

• *Defense Acquisition Regulations Web site:* <http://emissary.acq.osd.mil/dar/dfars.nsf/pubcomm>. Follow the instructions for submitting comments.

• E-mail: [dfars@osd.mil](mailto:dfars@osd.mil). Include DFARS Case 2003–D107 in the subject line of the message.

• Fax: (703) 602–0350.

• Mail: Defense Acquisition Regulations Council, Attn: Ms. Teresa Brooks, OUSD (AT&L) DPAP (DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062.

• *Hand Delivery/Courier:* Defense Acquisition Regulations Council, Crystal Square 4, Suite 200A, 241 18th Street, Arlington, VA 22202–3402.

All comments received will be posted to <http://emissary.acq.osd.mil/dar/dfars.nsf>.

**FOR FURTHER INFORMATION CONTACT:** Ms. Teresa Brooks, (703) 602–0326.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

10 U.S.C. 2465 prohibits DoD from entering into contracts for the performance of firefighting or security-guard functions at military installations or facilities, unless an exception applies. Section 331 of the National Defense Authorization Act for Fiscal Year 2004 (Pub. L. 108–136) added a new exception to the prohibition at 10 U.S.C. 2465. The new exception permits award of a contract for the performance of firefighting functions at a military installation or facility, if the contract is for a period of one year or less and the functions would otherwise have to be performed by members of the armed forces who are not readily available due to a deployment. This interim rule amends DFARS 237.102–70 to reflect the new exception.

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 application of the rule is limited to firefighting functions at military installations or facilities for periods of one year or less, when members of the armed forces are not readily available due to a deployment. 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 2003–D107.

**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 331 of the National Defense Authorization Act for Fiscal Year 2004 (Public Law 108–136). Section 331 provides authority for contractor performance of firefighting functions at military installations or facilities for periods of one year or less, if the functions would otherwise have to be performed by members of the armed forces who are not readily available due to a deployment. Section 331 became effective upon enactment on November 24, 2003. 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 237.102–70 is amended as follows:

■ a. In paragraph (a)(2) by removing “or”;

■ b. In paragraph (a)(3) by removing the period and adding in its place “; or”; and

■ c. By adding paragraph (a)(4) to read as follows:

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

(a) \* \* \*

(4) The contract—

(i) Is for the performance of firefighting functions;

(ii) Is for a period of 1 year or less; and

(iii) Covers only the performance of firefighting functions that, in the absence of the contract, would have to be performed by members of the armed forces who are not readily available to perform such functions by reason of a deployment.

\* \* \* \* \*

[FR Doc. 04–14338 Filed 6–24–04; 8:45 am]

**BILLING CODE 5001–08–P**

**DEPARTMENT OF DEFENSE**

**48 CFR Parts 239 and 252**

[DFARS Case 2002–D020]

**Defense Federal Acquisition Regulation Supplement; Information Assurance**

**AGENCY:** Department of Defense (DoD).

**ACTION:** Final rule.

**SUMMARY:** DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to address requirements for information assurance in the acquisition of information technology. The rule implements policy issued by the National Security Telecommunications and Information Systems Security Committee.

**EFFECTIVE DATE:** June 25, 2004.

**FOR FURTHER INFORMATION CONTACT:** Mr. Thaddeus Godlewski, Defense Acquisition Regulations Council, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–2022; facsimile (703) 602–0350. Please cite DFARS Case 2002–D020.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

In July 1990, the National Security Telecommunications and Information Systems Security Committee (NSTISSC) was established for the purpose of developing and promulgating national policies applicable to the security of national security telecommunications and information systems. In January 2000, NSTISSC issued Policy No. 11, which addresses the national policy governing the acquisition of information assurance and information assurance-enabled information technology products. Policy No. 11 states that information assurance shall be considered as a requirement for all systems used to enter, process, store, display, or transmit national security information. DoD issued DoD Directive 8500.1, Information Assurance, and DoD Instruction 8500.2, Information Assurance Implementation, to

implement Policy No. 11. This final rule makes corresponding changes to DFARS Subpart 239.71 and the clause at DFARS 252.239-7000.

DoD published a proposed rule at 68 FR 28187 on May 23, 2003. One source submitted comments on the proposed rule. A discussion of the comments is provided below. Differences between the proposed and final rules are addressed in the discussion of Comments 4 and 5. In addition, Subpart 239.71 is restructured for clarity by removing the "General" section previously at 239.7101 and relocating its contents to the "Scope" and "Definition" sections in 239.7100 and 239.7101 of the final rule.

1. *Comment:* The "Scope" section should further specify that the acquisition of information technology includes equipment (hardware and software), capabilities (building of enterprise architectures), and information technology services. This clarification would help ensure that the appropriate information assurance requirements are included in all information technology acquisition contracts.

