

225.004 Reporting of acquisition of end products manufactured outside the United States.

Follow the procedures at PGI 225.004 for entering the data upon which the report required by FAR 25.004 will be based.

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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 212, 222, and 252

RIN 0750-AF11

Defense Federal Acquisition Regulation Supplement; Combating Trafficking in Persons (DFARS Case 2004-D017)

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

ACTION: Interim rule with request for comments.

SUMMARY: DoD has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement DoD policy prohibiting activities on the part of DoD contractors and contractor employees that support or promote trafficking in persons. The rule contains a clause for use in contracts performed outside the United States.

DATES: *Effective date:* October 26, 2006.

Comment date: Comments on the interim rule should be submitted to the address shown below on or before December 26, 2006, to be considered in the formation of the final rule.

ADDRESSES: You may submit comments, identified by DFARS Case 2004-D017, using any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *E-mail:* dfars@osd.mil. Include DFARS Case 2004-D017 in the subject line of the message.
- *Fax:* (703) 602-0350.
- *Mail:* Defense Acquisition Regulations System, Attn: Ms. Amy Williams, OUSD (AT&L) DPAP (DARS), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301-3062.
- *Hand Delivery/Courier:* Defense Acquisition Regulations System, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202-3402.

Comments received generally will be posted without change to <http://www.regulations.gov>, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, (703) 602-0328.

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule implements (1) a memorandum issued by the Secretary of Defense on September 16, 2004, which states that trafficking practices will not be tolerated in DoD contractor organizations or their subcontractors in supporting DoD operations, and (2) a memorandum issued by the Deputy Secretary of Defense on January 30, 2004, which states as an objective that, consistent with U.S. and host-nation law, provisions should be incorporated in overseas service contracts that prohibit any activities on the part of contractor employees that support or promote trafficking in persons and that impose suitable penalties on contractors who fail to monitor the conduct of their employees. The January 30, 2004, memorandum cites National Security Presidential Directive/NSPD-22, which decrees that all departments of the U.S. Government will take a “zero tolerance” approach to trafficking in persons.

DoD published a proposed rule at 70 FR 35603 on June 21, 2005, to implement the DoD policy prohibiting trafficking in persons in all contracts performed outside the United States. Two respondents submitted comments on the proposed rule. Subsequently, on April 19, 2006 (71 FR 20301), an interim rule amending the Federal Acquisition Regulation (FAR) was published to implement 22 U.S.C. 7104, as amended by the Trafficking Victims Protection Reauthorization Act of 2003 (Pub. L. 108-193) and the Trafficking Victims Protection Reauthorization Act of 2005 (Public Law 109-164). The FAR rule contains a new Subpart 22.17, Combating Trafficking in Persons, with an associated contract clause, and prohibits severe forms of trafficking in persons, procurement of commercial sex acts, and the use of forced labor by Government contractors or subcontractors or their employees. The FAR rule applies to service contracts, other than commercial service contracts awarded under FAR Part 12.

This interim DFARS rule supplements the interim FAR rule published on April 19, 2006, and also contains changes made as a result of public comments received on the proposed DFARS rule published on June 21, 2005. The DFARS rule extends the FAR prohibitions on severe forms of trafficking in persons and use of forced labor to all DoD contracts performed outside the United States, and extends the FAR prohibition on the procurement of commercial sex acts to all DoD service and construction

contracts performed outside the United States.

Many of DoD’s contracts performed outside the United States are susceptible to trafficking in persons due to the difficult working conditions (e.g., war zones, extreme climate). Also, DoD has significant numbers and varying types of contracts and subcontracts being performed outside the United States (e.g., supplies, food services, logistics services, guard services, maintenance services, construction) and seeks to prevent instances of trafficking in persons in all such contracts. For example, if a contract or subcontract has been awarded for cleaning services and the contracting officer discovers that the contractor is using forced labor, DoD wants to be able to take action against the contractor. As another example, if a contractor employee working on a DoD logistics support contract “purchases” an individual (i.e., slavery/indentured servitude), DoD wants the contractor to take action against that employee.

The DFARS text is included in Part 222, instead of the proposed rule location of Part 225, for consistency with the location of the corresponding FAR text. The new clause at DFARS 252.222-7006, Combating Trafficking in Persons, requires DoD contractors performing outside the United States to take appropriate action against employees who engage in activities prohibited by the clause; to include the substance of the clause in all subcontracts performed outside the United States; and to include the substance of the clause in subcontracts performed in the United States when both the contract and the subcontract are for services (other than commercial services).

