

of the commercial audiovisual content to be provided pursuant to the undefined business model, and of the terms on which such content is to be available to consumers. Immediately upon request from a party entitled to be a complainant, the covered entity shall make available information that indicates the proposed encoding terms, including the use of copy never or copy one generation encoding, and the encoding of content with respect to "pause" as defined in § 76.1904(b)(2).

(2) *Complaint process.* Any interested party ("complainant") may file a complaint with the Commission objecting to application of encoding as set forth in the notice.

(i) *Pre-complaint resolution.* Prior to initiating a complaint with the Commission under this section, the complainant shall notify the covered entity that it may file a complaint under this section. The notice must be sufficiently detailed so that the covered entity can determine the specific nature of the potential complaint. The potential complainant must allow a minimum of thirty (30) days from such notice before filing such complaint with the Commission. During this period the parties shall endeavor in good faith to resolve the issue(s) in dispute. If the parties fail to reach agreement within this 30 day period, complainant may initiate a complaint in accordance with the procedures set forth herein.

(ii) *Complaint.* Within two years of publication of a notice under paragraph (a)(1) of this section, a complainant may file a complaint with the Commission objecting to application of the encoding terms to the service at issue. Such complaint shall state with particularity the basis for objection to the encoding terms.

(A) The complaint shall contain the name and address of the complainant and the name and address of the covered entity.

(B) The complaint shall be accompanied by a certification of service on the named covered entity.

(C) The complaint shall set forth with specificity all information and arguments relied upon. Specific factual allegations shall be supported by a declaration of a person or persons with actual knowledge of the facts, and exhibits shall be verified by the person who prepares them.

(D) The complaint shall set forth attempts made by the complainant to resolve its complaint pursuant to paragraph (a)(2)(i) of this section.

(iii) *Public notice.* The Commission shall give public notice of the filing of the complaint. Once the Commission has issued such public notice, any

person otherwise entitled to be a complainant shall instead have the status of a person submitting comments under paragraph (a)(2)(iv) of this section rather than a complainant.

(iv) *Comments and reply.*

(A) Any person may submit comments regarding the complaint within thirty (30) days after the date of public notice by the Commission. Comments shall be served on the complainant and the covered entity and on any persons listed in relevant certificates of service, and shall contain a detailed full statement of any facts or considerations relied on. Specific factual allegations shall be supported by a declaration of a person or persons with actual knowledge of the facts, and exhibits shall be verified by the person who prepares them.

(B) The covered entity may file a response to the complaint and comments within twenty (20) days after the date that comments are due. Such response shall be served on all persons who have filed complaints or comments and shall also contain a detailed full showing, supported by affidavit or declaration, of any additional facts or considerations relied on. Replies shall be due ten (10) days from the date for filing a response.

(v) *Basis for Commission determination as to encoding terms for an undefined business model.* In a permit-but-disclose proceeding, unless otherwise specified by the Commission, to determine whether encoding terms as noticed may be applied to an undefined business model, the covered entity shall have the burden of proof to establish that application of the encoding terms in the undefined business model is in the public interest. In making any such determination, the Commission shall take into account the following factors:

(A) Whether the benefit to consumers of the new service, including but not limited to earlier release windows, more favorable terms, innovation or original programming, outweighs the limitation on the consumers' control over the new service;

(B) Ways in which the new service differs from services offered by any covered entity prior to December 31, 2002;

(vi) *Determination procedures.* The Commission may specify other procedures, such as oral argument, evidentiary hearing, or further written submissions directed to particular aspects, as it deems appropriate.

(b) *Complaint regarding a service not subject to notice.* In an instance in which an interested party has a substantial basis to believe and believes in good faith that a service pursuant to

an undefined business model has been launched without requisite notice, such party may file a complaint pursuant to § 76.7.

§ 76.1907 Temporary bona fide trials.

The obligations and procedures as to encoding rules set forth in §§ 76.1904(b) and (c) and 76.1905(a) and (b) do not apply in the case of a temporary bona fide trial of a service.

§ 76.1908 Certain practices not prohibited.

Nothing in this subpart shall be construed as prohibiting a covered entity from:

(a) Encoding, storing or managing commercial audiovisual content within its distribution system or within a covered product under the control of a covered entity's commercially adopted access control method, provided that the outcome for the consumer from the application of the encoding rules set out in § 76.1904(a) and (b) is unchanged thereby when such commercial audiovisual content is released to consumer control, or

(b) Causing, with respect to a specific covered product, the output of content from such product in a format as necessary to match the display format of another device connected to such product, including but not limited to providing for content conversion between widely-used formats for the transport, processing and display of audiovisual signals or data, such as between analog and digital formats and between PAL and NTSC or RGB and Y,Pb,Pr.

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DEPARTMENT OF DEFENSE

Department of the Army

48 CFR Part 5125

RIN 0702-AA38

Foreign Acquisition

AGENCY: Department of Army, DoD.

ACTION: Interim final rule; request for comments.

