

## DEPARTMENT OF DEFENSE

## Defense Acquisition Regulations System

## 48 CFR Part 237

RIN 0750-AF64

## Defense Federal Acquisition Regulation Supplement; Security-Guard Functions (DFARS Case 2006-D050)

**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 Section 333 of the National Defense Authorization Act for Fiscal Year 2007. Section 333 extends, through September 30, 2009, the period during which contractor performance of security-guard functions at military installations or facilities is authorized to fulfill additional requirements resulting from the terrorist attacks on the United States on September 11, 2001.

**DATES:** *Effective date:* September 6, 2007.

*Comment date:* Comments on the interim rule should be submitted to the address shown below on or before November 5, 2007, to be considered in the formation of the final rule.

**ADDRESSES:** You may submit comments, identified by DFARS Case 2006-D050, using any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *E-mail:* [dfars@osd.mil](mailto:dfars@osd.mil). Include DFARS Case 2006-D050 in the subject line of the message.
- *Fax:* (703) 602-7887.
- *Mail:* Defense Acquisition Regulations System, Attn: Mr. Michael Benavides, OUSD (AT&L) DPAP (DARS), IMD 3D139, 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:** Mr. Michael Benavides, (703) 602-1302.

## SUPPLEMENTARY INFORMATION:

## A. Background

10 U.S.C. 2465 prohibits DoD from entering into contracts for the performance of firefighting or security-guard functions at military installations or facilities, unless an exception applies. Section 332 of the National Defense Authorization Act for Fiscal Year 2003 (Pub. L. 107-314), Section 324 of the National Defense Authorization Act for Fiscal Year 2005 (Pub. L. 108-175), and Section 344 of the National Defense Authorization Act for Fiscal Year 2006 (Pub. L. 109-163) have provided authority for DoD to waive the prohibition at 10 U.S.C. 2465, to fulfill additional requirements for security-guard functions at military installations or facilities resulting from the terrorist attacks on the United States on September 11, 2001.

Section 333 of the National Defense Authorization Act for Fiscal Year 2007 (Pub. L. 109-364) extends this authority through September 30, 2009, provided the total number of personnel employed to perform such functions does not exceed specified limits. This interim rule amends DFARS 237.102-70 to reflect the provisions of Section 333 of Public Law 109-364.

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.* Although the rule may provide opportunities for small business concerns to receive contracts for the performance of security-guard functions at military installations or facilities, the economic impact is not expected to be substantial. 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 2006-D050.

## 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 Section 333 of the National Defense Authorization Act for Fiscal Year 2007 (Pub. L. 109-364). Section 333 extends, through September 30, 2009, the period during which contractor performance of security-guard functions at military installations or facilities is authorized to fulfill additional requirements resulting from the terrorist attacks on the United States on September 11, 2001. Section 333 also places limitations on the total number of personnel that may be employed under this authority during fiscal years 2007 through 2009. 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,**

*Editor, Defense Acquisition Regulations System.*

■ Therefore, 48 CFR part 237 is amended as follows:

## PART 237—SERVICE CONTRACTING

■ 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.

■ 2. Section 237.102-70 is amended by revising paragraph (d) to read as follows:

## 237.102-70 Prohibition on contracting for firefighting or security-guard functions.

\* \* \* \* \*

(d)(1) Under Section 332 of Public Law 107-314, as amended by Section 333 of Public Law 109-364, this prohibition does not apply to any contract that is entered into for any increased performance of security-guard functions at a military installation or facility undertaken in response to the terrorist attacks on the United States on September 11, 2001, if—

(i) Without the contract, members of the Armed Forces are or would be used to perform the increased security-guard functions;

(ii) The agency has determined that—  
(A) Recruiting and training standards for the personnel who are to perform the security-guard functions are comparable to the recruiting and training standards for DoD personnel who perform the same security-guard functions;

(B) Contractor personnel performing such functions will be effectively supervised, reviewed, and evaluated; and

(C) Performance of such functions will not result in a reduction in the security of the installation or facility;

(iii) Contract performance will not extend beyond September 30, 2009; and

(iv) The total number of personnel employed to perform security-guard functions under all contracts entered into pursuant to this authority does not exceed—

(A) For fiscal year 2007, the total number of such personnel employed under such contracts on October 1, 2006;

(B) For fiscal year 2008, the number equal to 90 percent of the total number of such personnel employed under such contracts on October 1, 2006; and

(C) For fiscal year 2009, the number equal to 80 percent of the total number of such personnel employed under such contracts on October 1, 2006.

