Subpart 225.3 - CONTRACTS PERFORMED OUTSIDE THE UNITED STATES

Parent topic: Part 225 - FOREIGN ACQUISITION

225.301 Contractor personnel in a designated operational area or supporting a diplomatic or consular mission outside the United States.

225.301-1 Scope.

(a) “Performance in a designated operational area,” as used in this section, means performance of a service or construction, as required by the contract. For supply contracts, the term includes services associated with the acquisition of supplies (e.g., installation or maintenance), but does not include production of the supplies or associated overhead functions.

(c) For DoD, this section also applies to all personal services contracts.

225.301-4 Contract clause.

(1) Use the clause at FAR 52.225-19, Contractor Personnel in a Designated Operational Area or Supporting a Diplomatic or Consular Mission Outside the United States, in accordance with the prescription at FAR 25.301-4, except that—

(i) The clause shall also be used in personal services contracts with individuals; and

(ii) The clause shall not be used when all contractor personnel performing outside the United States will be covered by the clause at 252.225-7040 .

(2) When using the clause at FAR 52.225-19, the contracting officer shall inform the contractor that the Synchronized Predeployment and Operational Tracker (SPOT) is the appropriate automated system to use for the list of contractor personnel required by paragraph (g) of the clause. Information on the SPOT system is available at https://spot.dmdc.mil and http://www.acq.osd.mil/log/PS/ctr_mgt_accountability.html.

225.302 Contractors performing private security functions outside the United States.

225.302-6 Contract clause.

Use the clause at 252.225-7039 , Defense Contractors Performing Private Security Functions Outside the United States, instead of FAR clause 52.225-26, Contractors Performing Private Security

Functions Outside the United States, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services, when private security functions are to be performed outside the United States in—

(1) Contingency operations;

(2) Combat operations, as designated by the Secretary of Defense;

(3) Other significant military operations (as defined in 32 CFR part 159), designated by the Secretary of Defense, and only upon agreement of the Secretary of Defense and the Secretary of State;

(4) Peace operations, consistent with Joint Publication 3-07.3; or

(5) Other military operations or military exercises, when designated by the Combatant Commander.

225.370 Contracts requiring performance or delivery in a foreign country.

(a) If the acquisition requires the performance of services or delivery of supplies in an area outside the United States, follow the procedures at PGI 225.370 (a).

(b) For work performed in Germany, eligibility for logistics support or base privileges of contractor employees is governed by U.S.-German bilateral agreements. Follow the procedures at Army in Europe Regulation 715-9, available at http://www.eur.army.mil/g1/content/CPD/docper/docper_germanyLinks.html under “AE Regs & Resources.”

(c) For work performed in Japan or Korea, see PGI 225.370 (b) for information on bilateral agreements and policy relating to contractor employees in Japan or Korea.

(d) For work performed in the U.S. Central Command area of responsibility, follow the procedures for theater business clearance/contract administration delegation instructions at PGI 225.370 (d).

225.371 Contractor personnel supporting U.S. Armed Forces deployed outside the United States.

For additional information on contractor personnel supporting U.S. Armed Forces, see PGI 225.371 .

225.371-1 Scope.

(a) This section applies to contracts that involve contractor personnel supporting U.S. Armed Forces deployed outside the United States in—

(1) Contingency operations;

(2) Humanitarian or peacekeeping operations; or

(3) Other military operations or military exercises, when designated by the combatant commander.

(b) Any of the types of operations listed in paragraph (a) of this subsection may include stability operations such as—

(1) Establishment or maintenance of a safe and secure environment; or

(2) Provision of emergency infrastructure reconstruction, humanitarian relief, or essential governmental services (until feasible to transition to local government).

225.371-2 Definition.

“Designated operational area” is defined in the clause at 252.225-7040 . See PGI 225.371-2 for additional information on designated operational areas.

225.371-3 Government support.

(a) Government support that may be authorized or required for contractor personnel performing in a designated operational area may include, but is not limited to, the types of support listed in PGI 225.371-3 (a).

(b) The agency shall provide logistical or security support only when the appropriate agency official, in accordance with agency guidance, determines in coordination with the combatant commander that—

(1) Such Government support is available and is needed to ensure continuation of essential contractor services; and

(2) The contractor cannot obtain adequate support from other sources at a reasonable cost.

(c) The contracting officer shall specify in the solicitation and contract—

(1) Valid terms, approved by the combatant commander, that specify the responsible party, if a party other than the combatant commander is responsible for providing protection to the contractor personnel performing in the designated operational area; and

(2) Any other Government support to be provided, and whether this support will be provided on a reimbursable basis, citing the authority for the reimbursement.

(d) *Medical support of contractor personnel*. The contracting officer shall provide direction to the contractor when the contractor is required to reimburse the Government for medical treatment or transportation of contractor personnel to a selected civilian facility in accordance with paragraph (c)(2)(ii) of the clause at 252.225-7040 . For additional information, see PGI 225.371-3 (d).

(e) *Letter of authorization*. Contractor personnel must have a Synchronized Predeployment and Operational Tracker (SPOT)–generated letter of authorization (LOA) signed by the contracting officer in order to process through a deployment center or to travel to, from, or within the designated operational area. The LOA also will identify any additional authorizations, privileges, or

Government support that the contractor personnel are entitled to under the contract. For additional information on LOAs, see PGI 225.371-3 (e).

225.371-4 Law of war training.

