

DFARS Procedures, Guidance, and Information

PGI 225—Foreign Acquisition

(Revised March 31, 2008)

PGI 225.74—DEFENSE CONTRACTORS OUTSIDE THE UNITED STATES

PGI 225.7401 Contracts requiring performance or delivery in a foreign country.

(a) If the acquisition requires performance of work in a foreign country by contractor personnel other than host country personnel (i.e., host country nationals or personnel ordinarily resident in the host country), or delivery of items to a Unified Combatant Command designated operational area, the contracting officer shall--

(i) Ensure that the solicitation and contract include any applicable host country and designated operational area performance considerations. Failure to provide such information—

(A) May result in contractor personnel conflicting with theater operations or performing in violation of a theater commander's directives or host country laws; or

(B) May cause contractor personnel to be wrongly subjected to host country laws;

(ii) Refer to the website at <http://www.acq.osd.mil/dpap/pacc/cc/index.html>, which contains required procedures and applicable guidance and information;

(iii) Follow the procedures at http://www.acq.osd.mil/dpap/pacc/cc/areas_of_responsibility.html, at the weblink for the Combatant Command for the area in which the contractor will be performing or delivering items;

(iv) To contact the overseas contracting office, access the link for the Combatant Command for the area in which the contractor will be performing or delivering items. From the Combatant Command website, link to the contracting office supporting the Combatant Command to identify the appropriate point of contact; and

(v) Use the following checklist as a guide to document consideration of each listed issue, as applicable, and retain a copy of the completed checklist in the contract file.

CHECKLIST

The contracting officer shall verify that the requiring activity has considered the following, as applicable:

____ (1) Whether the contemplated acquisition will duplicate or otherwise conflict with existing work being performed or items already provided in the area, and whether

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economies of scope/schedule can be leveraged if there are already existing contracts in place for similar work or items.

- ____ (2) The applicability of any international agreements to the acquisition. (Some agreements may be classified and must be handled appropriately.)
- ____ (3) Whether there are any security requirements applicable to the area.
- ____ (4) Whether there are any requirements for use of foreign currencies, including applicability of U.S. holdings of excess foreign currencies.
- ____ (5) Information on taxes and duties from which the Government may be exempt.
- ____ (6) If the acquisition requires performance of work in the foreign country, whether there are standards of conduct for the prospective contractor and, if so, the consequences for violation of such standards of conduct.
- ____ (7) If applicable, the availability of logistical support for contractor employees.
- ____ (8) If the contractor will employ foreign workers, whether a waiver of the Defense Base Act will be required (see FAR 28.305).
- ____ (9) Whether contractor personnel will need authorization to carry weapons for the performance of the contract.
- ____ (10) If the contract will include the clause at DFARS 252.225-7040, Contractor Personnel Authorized to Accompany U.S. Armed Forces Deployed Outside the United States, the Government official authorized to receive DD Form 93, Record of Emergency Data Card, to enable the contracting officer to provide that information to the contractor, as required by paragraph (g) of the clause.
- ____ (11) Any other requirements of the website for the country in which the contract will be performed or the designated operational area to which deliveries will be made.

The contracting officer shall provide the following information to the applicable overseas contracting office (see PGI 225.7401(a)(iv)):

- ____ (1) The solicitation number, the estimated dollar value of the acquisition, and a brief description of the work to be performed or the items to be delivered.
- ____ (2) Notice of contract award, including contract number, dollar value, and a brief description of the work to be performed or the items to be delivered.

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_____(3) Any additional information requested by the applicable contracting office to ensure full compliance with policies, procedures, and objectives of the applicable country or designated operational area.

(c) For work performed in Japan or Korea, U.S.-Japan or U.S.-Korea bilateral agreements govern the status of contractors and employees, criminal jurisdiction, and taxation. U.S. Forces Japan (USFJ) and U.S. Forces Korea (USFK) are sub-unified commands of Pacific Command (PACOM). The PACOM Staff Judge Advocate contact information is available at <http://www.pacom.mil/staff/staff-spec.shtml>. Links to USFJ and USFK websites can be found at the PACOM website at <http://www.pacom.mil> by clicking on “Site Index” and then clicking on “Subordinate Commands”.