(2) Follow the procedures at PGI 237.102–70(d) to ensure that the personnel limitations specified in paragraph (d)(1)(iv) of this subsection are not exceeded.

[FR Doc. E7–17436 Filed 9–5–07; 8:45 am]

BILLING CODE 5001–08–P

## DEPARTMENT OF DEFENSE

### Defense Acquisition Regulations System

#### 48 CFR Part 237

RIN 0750–AF69

#### Defense Federal Acquisition Regulation Supplement; Limitation on Contracts for the Acquisition of Certain Services (DFARS Case 2006–D054)

**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 implement Section 832 of the National Defense Authorization Act for Fiscal Year 2007. Section 832 prohibits DoD from entering into a service contract to acquire a military flight simulator unless certain waiver criteria apply.

**EFFECTIVE DATE:** September 6, 2007.

**FOR FURTHER INFORMATION CONTACT:** Mr. Michael Benavides, Defense Acquisition Regulations System, OUSD (AT&L)

DPAP (DARS), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–1302; facsimile (703) 602–7887. Please cite DFARS Case 2006–D054.

#### SUPPLEMENTARY INFORMATION:

##### A. Background

Section 832 of the National Defense Authorization Act for Fiscal Year 2007 (Pub. L. 109–364) prohibits DoD from entering into a service contract to acquire a military flight simulator, unless the Secretary of Defense determines that a waiver is necessary for national security purposes and provides an economic analysis to the congressional defense committees at least 30 days before the waiver takes effect. This final rule adds text at DFARS 237.102–71 to reflect the provisions of Section 832 of Public Law 109–364.

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 2006–D054.

##### 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 237

Government procurement.

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

■ Therefore, 48 CFR part 237 is amended as follows:

#### PART 237—SERVICE CONTRACTING

■ 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.

■ 2. Section 237.102–71 is added to read as follows:

#### 237.102–71 Limitation on service contracts for military flight simulators.

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

(1) *Military flight simulator* means any system to simulate the form, fit, and function of a military aircraft that has no commonly available commercial variant.

(2) *Service contract* means any contract entered into by DoD, the principal purpose of which is to furnish services in the United States through the use of service employees as defined in 41 U.S.C. 357(b).

(b) Under Section 832 of Public Law 109–364, DoD is prohibited from entering into a service contract to acquire a military flight simulator. However, the Secretary of Defense may waive this prohibition with respect to a contract, if the Secretary—

(1) Determines that a waiver is necessary for national security purposes; and

(2) Provides an economic analysis to the congressional defense committees at least 30 days before the waiver takes effect. This economic analysis shall include, at a minimum—

(i) A clear explanation of the need for the contract; and

(ii) An examination of at least two alternatives for fulfilling the requirements that the contract is meant to fulfill, including the following with respect to each alternative:

(A) A rationale for including the alternative.

(B) A cost estimate of the alternative and an analysis of the quality of each cost estimate.

(C) A discussion of the benefits to be realized from the alternative.

(D) A best value determination of each alternative and a detailed explanation of the life-cycle cost calculations used in the determination.

(c) When reviewing requirements or participating in acquisition planning that would result in a military department or defense agency acquiring a military flight simulator, the contracting officer shall notify the program officials of the prohibition in paragraph (b) of this subsection. If the program officials decide to request a waiver from the Secretary of Defense under paragraph (b) of this subsection, the contracting officer shall follow the procedures at PGI 237.102–71.

[FR Doc. E7–17425 Filed 9–5–07; 8:45 am]

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