*DoD Response:* The recommended clarification is unnecessary. A comprehensive definition of "information technology" is provided in FAR 2.101.

2. *Comment:* Under "Policy and responsibilities," the "General" section should also include, as item (a)(7), Public Law 104-191, "Health Insurance Portability and Accountability Act of 1996," which addresses the security and privacy of health data.

*DoD Response:* Do not agree. The list of policies and statutes in the "General" section is a representative, not a comprehensive, list. The requirements of Public Law 104-191 are addressed in DoD 6025.18-R, DoD Health Information Privacy Regulation.

3. *Comment:* Under "Policy and responsibilities," paragraph (b) of the "General" section should also specify that the statement of work provided to the contracting officer contain a requirement that offerors provide a list to the contracting officer identifying any foreign nationals that may work on the contract by name, social security number (or other identifying number), and country of origin. In addition, the requiring activity should provide the requirements for disposal or destruction of information technology storage media.

*DoD Response:* Do not agree. DoD Directive 8500.1, Information Assurance, and DoD Instruction 8500.2, Information Assurance Implementation, contain references to other DoD

publications that outline the numerous security requirements that must be addressed in a statement of work and other contract documents for information technology requirements.

4. *Comment:* The section entitled "Compromising emanations—TEMPEST or other standard" should be amended to add a requirement for a date after which an accreditation would be considered current for purposes of the proposed contract.

*DoD Response:* Agree. This change has been included in the final rule.

5. *Comment:* The clause at 252.239-7000, Protection Against Compromising Emanations, should be amended in paragraph (a) to add a requirement for a date after which a required accreditation would be considered current or valid for the contract.

*DoD Response:* Agree. This change has been included in the final rule.

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 certifies that this final rule will not 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 DFARS changes in this rule reflect existing government policy pertaining to requirements for information assurance in the acquisition of information technology.

## C. Paperwork Reduction Act

The information collection requirements in the clause at DFARS 252.239-7000 have been approved by the Office of Management and Budget, under Clearance Number 0704-0341, for use through October 31, 2004.

## List of Subjects in 48 CFR Parts 239 and 252

Government procurement.

**Michele P. Peterson,**  
*Executive Editor, Defense Acquisition Regulations Council.*

■ Therefore, 48 CFR parts 239 and 252 are amended as follows:

■ 1. The authority citation for 48 CFR parts 239 and 252 continues to read as follows:

**Authority:** 41 U.S.C. 421 and 48 CFR chapter 1.

## PART 239—ACQUISITION OF INFORMATION TECHNOLOGY

■ 2. Subpart 239.71 is revised to read as follows:

## Subpart 239.71—Security and Privacy for Computer Systems

Sec.

239.7100 Scope of subpart.

239.7101 Definition.

239.7102 Policy and responsibilities.

239.7102-1 General.

239.7102-2 Compromising emanations—TEMPEST or other standard.

239.7103 Contract clause.

### 239.7100 Scope of subpart.

This subpart includes information assurance and Privacy Act considerations. Information assurance requirements are in addition to provisions concerning protection of privacy of individuals (see FAR Subpart 24.1).

### 239.7101 Definition.

*Information assurance*, as used in this subpart, means measures that protect and defend information, that is entered, processed, transmitted, stored, retrieved, displayed, or destroyed, and information systems, by ensuring their availability, integrity, authentication, confidentiality, and non-repudiation. This includes providing for the restoration of information systems by incorporating protection, detection, and reaction capabilities.

### 239.7102 Policy and responsibilities.

#### 239.7102-1 General.

(a) Agencies shall ensure that information assurance is provided for information technology in accordance with current policies, procedures, and statutes, to include—

- (1) The National Security Act;
- (2) The Clinger-Cohen Act;
- (3) National Security Telecommunications and Information Systems Security Policy No. 11;
- (4) Federal Information Processing Standards;
- (5) DoD Directive 8500.1, Information Assurance; and
- (6) DoD Instruction 8500.2, Information Assurance Implementation.

(b) For all acquisitions, the requiring activity is responsible for providing to the contracting officer—

- (1) Statements of work, specifications, or statements of objectives that meet information assurance requirements as specified in paragraph (a) of this subsection;
- (2) Inspection and acceptance contract requirements; and
- (3) A determination as to whether the information technology requires protection against compromising emanations.

**239.7102-2 Compromising emanations—TEMPEST or other standard.**

For acquisitions requiring information assurance against compromising emanations, the requiring activity is responsible for providing to the contracting officer—

(a) The required protections, *i.e.*, an established National TEMPEST standard (*e.g.*, NACSEM 5100, NACSIM 5100A) or a standard used by other authority;

(b) The required identification markings to include markings for TEMPEST or other standard, certified equipment (especially if to be reused);

(c) Inspection and acceptance requirements addressing the validation of compliance with TEMPEST or other standards; and

(d) A date through which the accreditation is considered current for purposes of the proposed contract.

