

## 225.104

that these articles are not reasonably available from domestic sources:

(A) End products or components listed in 225.104(a).

(B) Spare or replacement parts that must be acquired from the original foreign manufacturer or supplier.

(C) Foreign drugs acquired by the Defense Supply Center, Philadelphia, when the Director, Pharmaceuticals Group, Directorate of Medical Material, determines that only the requested foreign drug will fulfill the requirements.

(iv) Under coordinated acquisition (see Subpart 208.70), the determination is the responsibility of the requiring department when the requiring department specifies acquisition of a foreign end product.

(c) The cost of a domestic end product is unreasonable if it is not the low evaluated offer when evaluated under Subpart 225.5.

[68 FR 15618, Mar. 31, 2003, as amended at 70 FR 2362, Jan. 13, 2005; 73 FR 4113, Jan. 24, 2008; 75 FR 45074, Aug. 2, 2010]

## 225.104 Nonavailable articles.

(a) DoD has determined that the following articles also are nonavailable in accordance with FAR 25.103(b):

(i) Aluminum clad steel wire.

(ii) Sperm oil.

## 225.105 Determining reasonableness of cost.

(b) Use an evaluation factor of 50 percent instead of the factors specified in FAR 25.105(b).

## 225.170 Acquisition from or through other Government agencies.

Contracting activities must apply the evaluation procedures in Subpart 225.5 when using Federal supply schedules.

## Subpart 225.2—Buy American Act—Construction Materials

### 225.202 Exceptions.

(a)(2) A nonavailability determination is not required for construction materials listed in FAR 25.104(a) or in 225.104(a). For other materials, a nonavailability determination shall be approved at the levels specified in 225.103(b)(ii). Use the estimated value

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of the construction materials to determine the approval level.

[65 FR 19851, Apr. 13, 2000, as amended at 68 FR 15619, Mar. 31, 2003]

### 225.206 Noncompliance.

(c)(4) Prepare any report of noncompliance in accordance with the procedures at 209.406-3 or 209.407-3.

[64 FR 62986, Nov. 18, 1999]

## Subpart 225.3—Contracts Performed Outside the United States

SOURCE: 73 FR 16774, Mar. 31, 2008, unless otherwise noted.

### 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 <http://www.dod.mil/bta/products/spot.html> and <http://www.acq.osd.mil/log/PS/spot.html>.

[73 FR 16774, Mar. 31, 2008, as amended at 74 FR 34266, July 16, 2009]

**225.370 Contractors performing private security functions.**

**225.370-1 Scope.**

This section prescribes policy for implementing section 862 of the National Defense Authorization Act for Fiscal Year 2008 (Pub. L. 110-181), as amended by section 853 of the National Defense Authorization Act for Fiscal Year 2009 (Pub. L. 110-417) and sections 831 and 832 of the National Defense Authorization Act for Fiscal Year 2011 (Pub. L. 111-383).

**225.370-2 Applicability.**

This section applies to acquisitions for supplies and services that require the performance of private security functions in areas of—

- (a) Contingency operations (see FAR 2.101);
- (b) Complex contingency operations; or
- (c) Other military operations or exercises that are designated by the combatant commander.

**225.370-3 Definitions.**

As used in this section—

*Complex contingency operations* means large-scale peace operations (or elements thereof) conducted by a combination of military forces and non-military organizations that involve one or more of the elements of peace operations that include one or more elements of other types of operations, such as foreign humanitarian assistance, nation assistance, support to insurgency, or support to counterinsurgency.

*Private security functions* means activities engaged in by a contractor, including—

- (1) Guarding of personnel, facilities, designated sites, or property of a Federal agency, the contractor or subcontractor, or a third party; and

- (2) Any other activity for which personnel are required to carry weapons in the performance of their duties.

