMMARY: In 1998, the Japan Auto Parts Industries Association (JAPIA) petitioned for NHTSA to amend the Federal motor vehicle lighting standard to eliminate an existing requirement that the upper beam light source be no higher than the lower beam light source for motorcycle headlighting systems, and also to permit multiple lower beam light sources and multiple upper beam light sources within a single motorcycle headlamp (total of four light sources). After requesting additional information in support of the petition, NHTSA granted the JAPIA petition on May 21, 2001. For reasons discussed in this document, the agency is withdrawing this rulemaking.

FOR FURTHER INFORMATION CONTACT: The following persons at the NHTSA, 400 7th Street, SW., Washington, DC 20590.

For non-legal issues, you may call Mr. Kenneth O. Hardie, Office of Crash Avoidance Standards (Telephone: 202-366-6987) (Fax: 202-493-2739).

For legal issues, you may call Mr. George Feygin, Office of Chief Counsel (Telephone: 202-366-2992) (Fax: 202-366-3820).

SUPPLEMENTARY INFORMATION:

I. Background

Paragraph S7.9 of Federal Motor Vehicle Safety Standard (FMVSS) No. 108, *Lamps, Reflective Devices, and Associated Equipment*, specifies the requirements for motorcycle headlighting systems. Paragraph S7.9.6 specifies location requirements for motorcycle headlamps. S7.9.6.2(a) applies to motorcycles equipped with headlighting systems consisting of one headlamp; S7.9.6.2(b) applies to motorcycles equipped with headlighting systems consisting of two headlamps, each of which provides both an upper and lower beam; S7.9.6.2(c) applies to motorcycles equipped with headlighting systems consisting of two headlamps, one of which provides an upper beam and one of which provides a lower beam. For headlighting systems covered by subparagraphs (a) and (c), the upper beam light source is not permitted to be higher than the lower beam light source. Paragraph (b) is silent as to the upper beam light source location.

In a petition dated October 13, 1998, JAPIA asked NHTSA to eliminate the restriction on upper beam light source location in S7.9.6.2(a) and S7.9.6.2(c) to allow the upper beam light source to be mounted above the lower beam light source.¹ Additionally, JAPIA asked NHTSA to permit a motorcycle headlighting system consisting of a single headlamp (S7.9.6.2(a)) to contain two upper beam and two lower beam light sources for a total of four distinct light sources in a single headlamp. For headlighting systems consisting of two headlamps, the petition asked the agency to instead allow for four distinct headlamps, two of which would provide the upper beam, and the other two the lower beam.

In support of its first request, JAPIA stated that the restriction on the location of upper beam light source relative to the location of lower beam light source is not necessary because headlamps must be located at least 22 inches above the road surface and not more than 54 inches above the road surface. JAPIA stated that the upper beam light source would not present any visibility or

¹ To examine the JAPIA petition, please go to <http://dms.dot.gov/> (Docket No. NHTSA-1998-4367-18).