

252.237–7023 Continuation of Essential Contractor Services.

As prescribed in 237.7603(a), use the following clause:

CONTINUATION OF ESSENTIAL CONTRACTOR SERVICES (OCT 2010)

(a) *Definitions.* As used in this clause—

(1) *Essential contractor service* means a service provided by a firm or individual under contract to DoD to support mission-essential functions, such as support of vital systems, including ships owned, leased, or operated in support of military missions or roles at sea; associated support activities, including installation, garrison, and base support services; and similar services provided to foreign military sales customers under the Security Assistance Program. Services are essential if the effectiveness of defense systems or operations has the potential to be seriously impaired by the interruption of these services, as determined by the appropriate functional commander or civilian equivalent.

(2) *Mission-essential functions* means those organizational activities that must be performed under all circumstances to achieve DoD component missions or responsibilities, as determined by the appropriate functional commander or civilian equivalent. Failure to perform or sustain these functions would significantly affect DoD's ability to provide vital services or exercise authority, direction, and control.

(b) The Government has identified all or a portion of the contractor services performed under this contract as essential contractor services in support of mission-essential functions. These services are listed in attachment __, Mission-Essential Contractor Services, dated _____.

(c)(1) The Mission-Essential Contractor Services Plan submitted by the Contractor, is incorporated in this contract.

(2) The Contractor shall maintain and update its plan as necessary. The Contractor shall provide all plan updates to the Contracting Officer for approval.

(3) As directed by the Contracting Officer, the Contractor shall participate in training events, exercises, and drills associated with Government efforts to test the effectiveness of continuity of operations procedures and practices.

(d)(1) Notwithstanding any other clause of this contract, the Contractor shall be responsible to perform those services identified as essential contractor services during crisis situations (as directed by the Contracting Officer), in accordance with its Mission-Essential Contractor Services Plan.

(2) In the event the Contractor anticipates not being able to perform any of the essential contractor services identified in accordance with paragraph (b) of this clause during a crisis situation, the Contractor shall notify the Contracting Officer or other designated representative as expeditiously as possible and use its best efforts to cooperate with the Government in the Government's efforts to maintain the continuity of operations.

(e) The Government reserves the right in such crisis situations to use Federal employees, military personnel, or contract

support from other contractors, or to enter into new contracts for essential contractor services.

(f) *Changes.* The Contractor shall segregate and separately identify all costs incurred in continuing performance of essential services in a crisis situation. The Contractor shall notify the Contracting Officer of an increase or decrease in costs within ninety days after continued performance has been directed by the Contracting Officer, or within any additional period that the Contracting Officer approves in writing, but not later than the date of final payment under the contract. The Contractor's notice shall include the Contractor's proposal for an equitable adjustment and any data supporting the increase or decrease in the form prescribed by the Contracting Officer. The parties shall negotiate an equitable price adjustment to the contract price, delivery schedule, or both as soon as is practicable after receipt of the Contractor's proposal.

(g) The Contractor shall include the substance of this clause, including this paragraph (g), in subcontracts for the essential services.

(End of clause)

■ 4. Section 252.237–7024 is added to read as follows:

252.237–7024 Notice of Continuation of Essential Contractor Services.

As prescribed in 237.7603(b), use the following provision:

NOTICE OF CONTINUATION OF ESSENTIAL CONTRACTOR SERVICES [OCT 2010]

(a) *Definitions.* *Essential contractor service* and *mission-essential functions* have the meanings given in the clause at 252.237–7023, Continuation of Essential Contractor Services, in this solicitation.

(b) The offeror shall provide with its offer a written plan describing how it will continue to perform the essential contractor services listed in attachment __, Mission Essential Contractor Services, dated _____, during periods of crisis. The offeror shall—

(1) Identify provisions made for the acquisition of essential personnel and resources, if necessary, for continuity of operations for up to 30 days or until normal operations can be resumed;

(2) Address in the plan, at a minimum—
(i) Challenges associated with maintaining essential contractor services during an extended event, such as a pandemic that occurs in repeated waves;

(ii) The time lapse associated with the initiation of the acquisition of essential personnel and resources and their actual availability on site;

(iii) The components, processes, and requirements for the identification, training, and preparedness of personnel who are capable of relocating to alternate facilities or performing work from home;

(iv) Any established alert and notification procedures for mobilizing identified "essential contractor service" personnel; and

(v) The approach for communicating expectations to contractor employees

regarding their roles and responsibilities during a crisis.