**225.370-4 Policy.**

(a) The policy, responsibilities, procedures, accountability, training, equipping, and conduct of personnel performing private security functions in designated areas are addressed in Department of Defense Instruction (DoDI) 3020.50, Private Security Contractors Operating in Contingency Operations, Combat Operations, or Other Significant Military Operations, at <http://www.dtic.mil/whs/directives/corres/pdf/302050p.pdf>.

(b) The requirements of this section apply to contractors that employ private security contractors in areas of contingency operations, complex contingency operations, or other military operations or exercises that are designated by the combatant commander, whether the contract is for the performance of private security functions or other supplies or services.

(c) DoD requires contractors described in paragraph (b) above to—

- (1) Ensure that all employees of the contractor who are responsible for performing private security functions comply with orders, directives, and instructions to contractors performing private security functions for—

- (i) Registering, processing, accounting for, managing, overseeing, and keeping appropriate records of personnel performing private security functions. This includes ensuring the issuance, maintenance, and return of Personal Identity Verification credentials in accordance with FAR clause 52.204-9, Personal Identity Verification of Contractor Personnel, and DoD procedures, including revocation of any physical and/or logistical access (as defined by Homeland Security Presidential Directive (HSPD-12)) granted to such personnel;

- (ii) Authorizing and accounting for weapons to be carried by or available to be used by personnel performing private security functions;

- (A) All weapons must be registered in the Synchronized Predeployment Operational Tracker (SPOT) materiel tracking system.

(B) In addition, all weapons that are Government-furnished property must be assigned a unique identifier in accordance with the clauses at 252.211-7003 and 252.245.7001 and physically marked in accordance with MIL-STD 130 (current version) and DoD directives and instructions. The items must be registered in the DoD Item Unique Identification (IUID) Registry (<https://www.bpn.gov/iuid/>);

(iii) Registering and identifying armored vehicles, helicopters, and other military vehicles operated by contractors performing private security functions;

(A) All armored vehicles, helicopters, and other military vehicles must be registered in SPOT.

(B) In addition, all armored vehicles, helicopters, and other military vehicles that are Government-furnished property must be assigned a unique identifier in accordance with the clauses at 252.211-7003 and 252.245.7001 and physically marked in accordance with MIL-STD 130 (current version) and DoD directives and instructions. The items must be registered in the DoD IUID Registry; and

(iv) Reporting incidents in which—

(A) A weapon is discharged by personnel performing private security functions;

(B) Personnel performing private security functions are attacked, killed, or injured;

(C) Persons are killed or injured or property is destroyed as a result of conduct by contractor personnel;

(D) A weapon is discharged against personnel performing private security functions or personnel performing such functions believe a weapon was so discharged; or

(E) Active, non-lethal countermeasures (other than the discharge of a weapon) are employed by personnel performing private security functions in response to a perceived immediate threat;

(2) Ensure that all employees of the contractor who are responsible for personnel performing private security functions are briefed on and understand their obligation to comply with—

(i) Qualification, training, screening (including, if applicable, thorough

background checks), and security requirements established by DoDI 3020.50;

(ii) Applicable laws and regulations of the United States and the host country and applicable treaties and international agreements regarding performance of the functions of the private security contractors;

(iii) Orders, directives, and instructions issued by the applicable commander of a combatant command relating to weapons, equipment, force protection, security, health, safety, or relations and interaction with locals; and

(iv) Rules on the use of force issued by the applicable commander of a combatant command for personnel performing private security functions; and

(3) Cooperate with any Government-authorized investigation by providing access to employees performing private security functions and relevant information in the possession of the contractor.