(a) *Basic training*. Basic law of war training is required for all contractor personnel supporting U.S. Armed Forces deployed outside the United States. The basic training normally will be provided through a military-run training center. The contracting officer may authorize the use of an alternate basic training source, provided the servicing DoD legal advisor concurs with the course content. An example of an alternate source of basic training is the web-based training provided by the Defense Acquisition University at https://acc.dau.mil/CommunityBrowser.aspx?id=18014&lang=en-US.

(b) *Advanced law of war training*.

(1) The types of personnel that must obtain advanced law of war training include the following:

(i) Private security contractors.

(ii) Security guards in or near areas of military operations.

(iii) Interrogators, linguists, interpreters, guards, report writers, information technology technicians, or others who will come into contact with enemy prisoners of war, civilian internees, retained persons, other detainees, terrorists, or criminals who are captured, transferred, confined, or detained during or in the aftermath of hostilities.

(iv) Other personnel when deemed necessary by the contracting officer.

(2) If contractor personnel will be required to obtain advanced law of war training, the solicitation and contract shall specify—

(i) The types of personnel subject to advanced law of war training requirements;

(ii) Whether the training will be provided by the Government or the contractor;

(iii) If the training will be provided by the Government, the source of the training; and

(iv) If the training will be provided by the contractor, a requirement for coordination of the content with the servicing DoD legal advisor to ensure that training content is commensurate with the duties and responsibilities of the personnel to be trained.

225.371-5 Contract clauses.

Use the clause 252.225-7980, Contractor Personnel Performing in the United States Africa Command Area of Responsibility (DEVIATION 2016-O0008)(JUN 2016), in lieu of the clause at DFARS 252.225-7040 , Contractor Personnel Supporting U.S. Armed Forces Deployed Outside the United States, in all solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, that will require contractor personnel to perform in the United States Africa Command (AFRICOM) area of responsibility. This class deviation remains in effect until incorporated in the DFARS or otherwise rescinded.

Use the clause 252.225-7993, Prohibition on Providing Funds to the Enemy (DEVIATION 2015-O0016)(SEP 2015), in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, to be awarded on or before December 31, 2019, with an estimated value in excess of $50,000 that are being, or will be, performed outside the United States and its outlying areas, in support of a contingency operation in which members of the Armed Forces are actively engaged in hostilities. This class deviation remains in effect until incorporated in the Federal Acquisition Regulation or otherwise rescinded.

Use the clause 252.225-7981, Additional Access to Contractor and Subcontractor Records (Other than USCENTCOM) (DEVIATION 2015-O0016)(SEP 2015), in solicitations and contracts valued at more than $50,000, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, that are to be performed outside the United States and its outlying areas, in support of a contingency operation in which members of the armed forces are actively engaged in hostilities, except for contracts that will be performed in the United States Central Command (USCENTCOM) theater of operations. This class deviation remains in effect until incorporated in the Federal Acquisition Regulation or otherwise rescinded.

Use the clause 252.225-7994, Additional Access to Contractor and Subcontractor Records in the United States Central Command Theater of Operations (DEVIATION 2015-O0013)(MAR 2015), in all solicitations and contracts awarded prior to December 19, 2017, valued at more than $100,000, that are to be performed in the United States Central Command (USCENTCOM) theater of operations. This class deviation remains in effect until December 19, 2017 or otherwise rescinded.

Use the clause 252.225-7987, Requirements for Contractor Personnel Performing in USSOUTHCOM Area of Responsibility (DEVIATION 2014-O0016)(OCT 2014), in all solicitations and contracts that require performance in the USSOUTHCOM Area of Responsibility, unless the clause at DFARS 252.225-7040 applies. This class deviation remains in effect until incorporated in the DFARS or otherwise rescinded.

Use the clause at 252.225-7976 Contractor Personnel Performing in Japan (DEVIATION 2018-O0019) (AUG 2018) in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisitions of commercial items, that will require contractor personnel to perform in Japan. The clause requires DoD contractors to account for contractor personnel and dependents in the Synchronized Predeployment and Operational Tracker, in order for the contractor personnel and dependents to be eligible for coverage under the Status of Forces Agreement.

(a) Use the clause at 252.225-7040 , Contractor Personnel Supporting U.S. Armed Forces Deployed Outside the United States, instead of the clause at FAR 52.225-19, Contractor Personnel in a Designated Operational Area or Supporting a Diplomatic or Consular Mission Outside the United States, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services, for performance in a designated operational area that authorize contractor personnel (including both contractors authorized to accompany the Force (CAAF) and non-CAAF) to support U.S. Armed Forces deployed outside the United States in—

(1) Contingency operations;

(2) Peace operations consistent with Joint Publication 3-07.3; or

(3) Other military operations or military exercises, when designated by the combatant commander or as directed by the Secretary of Defense.

(b) For additional guidance on clauses to consider when using the clause at 252.225-7040 , see PGI 225.371-5 (b).

225.372 Antiterrorism/force protection.

225.372-1 General.

Information and guidance pertaining to DoD antiterrorism/force protection policy for contracts that require performance or travel outside the United States can be obtained from the offices listed in PGI 225.372-1 .

225.372-2 Contract clause.

Use the clause at 252.225-7043 , Antiterrorism/Force Protection Policy for Defense Contractors Outside the United States, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial products and commercial services, that require performance or travel outside the United States, except for contracts with—

(a) Foreign governments;

(b) Representatives of foreign governments; or

(c) Foreign corporations wholly owned by foreign governments.

225.373 Contract administration in support of contingency operations.

For additional guidance on contract administration considerations when supporting contingency operations, see PGI 225.373 .

225.374 Use of electronic business tools.

See 218.271 concerning the use of electronic business tools in support of a contingency operation or humanitarian or peacekeeping operation.