The following is a discussion of the public comments received in response to the proposed rule published on June 21, 2005, and the resulting changes included in this interim rule.

1. Comments Related to Policy and Clause Prescription

a. *Comment:* One respondent recommended that DoD withhold any further action on this DFARS rule pending completion of the FAR rule on this subject.

DoD Response: DoD has incorporated most of the language of the FAR interim rule into this interim DFARS rule. The DFARS rule implements DoD policy and has broader application than the FAR rule. Therefore, it is not necessary for the FAR rule to be finalized prior to proceeding with this DFARS rule.

b. *Comment:* One respondent expressed concerns about imposing the “full brunt” of the contract clause in all

commercial item and service procurements, and recommended narrowly tailoring the clause and revising flow-down requirements for commercial items.

DoD Response: DoD recognizes the difficulty in fully applying the clause to the purchase of commercial items, and acknowledges the intent of Public Law 103-355 to limit provisions and clauses in contracts for commercial items to those implementing statute or Executive order. However, DoD policy for zero tolerance requires application of the clause to all contractors and subcontractors performing contracts outside the United States, including those performing under contracts for commercial items. DoD also believes that contracts for supplies or services that rely upon unskilled labor, including contracts for commercial items, present the greatest risk for severe forms of trafficking in persons or use of forced labor. Therefore, the interim rule prohibits contractors performing outside the United States from engaging in trafficking and requires appropriate action against any employee found to be in violation of the policy, but limits the mandate to train and monitor the conduct of employees to those contractors performing under service and construction contracts, since those employees are generally providing direct support to DoD operations and their behavior can more reasonably be monitored.

c. *Comment:* One respondent recommended that DoD clarify that the scope of the rule extends beyond service contracts, specifically referencing the memorandum of the Deputy Secretary of Defense that addressed combating trafficking in overseas service contracts.

DoD Response: DoD developed the rule with the belief that the intent of the Deputy Secretary's memorandum of January 30, 2004, was to ensure adequate application of the policy to DoD service contract employees, but not necessarily limit the application to service contract employees. This belief was supported by National Security Presidential Directive/NSPD-22 and the Secretary of Defense memorandum of September 16, 2004, both of which indicate a broader application to contracts performed outside the United States. The Secretary's memorandum specifically states: "* * * trafficking practices will not be tolerated in DoD contractor organizations or their subcontractors in supporting DoD operations." Therefore, the interim rule applies to all contracts performed outside the United States.

d. *Comment:* One respondent questioned application of the rule to

non-U.S. contractors and subcontractors.

DoD Response: One of the examples leading to the development of the DoD policy involved a non-U.S. subcontractor. Zero tolerance within DoD extends to all contractors and subcontractors, whether or not based in the United States. The application of the rule to both U.S. and non-U.S. firms is necessary to fully implement the DoD policy.

2. Comments Related to Notification Requirements

a. *Comment:* One respondent recommended that the clause provide flexibility in both the timing and the nature of the disclosure to be required. Another respondent recommended that violations be reported to the contracting officer and the Combatant Commander within 24 hours of receiving or learning of any information relating to trafficking.

DoD Response: DoD recognizes the need to report infractions in a timely manner, but is concerned with stating a specific time period. While requiring that contractors report trafficking activities to the contracting officer within a certain time period may assist in promoting the U.S. policy, it may also raise issues with host nation criminal or international laws (e.g., permitting 24 hours to elapse before reporting a crime). Therefore, the clause has been amended to require "immediate" notification by the contractor to the contracting officer. The text at DFARS 222.1704-70 (previously DFARS 225.7404-3) also has been amended to require the contracting officer to "immediately" notify the Combatant Commander.

b. *Comment:* One respondent requested inclusion of a requirement to notify relevant law enforcement authorities.

DoD Response: DFARS 222.1704-70 requires the contracting officer to immediately notify the Combatant Commander, who will handle alleged violations in accordance with established theater policy and practices and U.S. and host nation laws.

3. Comments Related to Procedures and Training

a. *Comment:* One respondent recommended deleting the requirement for the contractor to obtain copies of referenced legal and regulatory documents, and expressed concerns with requirements for providing legal guidance and interpretations of non-U.S. host nation laws and policies to employees regarding trafficking laws and regulations, especially for small

businesses and contractors providing commercial items.