#### 225.370-5 Remedies.

(a) In addition to other remedies available to the Government—

(1) The contracting officer may direct the contractor, at its own expense, to remove and replace any contractor personnel who fail to comply with or violate applicable requirements. Such action may be taken at the Government's discretion without prejudice to its rights under any other contract provision, including termination for default. Required contractor actions include—

(i) Ensuring the return of personal identity verification credentials;

(ii) Ensuring the return of any other equipment issued to the employee under the contract; and

(iii) Revocation of any physical and/or logistical access granted to such personnel;

(2) The contracting officer shall include the contractor's failure to comply with the requirements of this subpart in appropriate databases of past performance and consider any such failure in any responsibility determination or evaluation of past performance;

(3) In the case of award-fee contracts, the contracting officer shall consider a contractor's failure to comply with the

requirements of this subpart in the evaluation of the contractor's performance during the relevant evaluation period, and may treat such failure as a basis for reducing or denying award fees for such period or for recovering all or part of award fees previously paid for such period; and

(4) If the contractor fails to comply with the Government's direction to remove or replace personnel (see paragraph (a)(1) of this subsection), and such failure to comply is severe, prolonged, or repeated, the contracting officer may terminate the contract for default.

(b) If the performance failures are significant or repeated, the contracting officer shall refer the contractor to the appropriate suspension and debarment official.

**225.370-6 Contract clause.**

Use the clause at 252.225-7039, Contractors Performing Private Security Functions, in all solicitations and contracts to be performed in areas of—

- (a) Contingency operations;
- (b) Complex contingency operations; or
- (c) Other military operations or exercises, when designated by the combatant commander.

**Subpart 225.4—Trade Agreements**

SOURCE: 65 FR 19852, Apr. 13, 2000, unless otherwise noted.

**225.401 Exceptions.**

(a)(2)(A) If a department or agency considers an individual acquisition of a product to be indispensable for national security or national defense purposes and appropriate for exclusion from the provisions of FAR subpart 25.4, it may submit a request with supporting rationale to the Director of Defense Procurement and Acquisition Policy (OUSD(AT&L)DPAP). Approval by OUSD(AT&L)DPAP is not required if—

- (1) Purchase from foreign sources is restricted by statute (see subpart 225.70);
- (2) Another exception in FAR 25.401 applies to the acquisition; or
- (3) Competition from foreign sources is restricted under subpart 225.71.

(B) Public interest exceptions for certain countries when acquiring products or services in support of operations in Afghanistan are in 225.7704-1.

[75 FR 81916, Dec. 29, 2010]

**225.401-70 End products subject to trade agreements.**

Acquisitions of end products in the following Federal supply groups (FSG) are covered by trade agreements if the value of the acquisition is at or above the applicable trade agreement threshold and no exception applies. If an end product is not in one of the listed groups, the trade agreements do not apply. The definition of Caribbean Basin country end products in FAR 25.003 excludes those end products that are not eligible for duty-free treatment under 19 U.S.C. 2703(b). Therefore certain watches, watch parts, and luggage from certain Caribbean Basin countries are not eligible products. However, 225.003 expands the definition of Caribbean Basin country end products to include petroleum and any product derived from petroleum, in accordance with Section 8094 of Pub. L. 103-139.

FSG	Category/Description
22	Railway equipment
23	Motor vehicles, trailers, and cycles (except 2350 and buses under 2310)
24	Tractors
25	Vehicular equipment components
26	Tires and tubes
29	Engine accessories
30	Mechanical power transmission equipment
32	Woodworking machinery and equipment
34	Metalworking machinery
35	Service and trade equipment
36	Special industry machinery (except 3690)
37	Agricultural machinery and equipment
38	Construction, mining, excavating, and highway maintenance equipment
39	Materials handling equipment
40	Rope, cable, chain and fittings
41	Refrigeration and air conditioning equipment
42	Fire fighting, rescue and safety equipment
43	Pumps and compressors
44	Furnace, steam plant and drying equipment (except 4470)
45	Plumbing, heating, and sanitation equipment

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value of those incidental services does not exceed the value of the product itself.

(15) *South Caucasus/Central and South Asian (SC/CASA) state* means Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Pakistan, Tajikistan, Turkmenistan, or Uzbekistan.

