

DEPARTMENT OF DEFENSE**Defense Acquisition Regulations System****48 CFR Parts 204, 212, and 252**

[Docket DARS–2018–0038]

RIN 0750–AJ45

Defense Federal Acquisition Regulation Supplement: Antiterrorism Training Requirements for Contractors (DFARS Case 2017–D034)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Proposed rule.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to implement the requirement for contractors to complete Level I antiterrorism awareness training.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before October 23, 2018, to be considered in the formation of a final rule.

ADDRESSES: Submit comments identified by DFARS Case 2017–D034, using any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Search for “DFARS Case 2017–D034.” Select “Comment Now” and follow the instructions provided to submit a comment. Please include “DFARS Case 2017–D034” on any attached documents.

- *Email:* osd.dfars@mail.mil. Include DFARS Case 2017–D034 in the subject line of the message.

- *Fax:* 571–372–6094.

- *Mail:* Defense Acquisition Regulations System, Attn: Ms. Kimberly Bass, OUSD(A&S)DPC/DARS, Room 3B941, 3060 Defense Pentagon, Washington, DC 20301–3060.

Comments received generally will be posted without change to <http://www.regulations.gov>, including any personal information provided. To confirm receipt of your comment(s), please check www.regulations.gov, approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Ms. Kimberly Bass, telephone 571–372–6174.

SUPPLEMENTARY INFORMATION:**I. Background**

DoD is proposing to revise the DFARS to implement the antiterrorism training

requirements for contractors provided in DoD Instruction (DoDI) O–2000.16, Volume 1, DoD Antiterrorism (AT) Program Implementation: DoD AT Standards (available at <http://www.esd.whs.mil/Directives/issuances/dodi/>). The rule will ensure contractors are aware of the requirement for contractor personnel, who as a condition of contract performance require routine physical access to a Federally-controlled facility or military installation, to complete Level I DoD antiterrorism awareness training. Routine physical access is considered more than intermittent access, such as when a contractor employee is required to obtain a Common Access Card. The training is required within 30 days of requiring access and annually thereafter and must be completed either through DoD-sponsored and certified computer or web-based distance learning instruction, or under the instruction of a qualified Level I antiterrorism awareness instructor.

II. Discussion and Analysis

This rule proposes a new DFARS subpart 204.7X, Antiterrorism Awareness Training, to address the requirement for covered contractors to complete Level I antiterrorism awareness training. The new subpart advises contracting officers of the training requirement, the authorized sources of training, and when training must be completed by contractors. This subpart also prescribes a new DFARS clause 252.204–7XXX, Antiterrorism Awareness Training for Contractors, for use in all solicitations and contracts, including those for the acquisition of commercial items, when contractor personnel will require routine physical access to a Federally-controlled facility or military installation. The clause advises contractors of the training requirements, provides a reference to additional information and guidance available on the internet, and instructs contractors to include the clause in all subcontracts. Conforming changes are made to DFARS 212.301(f)(ii) to add the new clause to the list of contract clauses applicable to the acquisition of commercial items.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold (SAT) and for Commercial Items, Including Commercially Available Off-the-Shelf (COTS) Items

This rule proposes to create a new clause, DFARS 252.204–7XXX, Antiterrorism Awareness Training for Contractors, to advise DoD contractors of the requirement for its employees (and those of its subcontractors, if

applicable) to complete Level I antiterrorism awareness training within 30 days of requiring access and annually thereafter, if, as a condition of contract performance require routine physical access to a Federally-controlled facility or a military installation. DoD plans to apply this clause to solicitations and contracts below the SAT and to the acquisition of commercial items, including COTS items (as defined in Federal Acquisition Regulation 2.101). This is necessary in order to reach as wide an audience as possible to ensure contractor personnel who are required to have routine physical access to a Federally-controlled facility or military installation are aware of this training requirement.

IV. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

V. Executive Order 13771

This proposed rule is not expected to be an E.O. 13771, Reducing Regulation and Controlling Regulatory Costs, regulatory action, because this proposed rule is not significant under E.O. 12866.

VI. Regulatory Flexibility Act

This rule is not expected 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.* An initial regulatory flexibility analysis has been performed and is summarized as follows:

This action is necessary to implement the requirements of DoD Instruction O–2000.16, Volume 1, DoD Antiterrorism (AT) Program Implementation: DoD AT Standards, to ensure that contractors complete Level I antiterrorism awareness training.

The objective of this proposed rule is to ensure contractor personnel who, as a condition of contract performance, require routine physical access to a

Federally-controlled facility or military installation are aware of terrorism threats and the proper responses to threat actions. In recent years, there have been terrorist events directed at Federally-controlled facilities and military installation and all personnel that routinely access those facilities need to be aware of the threat.

It is expected that contracts that contain the clause at Federal Acquisition Regulation (FAR) 52.204-9, Personal Identity Verification of Contractor Personnel, are contracts that would require contractor personnel to have routine physical access to Federally-controlled facilities or military installations. According to data available in the Electronic Data Access system, in fiscal year 2017, DoD awarded 137,106 contracts containing the clause at FAR 52.204-9 to 15,814 businesses, of which 10,837 (68.5 percent) were to small businesses. Common Access Cards (CAC) are issued to contractors who require routine physical access to a Federally-controlled facility or military installation. There are currently 507,665 contractors that hold CAC cards.

