(iii) A cyber incident involving possible exfiltration, manipulation, or other loss or compromise of any unclassified controlled technical information resident on or transiting through subcontractor’s, or its subcontractors’, unclassified information systems.

(ii) Any other activities not included in paragraph (d)(2)(i) of this clause that allow unauthorized access to the subcontractor’s unclassified information system on which unclassified controlled technical information is resident on or transiting.

(3) Other reporting requirements. This reporting in no way abrogates the Contractor’s responsibility for additional safeguarding and cyber incident reporting requirements pertaining to its unclassified information systems under other clauses that may apply, or as a result of other U.S. Government legislative and regulatory requirements that may apply (e.g., as cited in paragraph (c) of this clause).

(4) Contractor actions to support DoD damage assessment. In response to the reported cyber incident, the Contractor shall—

(i) Conduct further review of its unclassified network for evidence of compromise resulting from a cyber incident to include, but is not limited to, identifying compromised computers, servers, specific data and users accounts. This includes analyzing information systems that were part of the compromise, as well as other information systems on the network that were accessed as a result of the compromise;

(ii) Review the data accessed during the cyber incident to identify specific unclassified controlled technical information associated with DoD programs, systems or contracts, including military programs, systems and technology; and

(iii) Preserve and protect images of known affected information systems and all relevant monitoring/packet capture data for at least 90 days from the cyber incident to allow DoD to request information or decline interest.

(5) DoD damage assessment activities. If DoD elects to conduct a damage assessment, the Contracting Officer will request that the Contractor point of contact identified in the incident report at (d)(1) of this clause provide all of the damage assessment gathered in accordance with paragraph (d)(4) of this clause. The Contractor shall comply with damage assessment information requests. The requirement to share files and images exists unless there are legal restrictions that limit a company’s ability to share digital media. The Contractor shall inform the Contracting Officer of the source, nature, and preservation of such limitations and the authority responsible.

(e) Protection of reported information. Except to the extent that such information is lawfully publicly available without restrictions, the Government will protect information reported or otherwise provided to DoD under this clause in accordance with applicable statutes, regulations, and policies. The Contractor shall identify and mark attribution information reported or otherwise provided to the DoD. The Government may use information, including attribution information and disclose it only to authorized persons for purposes and activities consistent with this clause.

(f) Nothing in this clause limits the Government’s ability to conduct law enforcement or counterintelligence activities, or other lawful activities in the interest of homeland security and national security. The results of the activities described in this clause may be used to support an investigation and prosecution of any person or entity, including those attempting to infiltrate or compromise information on a contractor information system in violation of any statute.

(g) Subcontracts. The Contractor shall include the substance of this clause, including this paragraph (g), in all subcontracts, including subcontracts for commercial items.

(End of clause)

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 225 and 252

RIN 0750–AI12


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 remove coverage on contractors performing private security functions that is now covered in the FAR.

DATES: Effective November 18, 2013.

FOR FURTHER INFORMATION CONTACT: Ms. Meredith Murphy, telephone 571–372–6608.

SUPPLEMENTARY INFORMATION:

I. Background


These same statutory provisions were subsequently implemented in the FAR at 25.302 and 52.225–26, both entitled “Contractors Performing Private Security Functions Outside the United States.” in FAC 2005–067, issued June 21, 2013. The FAR changes regarding private security contractors were effective on July 22, 2013 (see 78 FR 37670). Therefore, there is no need to retain the duplicative DFARS coverage applicable solely to DoD.

This final rule removes DFARS 225.370 and the clause at 252.225–7039, effective upon publication. In all applicable cases (see FAR 25.302–3, Applicability), the FAR shall be used.

II. Publication of This Final Rule for Public Comment Is Not Required by Statute

“Publication of proposed regulations”, 41 U.S.C. 1707, is the statute which applies to the publication of the Federal Acquisition Regulation. Paragraph (a)(1) of the statute requires that a procurement policy, regulation, procedure or form (including an amendment or modification thereof) must be published for public comment if it relates to the expenditure of appropriated funds, and has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure or form, or has a significant cost or administrative impact on contractors or offerors. This final rule is not required to be published for public comment because DFARS 225.370 and the clause at 252.225–7039 are duplicative of the FAR. Using the FAR clause instead of the DFARS clause should, in effect, be transparent to contractors because the requirements are the same for both clauses.

III. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

IV. Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule because this final rule does not constitute a significant DFARS revision within the meaning of FAR 1.501–1 and 41 U.S.C. 1707 does not require publication for public comment.

V. Paperwork Reduction Act

This rule affects the information collection requirements in the provisions at DFARS 225.370 and 252.225–7039, currently approved under OMB Control Number 0704–0460, titled Synchronized Predeployment and Operational Tracker (SPOT) System, in accordance with the Paperwork Reduction Act (44 U.S.C. chapter 35). The information collection requirements associated with OMB 0704–0460 are broader than those applicable only to private security contractors, and the majority of the 0704–0460 requirements (i.e., those not associated with private security contractors) will continue to apply to DoD contractors under the clause at DFARS 252.225–7040. The information collection requirements associated with contractor employees performing private security functions will continue to apply to DoD contractors in accordance with the clause at FAR 52.225–26 (which cites to OMB 0704–0460). The information collection requirements for private security contractors under contracts with non-DoD agencies are addressed under a separate information collection, 9000–0180. There is no net impact of this final rule on the information collection requirements for OMB 0704–0460.

List of Subjects in 48 CFR Parts 225 and 252

Government procurement.

Manuel Quiones,
Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 225 and 252 are amended as follows:

1. The authority citation for 48 CFR parts 225 and 252 continues to read as follows:


PART 225—FOREIGN ACQUISITION

225.370 [Removed]

2. Remove section 225.370.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

252.225–7039 [Removed and Reserved]