DoD Response: Contractors operating overseas are expected to be knowledgeable of a host nation's policies, laws, regulations, and directives. DoD acknowledges that the intent of the clause is for contractors operating in a foreign country to know (not necessarily acquire copies of) host nation, as well as U.S., laws applicable to the instant contract. Therefore, the clause has been revised, indicating a requirement for the contractor to be knowledgeable (rather than obtain copies) of policies, laws, regulations, and directives. However, contractors performing under service and construction contracts must provide employees with guidance on trafficking policies, laws, regulations, and directives as part of efforts to increase awareness and must ensure that employees do not engage in trafficking activities.

b. *Comment:* One respondent recommended clarifying the actions that contractors must take relative to developing policy and procedures that prohibit employee activities supporting or promoting trafficking in persons.

DoD Response: DoD has revised the rule at 222.1703(2)(ii) (previously 225.7404-2(b)) and in paragraph (d) of the clause to incorporate the changes recommended by the respondent.

c. *Comment:* One respondent proposed that outside experts provide the training specified in the contract clause.

DoD Response: The clause neither precludes nor requires the use of outside experts in a training capacity. The clause has been drafted to give contractors maximum flexibility to use those resources that are deemed appropriate, based on location, workforce composition, and other factors, to ensure adequate training.

d. *Comment:* One respondent recommended that the contractor be permitted to tailor its training program to the size and nature of the overseas work.

DoD Response: The clause has been revised to require only those contractors (if other than an individual) performing service and construction contracts to fully train and monitor employees regarding severe forms of trafficking in persons, procurement of commercial sex acts, and use of forced labor, since those employees are generally providing direct support to DoD operations and their behavior can more reasonably be monitored. However, all DoD contractors and subcontractors are required to take action against any of their employees who engage in severe

forms of trafficking activities or the use of forced labor, regardless of the size or nature of the overseas work.

e. *Comment:* One respondent recommended deletion of the requirement for the contractor to develop policy and training relating to the Military Extraterritorial Jurisdiction Act (MEJA).

DoD Response: DoD has amended the rule to clarify this requirement. Contractors must train their employees about MEJA, not every possible felony committed in the host nation for which MEJA would confer jurisdiction on the United States.

f. *Comment:* One respondent recommended revision of the phrase "including removal" to "up to and including removal," to demonstrate that there is a range of personnel actions that the contractor could take if there is a violation.

DoD Response: Paragraph (d)(1) of the clause incorporates this recommendation by stating "Such actions may include, but are not limited to * * *".

g. *Comment:* One respondent expressed concern that the rule makes no mention of whether employees terminated for trafficking may be rehired or transferred to another location for additional service.

DOD Response: Existing laws and regulatory procedures address this issue with regard to employees who are found to be guilty of trafficking. For example, 10 U.S.C. 2408 provides for a fine of up to \$500,000 to be assessed against a contractor that employs (in certain positions) a person convicted of fraud or any other felony arising out of a DoD contract. These individuals are listed in the Excluded Parties List System, available to the public at <http://www.epls.gov/>.

h. *Comment:* One respondent was concerned with the use of suspension of payments as a remedy, and recommended that DFARS Procedures, Guidance, and Information (PGI) address procedures that the contracting officer must follow before concluding that there is a failure to comply.

DOD Response: The authority to suspend payments is modeled after the penalties in paragraph (d) of clause at FAR 52.223-6, Drug-Free Workplace. Guidance for contracting officers regarding use of this authority has been added at PGI 222.1704.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD does not expect this rule to 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 the rule applies only to contracts performed outside the United States, and reinforces existing laws and policies prohibiting trafficking in persons. 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 subparts in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 2004-D017.

C. Paperwork Reduction Act

This interim rule contains DFARS policy to supplement the interim FAR rule published at 71 FR 20301 on April 19, 2006. The interim FAR rule established a new contract clause, 52.222-50, Combating Trafficking in Persons, to implement 22 U.S.C. 7104(g), which requires that Federal contracts provide for termination of a contract if the contractor or a subcontractor engages in severe forms of trafficking in persons, the use of forced labor, or procures a commercial sex act during the period of contract performance. The FAR clause applies to contracts for services (other than commercial service contracts under FAR Part 12), and requires the contractor to notify the contracting officer of any information alleging employee misconduct under the clause and any resulting action taken against employees. Comments concerning the information collection requirements of the FAR clause were solicited in the preamble to the interim FAR rule published on April 19, 2006, for submission to the FAR Secretariat in accordance with the procedures specified at 71 FR 20301.