The impact is not expected to be significant, because current contractor employees who hold a CAC have already completed the requisite training and the cost of training new contractor personnel is at the expense of the Department. The time allotted for the training is approximately two hours per year. The training will provide safety awareness and precautionary measures that will benefit contractor personnel requiring routine physical access to a Federally-controlled facilities or military installations. This awareness not only benefits the contractor personnel, but also DoD civilians, military, and its assets.

The rule does not duplicate, overlap, or conflict with any other Federal rules.

DoD invites comments from small business concerns and other interested parties on the expected impact of this rule on small entities.

DoD will also consider comments from small entities concerning the existing regulations in subparts affected by this rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (DFARS Case 2017-D034), in correspondence.

VII. Paperwork Reduction Act

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

List of Subjects in 48 CFR Parts 204, 212, and 252

Government procurement.

Jennifer Lee Hawes,
Regulatory Control Officer, Defense Acquisition Regulations System.

Therefore, 48 CFR parts 204, 212, and 252 are proposed to be amended as follows:

■ 1. The authority citation for 48 CFR parts 204, 212, and 252 continues to read as follows:

Authority: 41 U.S.C. 1303 and 48 CFR chapter 1.

PART 204—ADMINISTRATIVE MATTERS

■ 2. Add new subpart 204.7X to read as follows:

Subpart 204.7X—Antiterrorism Awareness Training

Sec.
204.7X00 Scope of subpart.
204.7X01 Definition.
204.7X02 Policy.
204.7X03 Contract clause.

Subpart 204.7X—Antiterrorism Awareness Training

204.7X00 Scope of subpart.

This subpart provides policy and guidance related to antiterrorism awareness training for contractor personnel who require routine physical access to a Federally-controlled facility or military installation.

204.7X01 Definition.

As used in this subpart—
Military installation means a base, camp, post, station, yard, center, or other activity under the jurisdiction of the Secretary of a military department (see 10 U.S.C. 2801(c)(4)).

204.7X02 Policy.

It is DoD policy that—
(a) Contractor personnel who, as a condition of contract performance, require routine physical access to a Federally-controlled facility or military installation are required to complete Level I antiterrorism awareness training within 30 days of requiring access and annually thereafter.

(b) In accordance with Department of Defense Instruction O-2000.16, Volume 1, DoD Antiterrorism (AT) Program Implementation: DoD AT Standards, Level I antiterrorism awareness training may be completed—

(1) Through a DoD-sponsored and certified computer or web-based distance learning instruction for Level I antiterrorism awareness; or

(2) Under the instruction of a qualified Level I antiterrorism awareness instructor.

204.7X03 Contract clause.

Include the clause at 252.204-7XXX, DoD Antiterrorism Awareness Training for Contractors, in solicitations and contracts, including solicitations and contracts using FAR part 12 procedures for the acquisition of commercial items, when contractor personnel require routine physical access to a Federally-controlled facility or military installation.

PART 212—ACQUISITION OF COMMERCIAL ITEMS

■ 3. Amend section 212.301, by adding new paragraph (f)(ii)(G) to read as follows:

212.301 Solicitation provisions and contract clauses for the acquisition of commercial items.

* * * * *

(f) * * *

(ii) * * *

(G) Use the clause at 252.204-7XXX, Antiterrorism Awareness Training for Contractors, as prescribed in 204.7X03.

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PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 4. Add section 252.204-7XXX to read as follows:

252.204-7XXX Antiterrorism Awareness Training for Contractors.

As prescribed in 204.7X03, use the following clause:

Level I Antiterrorism Awareness Training for Contractors (Date)

(a) *Definition.* As used in this clause—
Military installation means a base, camp, post, station, yard, center, or other activity under the jurisdiction of the Secretary of a military department (see 10 U.S.C. 2801(c)(4)).

(b) *Training.* Contractor personnel who require routine physical access to a Federally-controlled facility or military installation shall complete Level I antiterrorism awareness training within 30 days of requiring access and annually thereafter. In accordance with Department of Defense Instruction O-2000.16 Volume 1, DoD Antiterrorism (AT) Program Implementation: DoD AT Standards, Level I antiterrorism awareness training shall be completed—

(1) Through a DoD-sponsored and certified computer or web-based distance learning instruction for Level I antiterrorism awareness; or

(2) Under the instruction of a Level I antiterrorism awareness instructor.

(c) Information and guidance pertaining DoD antiterrorism awareness training is

available at <http://jko.jfcom.mil/> or as otherwise identified in the performance work statement.

(d) The Contractor shall include the substance of this clause, including this paragraph (d), in subcontracts, including subcontracts for commercial items, when subcontractor performance requires routine physical access to a Federally-controlled facility or military installation.