(End of provision)

[FR Doc. 2010–27302 Filed 10–28–10; 8:45 am]

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DEPARTMENT OF DEFENSE**Defense Acquisition Regulations System****48 CFR Parts 246 and 252**

RIN 0750–AG73

Defense Federal Acquisition Regulation Supplement; Safety of Facilities, Infrastructure, and Equipment for Military Operations (DFARS Case 2009–D029)

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

ACTION: Interim rule with request for comments.

SUMMARY: DoD is issuing an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement section 807 of the National Defense Authorization Act of 2010. Section 807 requires that facilities, infrastructure, and equipment that are intended for use by military or civilian personnel of the Department of Defense (DoD), in current or future military operations, should be inspected for safety and habitability prior to use, and that such facilities should be brought into compliance with generally accepted standards for the safety and health of personnel to the maximum extent practicable consistent with the requirements of military operations and the best interests of DoD to minimize the safety and health risk posed to such personnel.

DATES: *Effective date:* October 29, 2010.

Comment date: Comments on the interim rule should be submitted in writing to the address shown below on or before December 28, 2010, to be considered in the formation of the final rule.

ADDRESSES: Submit comments, identified by DFARS Case 2008–D029, using any of the following methods:

Regulations.gov: <http://www.regulations.gov>.

Submit comments via the Federal eRulemaking portal by inputting "DFARS Case 2009–D029" under the heading "Enter keyword or ID" and selecting "Search." Select the link "Submit a Comment" that corresponds with "DFARS Case 2009–D029." Follow the instructions provided at the "Submit

a Comment" screen. Please include your name, company name (if any), and "DFARS Case 2009-D029" on your attached document.

E-mail: dfars@osd.mil. Include DFARS Case 2008-D029 in the subject line of the message.

Fax: 703-602-0350.

Mail: Defense Acquisition Regulations System, Attn: Ms. Mary Overstreet, OUSD (AT&L) DPAP (DARS), Room 3B855, 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 <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. Mary Overstreet, 703-602-0311.

SUPPLEMENTARY INFORMATION:

I. Background

This interim rule implements section 807 of the National Defense Authorization Act for Fiscal Year 2010 (Pub. L. 111-84), which was signed on October 28, 2009. Section 807 requires that—

- Each contract, including task or delivery orders, entered into for the construction, installation, repair, maintenance, or operation of facilities, infrastructure, and equipment for use by DoD military or civilian should be inspected for safety and habitability prior to use to minimize the safety and health risk posed to such personnel;

- The term "generally accepted standards" shall be defined with respect to fire protection, structural integrity, electrical systems, plumbing, water treatment, waste disposal, and telecommunications networks for the purposes of this section; and

- Exceptions and limitations shall be provided as may be needed to ensure that this section can be implemented in a manner that is consistent with the requirements of military operations and the best interests of the Department of Defense.

DoD amended DFARS subpart 246.2, Contract Quality Requirements, to add section 246.270, Safety of Facilities, Infrastructure, and Equipment for Military Operations. Part 252 is amended to include a new contract clause, 252.246-7004, Safety of Facilities, Infrastructure, and Equipment for Military Operations.

DFARS 246.270-1 provides for the scope to be limited to current or future

military operations performed outside the United States, Guam, Puerto Rico, and the Virgin Islands.

DFARS 246.270-2 provides for the rule to apply to each contract, including task and delivery orders, for construction, installation, repair, maintenance, or operation of facilities. This includes contracts for facilities, infrastructure, and equipment configured for occupancy, including but not limited to, existing host nation facilities, new construction, and relocatable buildings. Contracts will require compliance with the Unified Facilities Criteria (UFC) 1-200-01 and its referenced standards to meet generally accepted standards for fire protection, structural integrity, electrical systems, plumbing, water treatment, waste disposal, and telecommunications networks. Facilities, infrastructure, and equipment shall be inspected prior to use for compliance with UFC 1-200-01 to ensure safety and habitability.