This interim rule contains a new clause at DFARS 252.222-7006, Combating Trafficking in Persons, which expands the requirement for contractors to notify the contracting officer of employee misconduct and the resulting action, to all DoD contracts performed outside the United States, including those for supplies, construction, and commercial services. The Office of Management and Budget (OMB) has approved the information collection requirements of the interim DFARS rule for use through January 31, 2007, under OMB Control Number

0704-0440, in accordance with the emergency processing procedures of 5 CFR 1320.13. DoD invites comments on the following aspects of the interim DFARS rule: (a) Whether the collection of information is necessary for the proper performance of the functions of DoD, including whether the information will have practical utility; (b) the accuracy of the estimate of the burden of the information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology.

The following is a summary of the additional information collection requirements that will result from inclusion of the clause at DFARS 252.222-7006 in DoD contracts performed outside the United States for supplies, construction, and commercial services.

Title: Defense Federal Acquisition Regulation Supplement (DFARS) Subpart 222.17, Combating Trafficking in Persons.

Type of Request: New collection.

Number of Respondents: 30.

Responses Per Respondent: 2.

Annual Responses: 60.

Average Burden Per Response: 1 hour.

Annual Burden Hours: 60.

Needs and Uses: DoD contracting officers will use this information to monitor contractor compliance with DoD policy for zero tolerance of trafficking in persons.

Affected Public: Businesses or other for-profit and not-for-profit institutions.

Frequency: On occasion.

Written comments and recommendations on the proposed information collection should be sent to Ms. Hillary Jaffe at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503, with a copy to the Defense Acquisition Regulations System, Attn: Ms. Amy Williams, OUSD (AT&L) DPAP (DARS), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301-3062. Comments can be received from 30 to 60 days after the date of this notice, but comments to OMB will be most useful if received by OMB within 30 days after the date of this notice.

To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to Defense Acquisition Regulations System, Attn: Ms. Amy Williams, OUSD (AT&L) DPAP (DARS),

IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062.

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 on the rule. This interim DFARS rule supplements the interim FAR rule published in the **Federal Register** on April 19, 2006, regarding combating severe forms of trafficking in persons, the use of forced labor, and procurement of commercial sex acts by contractors performing under Federal contracts for services (other than commercial services). The supplemental DFARS coverage is needed to ensure that all DoD contracts performed outside the United States, including those for supplies, construction, and commercial services, address DoD zero-tolerance policy regarding these prohibited activities and provide for suitable penalties on contractors that fail to monitor the conduct of their employees. Comments received in response to this interim rule will be considered in the formation of the final rule.

List of Subjects in 48 CFR Parts 212, 222, and 252

Government procurement.

Michele P. Peterson,
Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR parts 212, 222, and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 212, 222, and 252 continues to read as follows:

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

PART 212—ACQUISITION OF COMMERCIAL ITEMS

■ 2. Section 212.301 is amended by adding paragraph (f)(x) to read as follows:

212.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

(f) * * *

(x) Use the clause at 252.222–7006, Combating Trafficking in Persons, as prescribed in 222.1705.

PART 222—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

■ 3. Subpart 222.17 is added to read as follows:

Subpart 222.17—Combating Trafficking in Persons

Sec.

222.1700 Scope of subpart.

222.1701 Applicability.

222.1702 Definitions.

222.1703 Policy.

222.1704 Violations and remedies.

222.1704–70 Notification to Combatant Commander.

222.1705 Contract clause.

Subpart 222.17—Combating Trafficking in Persons

222.1700 Scope of subpart.

This subpart also implements DoD policy for combating trafficking in persons in contracts performed outside the United States.

222.1701 Applicability.

This subpart also applies to all DoD contracts performed outside the United States.

222.1702 Definitions.

Combatant Commander, construction, employee, service contract, severe forms of trafficking in persons, and United States, as used in this subpart, have the meaning given in the clause at 252.222–7006, Combating Trafficking in Persons.

222.1703 Policy.

(1) Contracts performed outside the United States shall—

(i) Prohibit any activities on the part of the contractor that support or promote severe forms of trafficking in persons or use of forced labor;

(ii) Impose suitable penalties on contractors that—

(A) Engage in activities that support or promote severe forms of trafficking in persons or use of forced labor; or

(B) Fail to take appropriate action against their employees and subcontractors that engage in or support severe forms of trafficking in persons or use of forced labor.

