

Preference for Certain Domestic Commodities (Feb 2003)

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(3) To foods that have been manufactured or processed in the United States, its possessions, or Puerto Rico, regardless of where the foods (and any component if applicable) were grown or produced, except that this clause does apply to fish, shellfish, or seafood manufactured or processed in the United States and fish, shellfish, or seafood contained in foods manufactured or processed in the United States;

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DEPARTMENT OF DEFENSE

48 CFR Part 237

[DFARS Case 2002-D042]

Defense Federal Acquisition Regulation Supplement; Contractor Performance of Security-Guard Functions

AGENCY: 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 332 of the National Defense Authorization Act for Fiscal Year 2003. Section 332 provides temporary authority for contractor performance of security-guard functions at military installations or facilities in excess of those in place on September 10, 2001.

DATES: Effective date: February 14, 2003.

Comment date: Comments on the interim rule should be submitted to the address shown below on or before April 15, 2003, to be considered in the formation of the final rule.

ADDRESSES: Respondents may submit comments directly on the World Wide Web at <http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm>. As an alternative, respondents may e-mail comments to: dfars@acq.osd.mil. Please cite DFARS Case 2002-D042 in the subject line of e-mailed comments.

Respondents that cannot submit comments using either of the above methods may submit comments to: Defense Acquisition Regulations Council, Attn: Mr. Steven Cohen, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301-3062; facsimile (703) 602-0350. Please cite DFARS Case 2002-D042.

At the end of the comment period, interested parties may view public

comments on the World Wide Web at <http://emissary.acq.osd.mil/dar/dfars.nsf>.

FOR FURTHER INFORMATION CONTACT: Mr. Steven Cohen, (703) 602-0293.

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule amends DFARS subpart 237.1 to implement section 332 of the National Defense Authorization Act for Fiscal Year 2003 (Pub. L. 107-314). Section 332 authorizes DoD to waive the prohibition at 10 U.S.C. 2465(a) related to security-guard functions at military installations or facilities. It permits contractor performance of security-guard functions to meet the increased requirements for such services since September 11, 2001. This authority extends only to the increased requirements; therefore, existing security-guard services not performed by contractors are unaffected. The authority expires on December 2, 2005. Recruiting and training standards for contractor personnel who are to perform security-guard functions pursuant to this authority will be comparable to the standards in place for DoD personnel currently performing those functions.

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 the procurement of security-guard services over and above the level of such services being performed on September 10, 2001. The amount of such additional services is not expected to be significantly large, in comparison to the total amount of services procured by DoD. 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 2002-D042.

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 332 of the National Defense Authorization Act for Fiscal Year 2003 (Pub. L. 107-314). Section 332 provides temporary authority for contractor performance of security-guard functions at military installations or facilities to meet the increased requirements for such services since September 11, 2001. Section 332 became effective upon enactment on December 2, 2002. The authority provided by section 332 expires on December 2, 2005. 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,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Part 237 is amended as follows:

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.

PART 237—SERVICE CONTRACTING

2. Section 237.101 is added to read as follows:

237.101 Definitions.

Increased performance of security-guard functions, as used in this subpart, means—

(1) In the case of an installation or facility where no security-guard functions were performed as of September 10, 2001, the entire scope or extent of the performance of security-guard functions at the installation or facility after such date; and

(2) In the case of an installation or facility where security-guard functions were performed within a lesser scope of requirements or to a lesser extent as of September 10, 2001, than after such date, the increment of the performance of security-guard functions at the installation or facility that exceeds such lesser scope of requirements or extent of performance.

3. Section 237.102-70 is amended by adding paragraph (d) to read as follows:

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

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