(i) For work performed in Japan—

(A) U.S.-Japan bilateral agreements govern the status of contractors and employees, criminal jurisdiction, and taxation;

(B) USFJ and component policy, as well as U.S.-Japan bilateral agreements, govern logistic support and base privileges of contractor employees;

(C) The Commander, USFJ, is primarily responsible for interpreting the Status of Forces Agreement (SOFA) and local laws applicable to U.S. Forces in Japan and for requirements in support of USFJ; and

(D) To ensure that the solicitation and resultant contract reflect an accurate description of available logistic support and application of the U.S.-Japan SOFA—

(1) Review the information on Contract Performance in Japan at the USFJ website, <http://www.usfj.mil>; or

(2) Contact the Staff Judge Advocate at (commercial) 011-81-3117-55-7717, or DSN 315-225-7717.

(ii) For work performed in Korea—

(A) U.S.-Korea bilateral agreements govern the status of contractors and employees, criminal jurisdiction, and taxation;

(B) USFK and component policy, as well as U.S.-Korea bilateral agreements, govern logistic support and base privileges of contractor employees;

(C) The Commander, USFK, is primarily responsible for interpreting the SOFA and local laws applicable to U.S. Forces in Korea and for requirements in support of USFK; and

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(D) To ensure that the solicitation and resultant contract reflect an accurate description of available logistic support and application of the U.S.-Korea SOFA, review the SOFA information at the USFK website at <http://www.usfk.mil/org/fkdc-sa/index.html>. Contact information for the Commander is also available at <http://www.usfk.mil/org/leadership/index.html?org/leadership/Contents/cmd.html>.

(E) Additional applicable directives and regulations are available at http://www-hr.korea.army.mil/Programs_Policy.

PGI 225.7402 Contractor personnel authorized to accompany U.S. Armed Forces deployed outside the United States.

(1) DoDI 3020.41, Contractor Personnel Authorized to Accompany the U.S. Armed Forces, serves as a comprehensive source of DoD policy and procedures concerning DoD contractor and subcontractor personnel authorized to accompany the U.S. Armed Forces. Such personnel—

(i) May include U.S. citizens, U.S. legal aliens, third country nationals, and local nationals;

(ii) May be employees of external support, systems support, or theater support contractors, as defined in Enclosure 2 of DoDI 3020.41; and

(iii) Are provided with an appropriate identification card under the Geneva Conventions (also see DoDI 1000.1, Identity Cards Required by the Geneva Conventions).

(2) Not all contractor personnel in a designated operational area are authorized to accompany the U.S. Armed Forces. For example, contractor personnel performing reconstruction contracts generally are not authorized to accompany the U.S. Armed Forces.

(3) Also see PGI 207.105(b)(20)(C) for special considerations for acquisition planning for crisis situations outside the United States.

PGI 225.7402-2 Definitions.

“Designated operational areas” include, but are not limited to, such descriptors as theater of war, theater of operations, joint operations area, amphibious objective area, joint special operations area, and area of operations. See DoD Joint Publication 3-0, Joint Operations, Chapter II, Paragraph 5, “Organizing the Operational Areas,” at <https://jdeis.js.mil/jdeis/index.jsp> (select “Browse Joint Pubs” under “Joint Doctrine” heading).

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PGI 225.7402-3 Government support.

(a) Support that may be authorized or required when contractor personnel are deployed with or otherwise provide support in the theater of operations to U.S. military forces deployed outside the United States may include, but are not limited to—

- (i) Deployment in-processing centers;
- (ii) Training;
- (iii) Transportation to operation area;
- (iv) Transportation within operation area;
- (v) Physical security;
- (vi) Force protection;
- (vii) Organizational clothing and individual equipment;
- (viii) Emergency medical care;
- (ix) Mess operations;
- (x) Quarters;
- (xi) Postal service;
- (xii) Phone service;
- (xiii) Emergency notification;
- (xiv) Laundry; and
- (xv) Religious services.

(e) *Letter of Authorization.*

(i) A Letter of Authorization (LOA) is necessary to enable a contractor employee to process through a deployment processing center, to travel to, from, and within the theater of operations, and to identify any additional authorizations and privileges. If authorized by the contracting officer, a contracting officer's representative may approve a Letter of Authorization. Contractor travel orders will be prepared by the supporting installation.