(2) In addition to the prohibitions and penalties stated in paragraph (1) of this section, contracts performed outside the United States for services or construction shall—

(i) Prohibit any activities on the part of the contractor that promote or support the procurement of commercial sex acts;

(ii) Require contractors to develop policy and procedures that prohibit any activities on the part of contractor employees that support or promote severe forms of trafficking in persons, procurement of commercial sex acts, or use of forced labor; and

(iii) Impose suitable penalties on contractors that—

(A) Fail to monitor the conduct of their employees and subcontractors

with regard to severe forms of trafficking in persons, procurement of commercial sex acts, or use of forced labor; or

(B) Fail to take appropriate action against their employees and subcontractors that engage in or support the procurement of commercial sex acts.

(3) See PGI 222.1703 for additional information regarding DoD policy for combating trafficking in persons outside the United States.

222.1704 Violations and remedies.

(a) *Violations.*

(i) The Government may impose the remedies set forth in paragraph (b) of this section if, during performance of the contract—

(A) The contractor or any contractor employee engages in severe forms of trafficking in persons;

(B) The contractor or any contractor employee uses forced labor; or

(C) The contractor fails to comply with the requirements of the clause at 252.222–7006, Combating Trafficking in Persons.

(ii) In addition to the violations stated in paragraph (a)(i) of this section, the Government may impose the remedies specified in paragraph (b) of this section if, during performance of a service or construction contract, the contractor or any contractor employee procures a commercial sex act.

(b) *Remedies.* After determining in writing that adequate evidence exists to suspect any of the violations stated in paragraph (a) of this section, the contracting officer may pursue any of the remedies specified in paragraph (f) of the clause at 252.222–7006, Combating Trafficking in Persons. These remedies are in addition to any other remedies available to the Government (see PGI 222.1704 for procedures and guidance regarding imposition of such remedies).

222.1704–70 Notification to Combatant Commander.

If the contracting officer receives information indicating that the contractor or its subcontractors have failed to comply with paragraph (c), (d), or (e) of the clause at 252.222–7006, the contracting officer shall, through the contracting officer's local commander or other designated representative, immediately notify the Combatant Commander responsible for the geographical area in which the incident has occurred (see PGI 222.1704–70 for assistance in contacting the responsible Combatant Commander).

222.1705 Contract clause.

(1) Use the clause at 252.222–7006, Combating Trafficking in Persons, in

solicitations and contracts when contract performance will be outside the United States.

(2) Do not use the clause at FAR 52.222–50, Combating Trafficking in Persons, in solicitations and contracts that include the clause at 252.222–7006, Combating Trafficking in Persons.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 4. Section 252.222–7006 is added to read as follows:

252.222–7006 Combating Trafficking in Persons.

As prescribed in 222.1705, use the following clause:

Combating Trafficking in Persons (OCT 2006)

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

(1) Threats of serious harm to or physical restraint against any person;

(2) Any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or

(3) The abuse or threatened abuse of the legal process.

Commercial sex act means any sex act on account of which anything of value is given to or received by any person.

Construction means construction, alteration, or repair (including dredging, excavating, and painting) of buildings, structures, or other real property. For purposes of this definition, the terms “buildings, structures, or other real property” include, but are not limited to, improvements of all types, such as bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, cemeteries, pumping stations, railways, airport facilities, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, canals, and channels. Construction does not include the manufacture, production, furnishing, construction, alteration, repair, processing, or assembling of vessels, aircraft, or other kinds of personal property.

Debt bondage means the status or condition of a debtor arising from a pledge by the debtor of his or her personal services or of those of a person under his or her control as a security for debt, if the value of those services as reasonably assessed is not applied toward the liquidation of the debt or the length and nature of those services are not respectively limited and defined.

Employee means an employee of a contractor directly engaged in the performance of work under a Government contract, including all direct cost employees and any other contractor employee who has other than a minimal impact or involvement in contract performance.

Individual means a contractor that has no more than one employee including the contractor.

Involuntary servitude includes a condition of servitude induced by means of—

(1) Any scheme, plan, or pattern intended to cause a person to believe that, if the person did not enter into or continue in such conditions, that person or another person would suffer serious harm or physical restraint; or

(2) The abuse or threatened abuse of the legal process (22 U.S.C. 7102(5)).