SUMMARY: The Department of the Army is amending the Department of the Army Acquisition Regulations (also referred to as the Army Federal Acquisition Regulation Supplement (AFARS)) to increase consistency in Army contracts that may require deployment of contractor personnel. This change is a consolidation and summarization of current information

available in several documents, some of which are currently in draft form, and does not include new Army contracting policy. The purpose of this issuance is to notify interested parties of this change, and to request the public's comments. This change is issued by the Assistant Secretary of the Army (Acquisition, Logistics, and Technology) (ASA(ALT)). This issuance is made concurrent with publication of an interim rule with request for comments to Solicitations Provisions and Contract Clauses, published in this issue of the **Federal Register**.

DATES: *Effective date:* November 28, 2003.

Comment date: Comments must be submitted to the address shown below on or before January 27, 2004.

ADDRESSES: Respondents may e-mail comments to:

s.wisniewski@us.army.mil. Those who cannot submit comments by e-mail may submit comments to: Procurement Policy and Support Office, Attn: SAAL-PP, Sharon Wisniewski, Presidential Towers, 2511 S. Jeff Davis Highway, Arlington, VA, 22202, facsimile (703) 604-8178. Please cite "AFARS CAF Clause" in the subject line of comments.

FOR FURTHER INFORMATION CONTACT: Sharon Wisniewski, (586) 574-7050 or Linda Fowlkes, (703) 604-7104.

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule is added to incorporate information to facilitate deploying contractor personnel to Iraq or other areas of operations. It also seeks to ease the administrative difficulty for each contractor and contracting office researching current guidance on contractors accompanying the force, and to increase consistency among Army contracts. This AFARS change is published to address contractor and Army contracting offices' questions and concerns. This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

The Army 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 contractors that may require deployment of contractor personnel outside the United States, and because it only consolidates existing and draft logistical guidance. The amount of such additional services is not expected to be significantly large in comparison to the

total amount of services procured by Army, and any additional costs would be reimbursable under the resulting contract. Therefore, Army has not performed an initial regulatory flexibility analysis. Army invites comments from small businesses and other interested parties. Army also will consider comments from small entities concerning the affected AFARS subpart in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite "Small Entities CAF comment."

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 a Rule Effective With Publication in the Federal Register

A determination has been made under the authority of the Army Deputy Assistant Secretary of the Army (Policy & Procurement) that urgent and compelling reasons exist to publish this rule prior to affording the public an opportunity to comment. Contracting offices continue to write contracts that require contractor personnel to accompany the military force in Iraq and other places. Contractor representatives and contracting offices have requested inclusion of coverage in the AFARS expeditiously, even if not a complete solution, pending coverage on this topic in higher level regulations. Comments received in response to this notice will be considered.

Emily Clarke,

Director, Procurement Policy and Support.

List of Subjects in 48 CFR Part 5125

Government contracts, Government procurement.

■ For the reasons stated in the preamble, the Department of the Army adds 48 CFR part 5125 to read as follows:

PART 5125—FOREIGN ACQUISITION

Authority: 5 U.S.C 301, 10 U.S.C. 2202, DoD Directive 5000.35, FAR 1.301 and DOD FAR Supplement 201.3.

Subpart 5125.74-9000—Contractors Accompanying the Force—Deployment of Contractor Personnel in Support of Military Operations

Scope of Subpart

(a) *General.* This subpart applies whenever contractors may be required to accompany the force in support of

military operations, as defined in Joint Publication 1-02, "DOD Dictionary of Military and Associated Terms."

(b) *Coordination.* There are many operational details that will affect the scope of work in contracts requiring deployment of contractor personnel in support of military operations. The requirements activity, in conjunction with the contracting activity, must coordinate with the appropriate logistics organization to determine what level of support (e.g., billeting, messing, clothing and equipment, access to medical facilities, pre-deployment processing) will be available to contractors.

(i) DFARS 225.802-70 (Contracts for performance outside the United States and Canada) prescribes special procedures applicable to contracts requiring the performance of work in a foreign country by U.S. personnel or a third country contractor, or that will require logistics support for contractor employees, and the contracting activity is not under the command jurisdiction of a unified or specified command for the country involved. This provision generally requires the contracting activity to undertake certain coordination with the cognizant contract administration office for that country.

(ii) In situations where no contract administration office has been designated, the contracting officer shall ensure, prior to contract award, that the responsible combatant command concurs with any contract provision that promises logistical support to U.S. or foreign national contractor personnel. This requirement may be satisfied through a memorandum executed by the requiring activity that documents combatant command approval of any logistical support specified in the main body of the contract or its statement of work.

(c) *Legal status of contractor personnel.* The Status of Forces Agreements applicable to the Area of Operations (AO), as well as the Geneva Conventions and other international laws govern the legal status of contractor personnel. Contractor personnel's legal status will vary depending on the location and circumstances surrounding an incident.