(16) *South Caucasus/Central and South Asian (SC/CASA) state end product* means an article that—

(i) Is wholly the growth, product, or manufacture of an SC/CASA state; or

(ii) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in an SC/CASA state into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself.

(c) The Contractor shall deliver under this contract only domestic end products unless, in its offer, it specified delivery of qualifying country end products, SC/CASA state end products, Canadian end products, or other foreign end products in the Buy American Act—Free Trade Agreements—Balance of Payments Program Certificate provision of the solicitation. If the Contractor certified in its offer that it will deliver a qualifying country end product, SC/CASA state end products, or a Canadian end product, the Contractor shall deliver a qualifying country end product, an SC/CASA state end product, a Canadian end product or, at the Contractor's option, a domestic end product.

[68 FR 15640, Mar. 31, 2003, as amended at 69 FR 1929, Jan. 13, 2004; 69 FR 74992, Dec. 15, 2004; 70 FR 2365, Jan. 13, 2005; 70 FR 35548, June 21, 2005; 71 FR 34835, June 16, 2006; 71 FR 58543, Oct. 4, 2006; 72 FR 14243, Mar. 27, 2007; 73 FR 63156, Sept. 15, 2008; 74 FR 2423, Jan. 15, 2009; 74 FR 37642, 37651, July 29, 2009; 75 FR 81920, Dec. 29, 2010]

**252.225-7037 Evaluation of Offers for Air Circuit Breakers.**

As prescribed in 225.7006-4(a), use the following provision:

**EVALUATION OF OFFERS FOR AIR CIRCUIT BREAKERS (JUN 2006)**

(a) The offeror shall specify, in its offer, any intent to furnish air circuit breakers that are not manufactured in the United States or its outlying areas, Canada, or the United Kingdom.

(b) The Contracting Officer will evaluate offers by adding a factor of 50 percent to the offered price of air circuit breakers that are

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not manufactured in the United States or its outlying areas, Canada, or the United Kingdom.

(End of provision)

[70 FR 35548, June 21, 2005]

**252.225-7038 Restriction on Acquisition of Air Circuit Breakers.**

As prescribed in 225.7006-4(b), use the following clause:

**RESTRICTION ON ACQUISITION OF AIR CIRCUIT BREAKERS (JUN 2006)**

Unless otherwise specified in its offer, the Contractor shall deliver under this contract air circuit breakers manufactured in the United States or its outlying areas, Canada, or the United Kingdom.

(End of clause)

[70 FR 35548, June 21, 2005]

**252.225-7039 Contractors performing private security functions.**

As prescribed in 225.370-6, insert the following clause:

**CONTRACTORS PERFORMING PRIVATE SECURITY FUNCTIONS (AUG 2011)**

(a) *Definition.*

*Private security functions* means activities engaged in by a contractor, including—

(i) Guarding of personnel, facilities, designated sites, or property of a Federal agency, the contractor or subcontractor, or a third party; or

(ii) Any other activity for which personnel are required to carry weapons in the performance of their duties.

(b) *Requirements.* The Contractor is required to—

(1) Ensure that all employees of the Contractor who are responsible for performing private security functions under this contract comply with any orders, directives, and instructions to Contractors performing private security functions that are identified in the contract for—

(i) Registering, processing, accounting for, managing, overseeing, and keeping appropriate records of personnel performing private security functions. This includes ensuring the issuance, maintenance, and return of Personal Identity Verification credentials in accordance with FAR 52.204-19, Personnel Identity Verification of Contractor Personnel, and DoD procedures, including revocation of any physical and/or logistical access (as defined by Homeland Security Presidential Directive (HSPD-12)) granted to such personnel;

(1) Authorizing and accounting for weapons to be carried by or available to be used by personnel performing private security functions;

(A) All weapons must be registered in the Synchronized Predeployment Operational Tracker (SPOT) materiel tracking system.