Service contract means a contract that directly engages the time and effort of a contractor whose primary purpose is to perform an identifiable task rather than to furnish an end item of supply.

Service (other than commercial) means a service that does not meet the definition of commercial item in section 2.101 of the Federal Acquisition Regulation.

Severe forms of trafficking in persons means—

(1) Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such act has not attained 18 years of age; or

(2) The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjecting to involuntary servitude, peonage, debt bondage, or slavery.

Sex trafficking means the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act.

United States means the 50 States, the District of Columbia, and outlying areas.

(b) *Policy.* It is the policy of the Department of Defense (DoD) that trafficking in persons will not be facilitated in any way by the activities of DoD contractors or contractor personnel. DoD will not tolerate severe forms of trafficking in persons or use of forced labor by DoD contractors, DoD subcontractors, or DoD contractor or subcontractor personnel during the period of contract performance. Furthermore, DoD will not tolerate the procurement of commercial sex acts by DoD contractors, DoD subcontractors, or DoD contractor or subcontractor personnel, during the period of performance of service or construction contracts. As delineated in National Security Presidential Directive 22, the United States has adopted a zero tolerance policy regarding contractor personnel who engage in or support trafficking in persons.

(c) *Contractor compliance.*

(1) During the performance of this contract, the Contractor shall comply with the policy of DoD and shall not engage in or support severe forms of trafficking in persons or use of forced labor. The Contractor is responsible for knowing and adhering to United States Government zero-tolerance policy and all host nation laws and regulations relating to trafficking in persons and the use of forced labor.

(2) Additionally, if this contract is a service or construction contract, the Contractor shall not engage in or support the procurement of commercial sex acts during the performance of this contract and is responsible for knowing and adhering to United States Government policy and all host nation laws and regulations relating thereto.

(d) *Contractor responsibilities for employee conduct—service or construction contracts.* If

this contract is a service or construction contract, the Contractor, if other than an individual, shall establish policies and procedures for ensuring that during the performance of this contract, its employees do not engage in or support severe forms of trafficking in persons, procure commercial sex acts, or use forced labor. At a minimum, the Contractor shall—

(1) Publish a statement notifying its employees of the United States Government policy described in paragraph (b) of this clause and specifying the actions that will be taken against employees for violations of this policy. Such actions may include, but are not limited to, removal from the contract, reduction in benefits, termination of employment, or removal from the host country;

(2) Establish an awareness program to inform employees regarding—

(i) The Contractor's policy of ensuring that employees do not engage in severe forms of trafficking in persons, procure commercial sex acts, or use forced labor;

(ii) The actions that will be taken against employees for violation of such policy; and

(iii) Laws, regulations, and directives that apply to conduct when performance of the contract is outside the United States, including—

(A) All host country Government laws and regulations relating to severe forms of trafficking in persons, procurement of commercial sex acts, and use of forced labor;

(B) All United States laws and regulations on severe forms of trafficking in persons, procurement of commercial sex acts, and use of forced labor that may apply to its employees' conduct in the host nation, including those laws for which jurisdiction is established by the Military Extraterritorial Jurisdiction Act of 2000 (18 U.S.C. 3261–3267) and 18 U.S.C. 3271, Trafficking in persons offenses committed by persons employed by or accompanying the Federal Government outside the United States; and

(C) Directives on trafficking in persons from the Combatant Commander, or the Combatant Commander's designated representative, that apply to contractor employees, such as general orders and military listings of “off-limits” local establishments; and

(3) Provide all employees directly engaged in performance of the contract with—

(i) Any necessary legal guidance and interpretations regarding combating trafficking in persons policies, laws, regulations, and directives applicable to performance in the host country; and

(ii) A copy of the statement required by paragraph (d)(1) of this clause. If this contract is for services (other than commercial), the Contractor shall obtain written agreement from the employee that the employee shall abide by the terms of the statement.

(e) *Employee violations—notification and action.* The Contractor shall—

(1) Inform the Contracting Officer immediately of any information it receives from any source (including host country law enforcement) that alleges a contractor or subcontractor employee has engaged in conduct that violates the policy in paragraph (b) of this clause. Notification to the

Contracting Officer does not alleviate the Contractor's responsibility to comply with applicable host nation laws;

(2) In accordance with its own operating procedures and applicable policies, laws, regulations, and directives, take appropriate action, up to and including removal from the host nation or dismissal, against any of its employees who violate the policy in paragraph (b) of this clause; and

(3) Inform the Contracting Officer of any actions taken against employees pursuant to this clause.