DFARS 246.270-3 allows the combatant commander to waive compliance with any standards when compliance is impracticable under prevailing operational conditions.

The new contract clause 252.246-7004, Safety of Facilities, Infrastructure, and Equipment for Military Operations, provides for use of the UFC 1-200-01 standards. The clause also provides for use of facilities that are constructed to standards equivalent to or more stringent than the UFC 1-200-01 standards based upon a written determination by the Contracting Officer with the concurrence of the relevant Discipline Working Group. The Discipline Working Group is defined in the clause. Section 807 is applicable to contracts for the acquisition of commercial items. Subpart 252.2, Text of Provisions and Clauses, is amended to add 252.246.7004, Safety of Facilities, Infrastructure, and Equipment for Military Operations, to 252.212-7001, Contract Terms and Conditions Required to Implement Statutes or Executive Orders Applicable to Defense Acquisition of Commercial Items, subparagraph (b)(22).

Contracting officers are encouraged to include this rule in solicitations issued before the effective date, provided award occurs after the effective date. Contracting officers are also encouraged to apply this rule to the maximum extent practicable to existing contracts, consistent with FAR 1.108(d).

II. Executive Order 12866

This rule is a significant regulatory action and, therefore, was subject to review under section 6(b) of Executive Order 12866, Regulatory Planning and

Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

III. Regulatory Flexibility Act

DoD has prepared an initial regulatory flexibility analysis consistent with 5 U.S.C. 603. A copy of the analysis may be obtained from the point of contact specified herein. The analysis is summarized as follows:

The rule affects contractors with contracts, including task and delivery orders, in support of current and future military operations for construction, installation, repair, maintenance, or operation of facilities. This includes contracts for facilities, infrastructure, and equipment configured for occupancy, including but not limited to, existing host nation facilities, new construction, and relocatable buildings.

Contracts will require compliance with the Unified Facilities Criteria (UFC) 1-200-01 to meet generally accepted standards for fire protection, structural integrity, electrical systems, plumbing, water treatment, waste disposal, and telecommunications networks. Facilities, infrastructure, and equipment shall be inspected prior to use to ensure safety and habitability.

Military operations affected by this rule are those outside the United States, Guam, Puerto Rico, and the Virgin Islands.

Contract support for recent military operations has been provided primarily by the Department of Army's LOGCAP contracts, which were awarded to large businesses. There are high costs associated with a company being able to perform in the geographic regions where most military operations are currently taking place. This makes it unlikely that a small business could afford to sustain the infrastructure required to perform these types of services in locations such as Iraq and Afghanistan. Small business preferential programs under FAR part 19 may not apply to these contracts as they only apply to contracts placed in the United States or its outlying areas. At this time, DoD is unable to estimate the number of small entities to which this rule will apply. However, based on the above factors, the number of small business firms to which the rule would apply is expected to be minimal.

DoD invites comments from small businesses 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 this rule in accordance with 5 U.S.C. 610. Interested parties must submit comments separately and should cite 5

U.S.C. 610 (DFARS Case 2009–D029) in correspondence.

IV. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96–511) does not apply because the rule does not impose additional information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

V. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DoD) that urgent and compelling circumstances exist to promulgate this interim rule without prior opportunity for public comments. This action is necessary because section 807 of the National Defense Authorization Act for Fiscal Year 2010 became effective 60 days after enactment, October 28, 2009.

Section 807 requires that facilities, infrastructure, and equipment that are intended for use by military or civilian personnel of the Department of Defense (DoD), in current or future military operations, should be inspected for safety and habitability prior to use and that such facilities should be brought into compliance with generally accepted standards for the safety and health of personnel to the maximum extent practicable consistent with the requirements of military operations. Implementing language must be published as quickly as possible to minimize the safety and health risk posed to DoD military or civilian personnel during military operations.

However, pursuant to 41 U.S.C. 418b and FAR 1.501–3, DoD will consider public comments received in response to this interim rule in the formation of the final rule.