(B) In addition, all weapons that are Government-furnished property must be assigned a unique identifier in accordance with the clauses at DFARS 252.211-7003, Item Identification and Valuation, and DFARS 252.245.7001, Tagging, Labeling, and Marking of Government-Furnished Property, and physically marked in accordance with MIL-STD 130 (current version) and DoD directives and instructions. The items must be registered in the DoD Item Unique Identification (IUID) Registry (<https://www.bpn.gov/iuid/>);

(11) Registering and identifying armored vehicles, helicopters, and other military vehicles operated by Contractors performing private security functions;

(A) All armored vehicles, helicopters, and other military vehicles must be registered in SPOT.

(B) In addition, all armored vehicles, helicopters, and other military vehicles that are Government-furnished property must be assigned a unique identifier in accordance with the clauses at DFARS 252.211-7003 and DFARS 252.245.7001 and physically marked in accordance with MIL-STD 130 (current version) and DoD directives and instructions. The items must be registered in the DoD IUID Registry (<https://www.bpn.gov/iuid/>); and

(iv) Reporting incidents in which—

(A) A weapon is discharged by personnel performing private security functions;

(B) Personnel performing private security functions are attacked, killed, or injured;

(C) Persons are killed or injured or property is destroyed as a result of conduct by contractor personnel;

(D) A weapon is discharged against personnel performing private security functions or personnel performing such functions believe a weapon was so discharged; or

(E) Active, non-lethal countermeasures (other than the discharge of a weapon) are employed by personnel performing private security functions in response to a perceived immediate threat;

(2) Ensure that all employees of the Contractor who are responsible for personnel performing private security functions under this contract are briefed on and understand their obligation to comply with—

(i) Qualification, training, screening (including, if applicable, thorough background checks), and security requirements established by DoDI 8020.60, Private Security Contractors Operating in Areas of Contingency Operations, Combat Operations, or Other Significant Operations, at <http://www.dtic.mil/whs/directives/corres/pdf>;

(11) Applicable laws and regulations of the United States and the host country and applicable treaties and international agreements regarding performance of private security functions;

(iii) Orders, directives, and instructions issued by the applicable commander of a combatant command relating to weapons, equipment, force protection, security, health, safety, or relations and interaction with locals; and

(iv) Rules on the use of force issued by the applicable commander of a combatant command for personnel performing private security functions; and

(3) Cooperate with any Government-authorized investigation by providing access to employees performing private security functions and relevant information in the possession of the Contractor regarding the incident concerned.

(c) Remedies. In addition to other remedies available to the Government—

(1) The Contracting Officer may direct the Contractor, at its own expense, to remove and replace any Contractor personnel who fail to comply with or violate applicable requirements of this contract. Such action may be taken at the Government's discretion without prejudice to its rights under any other provision of this contract, including termination for default. Required Contractor actions include—

(i) Ensuring the return of personal identity verification credentials;

(ii) Ensuring the return of other equipment issued to the employee under the contract; and

(iii) Revocation of any physical and/or logistical access granted to such personnel;

(2) The Contractor's failure to comply with the requirements of this clause will be included in appropriate databases of past performance and may be considered in any responsibility determination or evaluation of past performance;

(3) If this is an award-fee contract, the Contractor's failure to comply with the requirements of this clause shall be considered in the evaluation of the Contractor's performance during the relevant evaluation period, and the Contracting Officer may treat such failure to comply as a basis for reducing or denying award fees for such period or for recovering all or part of award fees previously paid for such period; and

(4) This contract may be terminated for default if the Contractor fails to comply with the requirements of paragraph (b) of this clause or, if directed by the Contracting Officer, fails to remove or replace, at its own expense, any of its personnel who violate the requirements of paragraph (b) of this clause.

(d) Rule of construction. The duty of the Contractor to comply with the requirements of this clause shall not be reduced or diminished by the failure of a higher- or lower-tier

Contractor to comply with the clause requirements or by a failure of the contracting activity to provide required oversight.