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(ii) The LOA will state the intended length of assignment in the theater of operations and will identify planned use of Government facilities and privileges in the theater of operations, as authorized by the contract. Authorizations may include such privileges as access to the exchange facilities and the commissary, and use of Government messing and billeting. The LOA must include the name of the approving Government official.

(iii) Sample LOA:

OFFICE SYMBOL

Date

MEMORANDUM FOR *[insert name and address of military organization with the authority to provide Government-provided support where the contractor employees will be deployed]*

SUBJECT: Contractor Letter of Authorization *[note: much of the information contained within this Memorandum is similar to the information contained in travel orders for Government personnel]*

1. The *[insert appropriate name of Government requiring activity, such as a program management office]*, in its capacity for providing support under Contract Number *[insert contract number]*, *[insert delivery or task order number if applicable]*, awarded *[insert award date]*; authorizes the *[insert company name]* employee identified below to proceed to the locations and for the timeframe indicated below. Travel being performed is necessary and in the public's service.

a. Name: *[insert employee's full name, including middle name. In addition, include the employee's GS grade equivalent]*.

b. Home Address: *[insert complete street address, city, state, and zip code. Include a CONUS work e-mail address if available]*.

c. Date of Birth: *[insert employee's birth date]*.

d. Place of Birth: *[insert employee's birth place]*.

e. Passport Number/Expiration Date: *[insert contractor employee's passport number and passport expiration date]*.

f. Next of Kin: *[insert full name, along with contact information and individual's relationship]*.

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g. Job Title: *[insert company job title for employee]*.

h. Equivalent GS grade: For purposes of determining what level of Government-provided support should be granted to contractor personnel, and for prisoner-of-war status, the individual named herein is equivalent to a *[for contractor non-supervisory positions insert GS-12. For contractor supervisory/managerial positions insert GS-13]*.

i. Level of Clearance: *[insert individual's security clearance; if not applicable, insert N/A]*.

j. Issuing Agency: *[insert complete name and address of Government contracting organization that awarded the contract for which this work is being performed]*.

k. Countries to be visited: *[insert the countries to be visited in support of military operations]*.

l. Purpose: *[provide a brief description of the contractor support being provided. This should not exceed three lines. If known, include what military organizations will be supported at the tactical level]*.

m. Deployed Performance Period: *[provide the estimated deployed performance dates]*.

2. Contractor Privileges: *[Note the following list is provided for sample purposes only. The contracting officer should not state the following list verbatim. Every contracting officer should prepare the LOA in accordance with those specific privileges that may be made available for contractor personnel in performance of the specific contract.]* Request that this contractor employee be granted, subject to availability, access to or the privileges defined below while temporarily deployed with *[insert military organization supporting]* on Contract Number *[insert contract number]*:

a. Common Access Card (CAC), Geneva Convention Card (DD Form 489), and ration cards.

b. *[Insert appropriate exchange name]* Exchange service facilities (includes rationed items).

c. Military clothing sales for repair and replacement of issued equipment.

d. Organizational clothing and individual equipment.

e. Military banking facilities and Finance Accounting Office.

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f. Government transportation (i.e. aircraft, automobile, bus, train) for official Government business.

g. Commissary (includes rationed items).

h. Morale and welfare recreational facilities (e.g., clubs, movie theaters, gyms).

i. Purchase of petroleum and oil products for rental and/or Government vehicles.

j. Customs exemption.

k. Emergency medical care.

l. The following theater-specific immunizations that are not available to the general public: _____.

m. Mess facilities.

n. Quarters.

o. Military postal service.

p. Phone service.

q. Laundry services.

r. Religious services.

3. Travel Discount Rates: *[Insert full name of contract employee]*, the bearer of this letter, is an employee of *[insert company name]* which has a contract with this agency under Government contract *[insert contract number]*. During the period of this contract, *[insert performance period relating to deployment]*, and only if the vendor permits, the named bearer is eligible and authorized to use available travel discount rates in accordance with Government contracts and/or agreements. Government Contract City Pair fares are not available to Contractors.