(End of clause)

[FR Doc. 2018-18250 Filed 8-23-18; 8:45 am]

BILLING CODE 5001-06-P

DEPARTMENT OF DEFENSE

Defense Acquisition Regulations System

48 CFR Parts 212, 225, and 252

[Docket DARS-2018-0028]

RIN 0750-AJ71

Defense Federal Acquisition Regulation Supplement: Sunset of Provision Relating to the Procurement of Certain Goods (DFARS Case 2018-D007)

AGENCY: Defense Acquisition Regulations System, Department of Defense (DoD).

ACTION: Proposed rule.

SUMMARY: DoD is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to implement a section of the National Defense Authorization Act for Fiscal Year 2018 that repeals the Fiscal Year 2015 restrictions on the source of photovoltaic devices in contracts awarded by DoD that result in DoD ownership of photovoltaic devices by means other than DoD purchase of the photovoltaic devices as end products.

DATES: Comments on the proposed rule should be submitted in writing to the address shown below on or before October 23, 2018, to be considered in the formation of a final rule.

ADDRESSES: Submit comments identified by DFARS Case 2018-D007, using any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Search for "DFARS Case 2018-D007". Select "Comment Now" and follow the instructions provided to submit a comment. Please include "DFARS Case 2018-D007" on any attached documents.

- *Email:* osd.dfars@mail.mil. Include DFARS Case 2018-D007 in the subject line of the message.

- *Fax:* 571-372-6094.

- *Mail:* Defense Acquisition Regulations System, Attn: Amy G.

Williams, OUSD(A&S)DPC/DARS, Room 3B941, 3060 Defense Pentagon, Washington, DC 20301-3060.

Comments received generally will be posted without change to <http://www.regulations.gov>, including any personal information provided. To confirm receipt of your comment(s), please check www.regulations.gov, approximately two to three days after submission to verify posting (except allow 30 days for posting of comments submitted by mail).

FOR FURTHER INFORMATION CONTACT: Ms. Amy G. Williams, telephone 571-372-6106.

SUPPLEMENTARY INFORMATION:

I. Background

DoD is proposing to revise the DFARS to implement section 813(b) of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2018. Section 813(b) repeals section 858 of the NDAA for FY 2015, effective October 1, 2018, but does not repeal section 846 of the NDAA for FY 2011. DoD published the final rule to implement section 858 under DFARS case 2015-D007 in the **Federal Register** on November 20, 2015 (80 FR 72599).

Section 858 of the NDAA for FY 2015 did not contain specific language to rescind or supersede section 846 of the NDAA for FY 2011, which was first implemented in the DFARS by an interim rule under DFARS Case 2011-D046, published in the **Federal Register** on December 20, 2011 (76 FR 78858), and then finalized on May 22, 2012 (77 FR 30368).

II. Discussion and Analysis

A. Analysis of Statutory Requirements

1. Covered Contracts

Section 846 applies to contracts awarded by DoD, including energy savings performance contracts, utility energy service contracts, and private housing contracts, to the extent that such contracts result in ownership of photovoltaic devices by DoD. Section 846 further provides that DoD is deemed to own a photovoltaic device if the device is—

- Installed on DoD property or in a facility owned by DoD; and
- Reserved for the exclusive use of DOD for the full economic life of the device.

Section 858 substituted "or" for "and" in connecting the two conditions. Therefore, either one of the conditions would be sufficient to make the law applicable. By repealing section 858, the law does not apply unless both of the conditions are met. Although section

858 explicitly restricted applicability to the United States, that restriction is still equivalent to the section 846 applicability, because the Buy American statute invoked in section 846 does not apply overseas. Land leases are not addressed in this rule because land leases are outside the scope of the FAR and DFARS.

2. Requirements

Section 846 requires that, with some exceptions, photovoltaic devices provided under covered contracts comply with the Buy American statute. The Buy American statute requires, for use inside the United States, that manufactured articles, materials and supplies be manufactured in the United States, substantially all from articles, materials, or supplies mined, produced, or manufactured in the United States. When section 858 was enacted, it imposed basically the same requirement, requiring that any photovoltaic device installed under a covered contract be manufactured in the United States substantially all from articles, materials or supplies mined, produced, or manufactured in the United States, but no longer referenced the Buy American statute.

3. Exceptions

Because the requirement under section 858 was separated from the explicit application of the Buy American statute, the exceptions and waivers that apply to the Buy American statute no longer automatically applied to the restrictions of section 858, unless provided for and authorized by section 858. Now that section 858 has been repealed, the following exceptions are again applicable:

- Exceptions for domestic nonavailability and acquisitions in which the values of the photovoltaic devices does not exceed the micro-purchase threshold.
- Public interest determination. The Buy American statute provides for individual or class determinations that application of the Buy American statute is inconsistent with the public interest. Through public interest class determinations, DoD does not apply the Buy American statute to (1) qualifying country end products; or (2) U.S.-made end products, if the World Trade Organization Government Procurement Agreement applies (*i.e.*, the aggregate value of the photovoltaic devices to be utilized is \$180,000 or more). In implementing section 846, this determination was applied to photovoltaic devices not acquired as end products. Section 858 only allowed, on a case-by-case basis, determinations