(e) *Subcontracts.* The Contractor shall include the substance of this clause, including this paragraph (e), in all subcontracts that will be performed in areas of contingency operations, complex contingency operations, or other military operations or exercises designated by the Combatant Commander.

(End of clause)

[76 FR 52137, Aug. 19, 2011]

**252.225-7040 Contractor Personnel Authorized to Accompany U.S. Armed Forces Deployed Outside the United States.**

As prescribed in 225.7402-5(a), use the following clause:

CONTRACTOR PERSONNEL AUTHORIZED TO ACCOMPANY U.S. ARMED FORCES DEPLOYED OUTSIDE THE UNITED STATES (JUN 2011)

(a) *Definitions.* As used in this clause—

*Combatant Commander* means the commander of a unified or specified combatant command established in accordance with 10 U.S.C. 161.

*Designated operational area* means a geographic area designated by the combatant commander or subordinate joint force commander for the conduct or support of specified military operations.

*Law of war* means that part of international law that regulates the conduct of armed hostilities. The law of war encompasses all international law for the conduct of hostilities binding on the United States or its individual citizens, including treaties and international agreements to which the United States is a party, and applicable customary international law.

*Subordinate joint force commander* means a sub-unified commander or joint task force commander.

(b) *General.*

(1) This clause applies when Contractor personnel are authorized to accompany U.S. Armed Forces deployed outside the United States in—

(i) Contingency operations;  
(ii) Humanitarian or peacekeeping operations; or

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

(2) Contract performance in support of U.S. Armed Forces deployed outside the United States may require work in dangerous or austere conditions. Except as otherwise provided in the contract, the Contractor accepts the risks associated with required contract performance in such operations.

(3) Contractor personnel are civilians accompanying the U.S. Armed Forces.

(i) Except as provided in paragraph (b)(3)(ii) of this clause, Contractor personnel are only authorized to use deadly force in self-defense.

(ii) Contractor personnel performing security functions are also authorized to use deadly force when such force reasonably appears necessary to execute their security mission to protect assets/persons, consistent with the terms and conditions contained in their contract or with their job description and terms of employment.

(iii) Unless immune from host nation jurisdiction by virtue of an international agreement or international law, inappropriate use of force by contractor personnel authorized to accompany the U.S. Armed Forces can subject such personnel to United States or host nation prosecution and civil liability (see paragraphs (d) and (j)(3) of this clause).

(4) Service performed by Contractor personnel subject to this clause is not active duty or service under 38 U.S.C. 106 notes.

(c) *Support.* (1)(i) The Combatant Commander will develop a security plan for protection of Contractor personnel in locations where there is not sufficient or legitimate civil authority, when the Combatant Commander decides it is in the interests of the Government to provide security because—

(A) The Contractor cannot obtain effective security services;

(B) Effective security services are unavailable at a reasonable cost; or

(C) Threat conditions necessitate security through military means.

(ii) The Contracting Officer shall include in the contract the level of protection to be provided to Contractor personnel.

(iii) In appropriate cases, the Combatant Commander may provide security through military means, commensurate with the level of security provided DoD civilians.

(2)(i) Generally, all Contractor personnel authorized to accompany the U.S. Armed Forces in the designated operational area are authorized to receive resuscitative care, stabilization, hospitalization at level III military treatment facilities, and assistance with patient movement in emergencies where loss of life, limb, or eyesight could occur. Hospitalization will be limited to stabilization and short-term medical treatment with an emphasis on return to duty or placement in the patient movement system.

(ii) When the Government provides medical treatment or transportation of Contractor personnel to a selected civilian facility, the Contractor shall ensure that the Government is reimbursed for any costs associated with such treatment or transportation.

(iii) Medical or dental care beyond this standard is not authorized unless specified elsewhere in this contract.

(3) Unless specified elsewhere in this contract, the Contractor is responsible for all