4. Special Notice: Employees, including dependents residing with employees, employed by or accompanying the Armed Forces outside the United States, who engage in conduct outside the United States that would constitute an offense punishable by imprisonment for more than one year if the conduct had been engaged in within the special maritime and territorial jurisdiction of the United States, may

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potentially be subject to the criminal jurisdiction of the United States. See the Military Extraterritorial Jurisdiction Act of 2000 (18 U.S.C. 3261 et. seq., as amended by Section 1088 of the National Defense Authorization Act for Fiscal Year 2005 (Public Law 108-375)).

5. Points of Contacts (POC):

a. POC at *[insert contracting activity information]* is the undersigned. The undersigned can be reached at:

(1) DSN and Commercial *[insert phone numbers]*.

(2) E-mail *[insert unclassified e-mail address]*.

b. The Government requiring activity POC at *[insert requiring activity information]* is *[insert a requiring activity POC who will be familiar with the work being performed]*. The undersigned can be reached at:

(1) DSN and Commercial *[insert phone numbers]*.

(2) E-mail *[insert unclassified e-mail address]*.

c. Contracting Officer's Representative (COR) POC *[insert primary contract COR information. In addition to the primary COR, there may be a COR in the theater of operations.]*. The COR can be reached at:

(1) DSN and Commercial *[insert phone numbers]*.

(2) E-mail *[insert unclassified e-mail address]*.

6. Upon completion of the mission, the employee should make all attempts to return to the deployment processing center point of origin.

[The LOA is typically signed by the procuring contracting officer.]

CF: *[insert applicable addresses (i.e., PM for the individual specified in this order)]*

PGI 225.7402-4 Contract clauses.

(a) *Class Deviation 2007-00010, Implementation of the Synchronized Predeployment and Operational Tracker (SPOT) to Account for Contractor Personnel Performing in the United States Central Command Area of Responsibility.*

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(i) “Performance in the United States Central Command Area of Responsibility (USCENTCOM AOR)” means performance of a service or construction, as required by the contract. For supply contracts, production of the supplies or associated overhead functions are not covered, but services associated with the acquisition of the supplies are covered (e.g., installation or maintenance).

(ii) If a contract requires performance in the USCENTCOM AOR, but some personnel performing the contract are authorized to accompany the U.S. Armed Forces, and other personnel performing the contract are not authorized to accompany the U.S. Armed Forces, include in the solicitation and contract both the clause at DFARS 252.225-7040 and the clause provided by Class Deviation 2007-O0010. Paragraph (b)(1) of each clause limits the applicability of the clause to the appropriate personnel. There are differences between the two clauses, primarily in Government support to contractor personnel (e.g., security protection and limited medical treatment) and potential applicability of the Uniform Code of Military Justice to contractor employees that are authorized to accompany the U.S. Armed Forces.

(iii) The requirements of paragraph (g) of the clause in Class Deviation 2007-O0010 are not applicable to subcontracts for which the period of performance of the subcontract is less than 30 days.

(iv) In exceptional circumstances, the head of the agency may authorize deviations from the requirements of Class Deviation 2007-O0010, in accordance with FAR Subpart 1.4 and DFARS Subpart 201.4.

(b) When using the clause at DFARS 252.225-7040, Contractor Personnel Authorized to Accompany U.S. Armed Forces Deployed Outside the United States, consider the applicability of the following clauses:

(i) The clause at DFARS 252.225-7043, Antiterrorism/Force Protection Policy for Defense Contractors Outside the United States, as prescribed at DFARS 225.7403-2.

(ii) Either the clause at FAR 52.228-3, Workers’ Compensation Insurance (Defense Base Act), or the clause at FAR 52.228-4, Workers’ Compensation and War-Hazard Insurance Overseas, as prescribed at FAR 28.309(a) and (b).

(iii) The clause at FAR 52.228-7, Insurance—Liability to Third Persons, in cost-reimbursement contracts as prescribed at DFARS 228.311-1.

(iv) The clause at DFARS 252.228-7003, Capture and Detention, as prescribed at DFARS 228.370(d).

(v) The clause at DFARS 252.237-7019, Training for Contractor Personnel Interacting with Detainees, as prescribed at DFARS 237.171-4.

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(vi) The clause at FAR 52.249-14, Excusable Delays, as prescribed at FAR 49.505(b).

(vii) The clauses at FAR 52.251-1, Government Supply Sources, as prescribed at FAR 51.107, and DFARS 252.251-7000, Ordering from Government Supply Sources, as prescribed at DFARS 251.107.