List of Subjects in 48 CFR Parts 246 and 252

Government procurement.

Ynette R. Shelkin,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR parts 246 and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 246 and 252 continues to read as follows:

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

PART 246—QUALITY ASSURANCE

■ 2. Section 246.101 is added to read as follows:

246.101 Definitions.

Discipline Working Group, as used in this subpart, is defined in the clause at 252.246–7004, Safety of Facilities, Infrastructure, and Equipment for Military Operations.

■ 3. Section 246.270 is added to read as follows:

246.270 Safety of facilities, infrastructure, and equipment for military operations.

246.270–1 Scope.

This section implements section 807 of the National Defense Authorization Act for Fiscal Year 2010 (Pub. L. 111–84). It establishes policies and procedures intended to ensure the safety and habitability of facilities, infrastructure, and equipment acquired for use by DoD military or civilian personnel during military operations performed outside the United States, Guam, Puerto Rico, and the Virgin Islands.

246.270–2 Policy.

(a) Contracts (including task and delivery orders) for the construction, installation, repair, maintenance, or operation of facilities, infrastructure, and equipment configured for occupancy, including but not limited to, existing host nation facilities, new construction, and relocatable buildings acquired for use by DoD military or civilian personnel, shall require a pre-occupancy safety and habitability inspection.

(b) To minimize safety and health risks, each contract covered by this policy shall require the contractor's compliance with the Unified Facilities Criteria (UFC) 1–200–01 and its referenced standards for—

- (1) Fire protection;
- (2) Structural integrity;
- (3) Electrical systems;
- (4) Plumbing;
- (5) Water treatment;
- (6) Waste disposal; and
- (7) Telecommunications networks.

(c) Existing host nation facilities constructed to standards equivalent to or more stringent than UFC 1–200–01 are acceptable upon a written determination of the acceptability of the standards by the Discipline Working Group.

(d) Inspections to ensure compliance with UFC 1–200–01 standards shall be conducted in accordance with the inspection clause of the contract.

246.270–3 Exceptions.

The combatant commander may waive compliance with the foregoing standards when it is impracticable to comply with such standards under prevailing operational conditions.

246.270–4 Contract clause.

Use the clause at 252.246–7004, Safety of Facilities, Infrastructure, and Equipment for Military Operations, in solicitations and contracts for the construction, installation, repair, maintenance, or operation of facilities, infrastructure, or for equipment configured for occupancy, planned for use by DoD military or civilian personnel during military operations.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

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

- a. Redesignate paragraphs (b)(22), (b)(23), and (b)(24) as paragraphs (b)(23), (b)(24), and (b)(25), respectively;
- b. Add new paragraph (b)(22) 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) * * *
(22) _____ 252.246–7004, Safety of Facilities, Infrastructure, and Equipment for Military Operations (OCT 2010) (Section 807 of Public Law 111–84).

* * * * *

■ 5. Section 252.246–7004 is added to read as follows:

252.246–7004 Safety of Facilities, Infrastructure, and Equipment for Military Operations.

As prescribed in 246.270–4, use the following clause:

SAFETY OF FACILITIES, INFRASTRUCTURE, AND EQUIPMENT FOR MILITARY OPERATIONS (OCT 2010)

(a) *Definition.* *Discipline Working Group*, as used in this clause, means representatives from the DoD Components, as defined in MIL–STD–3007F, who are responsible for the unification and maintenance of the Unified Facilities Criteria (UFC) documents for a particular discipline area.

(b) The Contractor shall ensure, consistent with the requirements of the applicable inspection clause in this contract, that the facilities, infrastructure, and equipment acquired, constructed, installed, repaired, maintained, or operated under this contract comply with Unified Facilities Criteria (UFC) 1–200–01 for—

- (1) Fire protection;
- (2) Structural integrity;
- (3) Electrical systems;
- (4) Plumbing;
- (5) Water treatment;
- (6) Waste disposal; and
- (7) Telecommunications networks.