**239.7103 Contract clause.**

Use the clause at 252.239-7000, Protection Against Compromising Emanations, in solicitations and contracts involving information technology that requires protection against compromising emanations.

**PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES**

■ 3. Section 252.239-7000 is revised to read as follows:

**252.239-7000 Protection against compromising emanations.**

*As prescribed in 239.7103, use the following clause:*

Protection Against Compromising Emanations (JUN 2004)

(a) The Contractor shall provide or use only information technology, as specified by the Government, that has been accredited to meet the appropriate information assurance requirements of—

(1) The National Security Agency National TEMPEST Standards (NACSEM No. 5100 or NACSEM No. 5100A, Compromising Emanations Laboratory Test Standard, Electromagnetics (U)); or

(2) Other standards specified by this contract, including the date through which the required accreditation is current or valid for the contract.

(b) Upon request of the Contracting Officer, the Contractor shall provide documentation supporting the accreditation.

(c) The Government may, as part of its inspection and acceptance, conduct additional tests to ensure that information technology delivered under this contract satisfies the information assurance standards specified. The Government may conduct additional tests—

(1) At the installation site or contractor's facility; and

(2) Notwithstanding the existence of valid accreditations of information technology prior to the award of this contract.

(d) Unless otherwise provided in this contract under the Warranty of Supplies or Warranty of Systems and Equipment clause, the Contractor shall correct or replace accepted information technology found to be deficient within 1 year after proper installations.

(1) The correction or replacement shall be at no cost to the Government.

(2) Should a modification to the delivered information technology be made by the Contractor, the 1-year period applies to the modification upon its proper installation.

(3) This paragraph (d) applies regardless of f.o.b. point or the point of acceptance of the deficient information technology. (End of clause)

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**DEPARTMENT OF DEFENSE****48 CFR Part 252**

[DFARS Case 2004-D006]

**Defense Federal Acquisition Regulation Supplement; Designated Countries—New European Union Members**

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

**SUMMARY:** DoD has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to add 10 new European Union Member States to the list of designated countries whose products DoD may acquire under the Trade Agreements Act, in accordance with a determination of the United States Trade Representative.

**EFFECTIVE DATE:** June 25, 2004.

**FOR FURTHER INFORMATION CONTACT:** Ms. Amy Williams, Defense Acquisition Regulations Council, OUSD(AT&L)DPAP(DAR), IMD 3C132, 3062 Defense Pentagon, Washington, DC 20301-3062. Telephone (703) 602-0328; facsimile (703) 602-0350. Please cite DFARS Case 2004-D006.

**SUPPLEMENTARY INFORMATION:****A. Background**

This final rule amends the clauses at DFARS 252.225-7021, Trade Agreements, and 252.225-7045, Balance of Payments Program—Construction Material Under Trade Agreements, to add 10 new European Union Member States to the definition of “designated country.” The new Member States are Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, the Slovak Republic, and Slovenia. The rule implements a determination of the United States Trade Representative that suppliers of

eligible products of these Member States may participate in U.S. Government procurements without discriminatory treatment (69 FR 25654, May 7, 2004).

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

**B. Regulatory Flexibility Act**

This rule will not have a significant cost or administrative impact on contractors or offerors, or a significant effect beyond the internal operating procedures of DoD. Therefore, publication for public comment is not required. However, DoD will consider comments from small entities concerning the affected DFARS subparts in accordance with 5 U.S.C. 610. Such comments should cite DFARS Case 2004-D006.

**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.*

**List of Subjects in 48 CFR Part 252**

Government procurement.

**Michele P. Peterson,**

*Executive Editor, Defense Acquisition Regulations Council.*

■ Therefore, 48 CFR part 252 is amended as follows:

■ 1. The authority citation for 48 CFR part 252 continues to read as follows:

**Authority:** 41 U.S.C. 421 and 48 CFR chapter 1.

**PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES****252.212-7001 [Amended]**

■ 2. Section 252.212-7001 is amended in paragraph (b), in entry “252.225-7021”, by removing “(JAN 2004)” and adding in its place “(JUN 2004)”.

■ 3. Section 252.225-7021 is amended by revising the clause date and paragraph (a)(4) to read as follows:

**252.225-7021 Trade Agreements.**

\* \* \* \* \*

Trade Agreements (JUN 2004)

(a) \* \* \*

(4) *Designated country* means—

Aruba  
Austria  
Bangladesh  
Belgium  
Benin  
Bhutan  
Botswana  
Burkina Faso