(f) *Remedies.* In addition to other remedies available to the Government, the Contractor's failure to comply with the requirements of paragraphs (c), (d), (e), or (g) of this clause may render the Contractor subject to—

(1) Required removal of a Contractor employee or employees from the performance of the contract;

(2) Required subcontractor termination;

(3) Suspension of contract payments;

(4) Loss of award fee, consistent with the award fee plan, for the performance period in which the Government determined Contractor non-compliance;

(5) Termination of the contract for default, in accordance with the Termination clause of this contract; or

(6) Suspension or debarment.

(g) *Subcontracts.*

(1)(i) The Contractor shall include the substance of this clause, including this paragraph (g), in all subcontracts performed outside the United States; and

(ii) If this contract is for services (other than commercial), the Contractor shall include the substance of this clause, including this paragraph (g), in all subcontracts performed in the United States for the acquisition of services (other than commercial).

(2) If this contract is a service or construction contract, the Contractor shall conduct periodic reviews of its service and construction subcontractors to verify compliance with their obligations pursuant to paragraph (d) of this clause.

(3) The Contractor shall—

(i) Immediately inform the Contracting Officer of any information it receives from any source (including host country law enforcement) that alleges a subcontractor has engaged in conduct that violates the policy in paragraph (b) of this clause. Notification to the Contracting Officer does not alleviate the Contractor's responsibility to comply with applicable host nation laws;

(ii) Take appropriate action, including termination of the subcontract, when the Contractor obtains sufficient evidence to determine that the subcontractor is in non-compliance with its contractual obligations pursuant to this clause; and

(iii) Inform the Contracting Officer of any actions taken against subcontractors pursuant to this clause.

(End of Clause)

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DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Part 225

[DFARS Case 2005-D012]

RIN 0750-AF21

Defense Federal Acquisition Regulation Supplement; Foreign Acquisition Procedures

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 delete text addressing internal DoD procedures pertaining to foreign acquisition. This text has been relocated to the DFARS companion resource, Procedures, Guidance, and Information.

DATES: *Effective Date:* October 26, 2006.

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) 602-0350. Please cite DFARS Case 2005-D012.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule deletes DFARS text addressing internal DoD procedures in the following areas:

DFARS 225.871-4—Processing of requests for waiver under North Atlantic Treaty Organization cooperative projects.

DFARS 225.7017-3—Preparation of determinations regarding award of a contract for ballistic missile defense research, development, test, and evaluation to a foreign source.

DFARS 225.7502—Application of the Balance of Payments Program to an acquisition.

DFARS 225.7604—Processing of requests for waiver of foreign source restrictions.

This text has been relocated to the DFARS companion resource, Procedures, Guidance, and Information (PGI), available at <http://www.acq.osd.mil/dpap/dars/pgi>.

DoD published a proposed rule at 71 FR 3448 on January 23, 2006. DoD received no comments on the proposed rule and has adopted the proposed rule as a final rule. However, as a result of

the final rule published at 71 FR 39005 on July 11, 2006, which relocated DFARS Subpart 225.6 to 225.76, the text that was designated in the January 23, 2006, proposed rule as DFARS 225.670-4 is now located at DFARS 225.7604.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. 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 the rule addresses internal DoD procedural matters and makes no significant change to DoD contracting policy.

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 225

Government procurement.

Michele P. Peterson,

Editor, Defense Acquisition Regulations System.

■ Therefore, 48 CFR part 225 is amended as follows:

PART 225—FOREIGN ACQUISITION

■ 1. The authority citation for 48 CFR part 225 continues to read as follows:

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

■ 2. Section 225.871-4 is amended by revising paragraph (c) to read as follows:

225.871-4 Statutory waivers.

* * * * *

(c) To request a waiver under a cooperative project, follow the procedures at PGI 225.871-4.

* * * * *

■ 3. Section 225.7017-3 is amended by revising paragraph (b) to read as follows:

225.7017-3 Exceptions.

* * * * *

(b) If the head of the contracting activity certifies in writing, before contract award, that a U.S. firm cannot competently perform a contract for RDT&E at a price equal to or less than the price at which a foreign government or firm would perform the RDT&E. The contracting officer or source selection authority, as applicable, shall make a determination, in accordance with PGI