

(b) After receipt of a notification submitted in accordance with paragraph (a) of this clause, the DoD Program Manager will—

(1) Conduct a security assessment to determine if and by what means access may be granted to the IAEA; or

(2) Provide written justification to the component or agency treaty office for a national security exclusion, in accordance with DoD Instruction 2060.03, Application of the National Security Exclusion to the Agreements Between the United States of America and the International Atomic Energy Agency for the Application of Safeguards in the United States of America. DoD will notify the Contractor if a national security exclusion is applied at the Contractor's location to prohibit access by the IAEA.

(c) If the DoD Program Manager determines that a security assessment is required—

(1) DoD will, at a minimum—

(i) Notify the Contractor that DoD officials intend to conduct an assessment of vulnerabilities to IAEA inspections or visits;

(ii) Notify the Contractor of the time at which the assessment will be conducted, at least 30 days prior to the assessment;

(iii) Provide the Contractor with advance notice of the credentials of the DoD officials who will conduct the assessment; and

(iv) To the maximum extent practicable, conduct the assessment in a manner that does not impede or delay operations at the Contractor's facility; and

(2) The Contractor shall provide access to the site and shall cooperate with DoD officials in the assessment of vulnerabilities to IAEA inspections or visits.

(d) Following a security assessment of the Contractor's facility, DoD officials will notify the Contractor as to—

(1) Whether the Contractor's facility has any vulnerabilities where potentially declarable activities under the U.S.-IAEA AP are taking place;

(2) Whether additional security measures are needed; and

(3) Whether DoD will apply a national security exclusion.

(e) If DoD applies a national security exclusion, the Contractor shall not grant access to IAEA inspectors.

(f) If DoD does not apply a national security exclusion, the Contractor shall apply managed access to prevent disclosure of program activities, locations, or information in the U.S. declaration.

(g) The Contractor shall not delay submission of any reports required by the Department of Commerce or the Nuclear Regulatory Commission while awaiting a DoD response to a notification provided in accordance with this clause.

(h) The Contractor shall incorporate the substance of this clause, including this paragraph (h), in all subcontracts that are subject to the provisions of the U.S.-IAEA AP.

(End of clause)

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## DEPARTMENT OF DEFENSE

### Defense Acquisition Regulations System

#### 48 CFR Part 209

RIN 0750-AG22

### Defense Federal Acquisition Regulation Supplement; List of Firms Owned or Controlled by the Government of a Terrorist Country (DFARS Case 2008-D025)

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

**ACTION:** Final rule.

**SUMMARY:** DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to address procedures for notifying the appropriate DoD office of any information indicating that a firm or a subsidiary of a firm may be owned or controlled by the Government of a terrorist country. The notifications will facilitate maintenance of a list of such firms, as required by statute.

**DATES:** *Effective Date:* January 15, 2009.

**FOR FURTHER INFORMATION CONTACT:** Ms. Amy Williams, Defense Acquisition Regulations System, OUSD (AT&L) DPAP (DARS), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301-3062. Telephone 703-602-0328; facsimile 703-602-7887. Please cite DFARS Case 2008-D025.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

10 U.S.C. 2327(d) requires DoD to develop and maintain a list of all firms, and subsidiaries of firms, that are owned or controlled by the government of a terrorist country and that, therefore, are subject to a prohibition on DoD contract awards.

To facilitate maintenance of the list required by 10 U.S.C. 2327(d), this final rule amends DFARS 209.104-1 and 209.104-70 to address DoD procedures for forwarding, to the appropriate office, any information indicating that a firm or a subsidiary of a firm may be owned or controlled by the government of a terrorist country.

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 under 41 U.S.C. 418b 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 2008-D025.

### 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 209

Government procurement.

**Michele P. Peterson,**

*Editor, Defense Acquisition Regulations System.*

■ Therefore, 48 CFR part 209 is amended as follows:

#### PART 209—CONTRACTOR QUALIFICATIONS

■ 1. The authority citation for 48 CFR part 209 continues to read as follows:

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

■ 2. Section 209.104-1 is amended by adding paragraph (g)(i)(C) to read as follows:

#### 209.104-1 General standards.

\* \* \* \* \*

(g)(i) \* \* \*

(C) Forward any information indicating that a firm or a subsidiary of a firm may be owned or controlled by the government of a terrorist country, through agency channels, to: Deputy Director, Defense Procurement (Contract Policy and International Contracting, OUSD(AT&L)DPAP(CPIC)), 3060 Defense Pentagon, Washington, DC 20301-3060.

\* \* \* \* \*

■ 3. Section 209.104-70 is amended in paragraph (a) by revising the second sentence to read as follows:

#### 209.104-70 Solicitation provisions.

(a) \* \* \* 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 agency channels to the address at 209.104-1(g)(i)(C).

\* \* \* \* \*

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