(c) The Contractor may apply a standard equivalent to or more stringent than UFC 1–

200-01 upon a written determination of the acceptability of the standard by the Contracting Officer with the concurrence of the relevant Discipline Working Group.

(End of clause)

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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 252

RIN 0750-AG60

Defense Federal Acquisition Regulation Supplement; Balance of Payments Program Exemption for Commercial Information Technology—Construction Material (DFARS Case 2009-D041)

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

ACTION: Final rule.

SUMMARY: DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement the exemption from the Balance of Payments Program for construction material that is commercial information technology. DATES: Effective Date: October 29, 2010. FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, 703-602-0328.

SUPPLEMENTARY INFORMATION:

I. Background

DoD is amending the DFARS to implement in the clauses at 252.225-7044, Balance of Payments Program—Construction Material, and 252.225-7045, Balance of Payments Program—Construction Material under Trade Agreements, the exemption from the Balance of Payments Program for construction material that is commercial information technology.

DoD published a proposed rule in the Federal Register (75 FR 32636) on June 8, 2010. DoD received no comments on the proposed rule. Therefore, DoD is adopting the proposed rule as a final rule without change.

II. Executive Order 12866

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

III. Regulatory Flexibility Act

DoD certifies that this final rule will not 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 this rule does not impose economic burdens on contractors. The purpose and effect of this rule is to provide an exception to the Balance of Payments Program for commercial information technology to be used in overseas construction projects.

IV. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 104-13) does not apply because the proposed rule contains no information collection requirements.

List of Subjects in 48 CFR Part 252

Government procurement.

Ynette R. Shelkin,

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR part 252 is amended as follows:

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

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.

2. Section 252.225-7044 is amended by revising the clause date, revising paragraph (b)(1), redesignating paragraph (b)(2) as paragraph (b)(3), and adding new paragraph (b)(2) to read as follows:

252.225-7044 Balance of Payments Program—Construction Material.

* * * * *

BALANCE OF PAYMENTS PROGRAM—CONSTRUCTION MATERIAL (OCT 2010)

* * * * *

(b) * * *

(1) Construction material valued at or below the simplified acquisition threshold in part 2 of the Federal Acquisition Regulation;

(2) Information technology that is a commercial item; or

* * * * *

3. Section 252.225-7045 is amended by:

a. Revising the clause date, revising paragraph (c)(1), redesignating paragraph (c)(2) as paragraph (c)(3), and adding new paragraph (c)(2); and

b. In Alternate I, by revising the clause date, revising paragraph (c)(1), redesignating paragraph (c)(2) as paragraph (c)(3), and adding new paragraph (c)(2).

The revisions and additions read as follows:

252.225-7045 Balance of Payments Program—Construction Material Under Trade Agreements.

* * * * *

BALANCE OF PAYMENTS PROGRAM—CONSTRUCTION MATERIAL UNDER TRADE AGREEMENTS (OCT 2010)

* * * * *

(c) * * *

(1) Construction material valued at or below the simplified acquisition threshold in part 2 of the Federal Acquisition Regulation;

(2) Information technology that is a commercial item; or

* * * * *

ALTERNATE I (OCT 2010)

* * * * *

(c) * * *

(1) Construction material valued at or below the simplified acquisition threshold in part 2 of the Federal Acquisition Regulation;

(2) Information technology that is a commercial item; or

* * * * *

[FR Doc. 2010-27304 Filed 10-28-10; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. NHTSA-2008-0613]

RIN 2127-AK49

Federal Motor Vehicle Safety Standards; Seat Belt Assembly Anchorages, School Bus Passenger Seating and Crash Protection

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

ACTION: Final rule; response to petitions for reconsideration.

SUMMARY: In this final rule, we respond to petitions for reconsideration of a final rule published on October 21, 2008, which upgraded NHTSA's school bus passenger crash protection requirements. This document denies most of the requests in the petitions for reconsideration.

To the extent we grant petitions, we make slight changes to the regulatory text of the October 2008 final rule to clarify the rule. We make clearer the procedure specifying how we will measure the height of school bus passenger torso belts, and we are clarifying that a requirement that seat belts be integral to the passenger seat (a requirement adopted to reduce the