(d) Requirements offices and contracting officers should use the Army Contractors Accompanying the Force Guidebook for more detailed guidance, including sample contract language, and a listing of Army and DoD regulations and other resources. Contracting Officers may tailor this language as appropriate, but using the Guidebook will both answer many

common questions and foster uniform handling of common issues. The Guidebook may be found on the Deputy Assistant Secretary of the Army (Procurement & Production) Web site at <http://dasapp.saalt.army.mil/>.

(e) *Solicitation provision and contract clause.* The clause at § 5152.225-74-9000 shall be inserted in all solicitations and contracts that may require deployment of contractor personnel in support of military operations. It may be tailored to fit the specific circumstances of the procurement.

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DEPARTMENT OF DEFENSE

Department of the Army

48 CFR Part 5152

RIN 0702-AA39

Solicitation Provisions and Contract Clauses

AGENCY: Department of Army, DOD.

ACTION: Interim final rule; Request for comments.

SUMMARY: The Department of the Army is amending its Acquisition Regulations to increase consistency in Army contracts that may require deployment of contractor personnel. This change is a consolidation and summarization of current information available in several documents, some of which are currently in draft form, and does not include new Army contracting policy. The purpose of this issuance is to notify interested parties of this change, and to request the public's comments. This change is issued by the Assistant Secretary of the Army (Acquisition, Logistics, and Technology) (ASA(ALT)). This issuance is made concurrent with publication of an interim rule with request for comments to add rules concerning Foreign Acquisition—Contractors Accompanying the Force, published in this issue of the **Federal Register**.

DATES: *Effective date:* November 28, 2003.

Comment date: Comments must be submitted to the address shown below on or before January 27, 2004.

ADDRESSES: Respondents may e-mail comments to:

s.wisniewski@us.army.mil. Those who cannot submit comments by e-mail may submit comments to: Procurement Policy and Support Office, Attn: SAAL-PP, Sharon Wisniewski, Presidential Towers, 2511 S. Jeff Davis Highway, Arlington, VA, 22202, facsimile (703)

604-8178. Please cite "AFARS CAF Clause" in the subject line of comments.

FOR FURTHER INFORMATION CONTACT:

Sharon Wisniewski, (586) 574-7050 or Linda Fowlkes, (703)604-7104.

SUPPLEMENTARY INFORMATION:

A. Background

This issuance amends 48 CFR part 5152 (also referred to as the Army Federal Acquisition Regulation Supplement (AFARS)) to incorporate information to facilitate deploying contractor personnel to Iraq or other areas of operations. It also seeks to ease the administrative difficulty for each contractor and contracting office researching current guidance on contractors accompanying the force, and to increase consistency among Army contracts. This AFARS change is published to address contractor and Army contracting offices' questions and concerns. This notice was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

The Army 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 contractors that may require deployment of contractor personnel outside the United States, and because it only consolidates existing and draft logistical guidance. The amount of such additional services is not expected to be significantly large in comparison to the total amount of services procured by Army, and any additional costs would be reimbursable under the resulting contract. Therefore, Army has not performed an initial regulatory flexibility analysis. Army invites comments from small businesses and other interested parties. Army also will consider comments from small entities concerning the affected AFARS subpart in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite "Small Entities CAF comment."

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 a Rule Effective With Publication in the Federal Register

A determination has been made under the authority of the Army Deputy Assistant Secretary of the Army (Policy & Procurement) that urgent and compelling reasons exist to publish this notice prior to affording the public an opportunity to comment. Contracting offices continue to write contracts that require contractor personnel to accompany the military force in Iraq and other places. Contractor representatives and contracting offices have requested inclusion of coverage in the AFARS expeditiously, even if not a complete solution, pending coverage on this topic in higher level regulations. Comments received in response to this notice will be considered.

Emily Clarke,

Director, Procurement Policy and Support.

List of Subjects in 48 CFR Part 5152

Government contracts, Government procurement.

■ For reasons set forth in the preamble, the Department of the Army amends 48 CFR Part 5152 as follows:

PART 5152—SOLICITATIONS PROVISIONS AND CONTRACT CLAUSES

■ 1. The authority citation for 5152.225-74-9000 is added to read as follows:

Authority: 5 U.S.C. 301, 10 U.S.C. 2202, DOD Directive 5000.35, FAR 1.301 and DOD FAR Supplement 201.3.

■ 2. Add 5152.225-74-9000 to read as follows:

5152.225-74-9000 Contractors Accompanying the Force.

As prescribed at subpart 5125.74-9000(e) insert the following clause:

CONTRACTORS ACCOMPANYING THE FORCE (NOV. 2003)

(a) *General.* (1) Performance of this contract may require deployment of Contractor Personnel in support of military operations. The Contractor acknowledges that such operations are inherently dangerous and accepts the risks associated with contract performance in this environment.

(2) For purposes of this clause, the term "Contractor Personnel" refers to the Contractor's officers and employees. Unless otherwise specified (*e.g.*, subparagraph (b) of this clause), this term does not include personnel who permanently reside in the country where contract performance will take place.

(3) The Contractor shall ensure that Contractor Personnel working in an area of operations (AO, as defined in the Joint Publication 1-02, "DOD Dictionary of