

Subpart 25.3 - Contracts Performed Outside the United States

Parent topic: [Part 25 - Foreign Acquisition](#)

25.301 Contractor personnel in a designated operational area or supporting a diplomatic or consular mission outside the United States.

25.301-1 Scope.

(a) This section applies to contracts requiring contractor personnel to perform outside the *United States*-

(1) In a *designated operational area* during-

(i) Contingency operations;

(ii) Humanitarian or peacekeeping operations; or

(iii) Other military operations or military exercises, when designated by the *combatant commander*; or

(2) When supporting a diplomatic or consular mission-

(i) That has been designated by the Department of State as a danger pay post (see <https://aoprals.state.gov/>); or

(ii) That the *contracting officer* determines is a post at which application of 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*, is appropriate.

(b) Any of the types of operations listed in paragraph (a)(1) of this section *may* include stability operations such as-

(1) Establishment or maintenance of a safe and secure environment; or

(2) Provision of *emergency* infrastructure reconstruction, humanitarian relief, or essential governmental services (until feasible to transition to local government).

(c) This section does not apply to *personal services contracts* (see FAR [37.104](#)), unless specified otherwise in agency procedures.

25.301-2 Government support.

(a) Generally, contractors are responsible for providing their own logistical and security support, including logistical and security support for their employees. The agency *shall* provide logistical or

security support only when the appropriate agency official, in accordance with agency guidance, determines that-

(1) Such Government support is available and is needed to ensure continuation of essential contractor services; and

(2) The contractor cannot obtain adequate support from other sources at a reasonable cost.

(b) The *contracting officer shall* specify in the contract, and in the *solicitation* if possible, the exact support to be provided, and whether this support is provided on a reimbursable basis, citing the authority for the reimbursement.

25.301-3 Weapons.

The *contracting officer shall* follow agency procedures and the weapons policy established by the *combatant commander* or the *chief of mission* when authorizing contractor personnel to carry weapons (see paragraph (i) of the clause at 52.225-19, Contractor Personnel in a *Designated Operational Area* or *Supporting a Diplomatic or Consular Mission* outside the *United States*).

25.301-4 Contract clause.

Insert the clause at 52.225-19, Contractor Personnel in a *Designated Operational Area* or *Supporting a Diplomatic or Consular Mission* outside the *United States*, in *solicitations* and contracts, other than personal service contracts with individuals, that will require contractor personnel to perform outside the United States—

(a) In a *designated operational area* during—

(1) Contingency operations;

(2) Humanitarian or peacekeeping operations; or

(3) Other military operations or military exercises, when designated by the combatant commander; or

(b) When supporting a diplomatic or consular mission—

(1) That has been designated by the Department of State as a danger pay post (see <https://aoprals.state.gov/>); or

(2) That the *contracting officer* determines is a post at which application of the clause FAR 52.225-19, Contractor Personnel in a *Designated Operational Area* or *Supporting a Diplomatic or Consular Mission* outside the *United States*, is appropriate.

25.302 Contractors performing private security functions outside the United States.

25.302-1 Scope.

This section prescribes policy for implementing section 862 of the *National Defense Authorization Act* (NDAA) for Fiscal Year (FY) 2008 (Pub. L. 110-181), as amended by section 853 of the NDAA for FY 2009 (Pub. L. 110-417), and sections 831 and 832 of the NDAA for FY 2011 (Pub. L. 111-383) (see 10 U.S.C. Subtitle A, Part V, Subpart G Note).

25.302-2 Definitions.

As used in this section-

Area of combat operations means an area of operations designated as such by the Secretary of Defense when enhanced coordination of contractors performing private security functions working for Government agencies is required.

Other significant military operations means activities, other than combat operations, as part of a *contingency operation* outside the *United States* that is carried out by *United States* Armed Forces in an uncontrolled or unpredictable high-threat environment where personnel performing security functions *may* be called upon to use deadly force (see [25.302-3\(a\)\(2\)](#)).

Private security functions means activities engaged in by a contractor, as follows-

- (1) Guarding of personnel, facilities, designated sites, or property of a *Federal agency*, the contractor or subcontractor, or a third party; or
- (2) Any other activity for which personnel are required to carry weapons in the performance of their duties in accordance with the terms of the contract.

25.302-3 Applicability.

(a) This section applies to contracts that require performance outside the *United States*-

- (1) In an *area of combat operations* as designated by the Secretary of Defense; or
- (2) In an area of *other significant military operations* as designated by the Secretary of Defense, and only upon agreement of the Secretary of Defense and the Secretary of State.

(b) These designations can be found at

http://www.acq.osd.mil/dpap/pacc/cc/designated_areas_of_other_significant_military_operations.html and http://www.acq.osd.mil/dpap/pacc/cc/designated_areas_of_combat_operations.html.

(c) When the applicability requirements of this subsection are met, contractors and subcontractors *must* comply with 32 CFR part 159, whether the contract is for the performance of private security functions as a primary deliverable or the provision of private security functions is ancillary to the stated deliverables.

(d) The requirements of section [25.302](#) *shall* not apply to-

- (1) Contracts entered into by elements of the intelligence community in support of intelligence

activities; or

(2) Temporary arrangements entered into on a non-DoD contract for the performance of private security functions by individual indigenous personnel not affiliated with a local or expatriate security company. These temporary arrangements *must* still comply with local law.

25.302-4 Policy.

(a) *General.*

(1) The policy, responsibilities, procedures, accountability, training, equipping, and conduct of personnel performing private security functions in designated areas are addressed at 32 CFR part 159, entitled "Private Security Contractors Operating in *Contingency Operations*". Contractor responsibilities include ensuring that employees are aware of, and comply with, relevant orders, directives, and instructions; keeping appropriate personnel records; accounting for weapons; registering and identifying armored vehicles, helicopters, and other military vehicles; and reporting specified incidents in which personnel performing private security functions under a contract are involved.

(2) In addition, contractors are required to fully cooperate with any Government-authorized investigation into incidents reported pursuant to paragraph (c)(3) of the clause at [52.225-26](#), Contractors Performing Private Security Functions Outside the *United States*, by providing access to employees performing private security functions and relevant information in the possession of the contractor regarding the incident concerned.

(b) *Implementing guidance.* In accordance with 32 CFR part 159-

(1) Geographic *combatant commanders* will provide DoD contractors performing private security functions with guidance and procedures for the operational environment in their area of responsibility; and

(2) In a designated *area of combat operations*, or areas of *other significant military operations*, as designated by the Secretary of Defense and only upon agreement of the Secretary of Defense and the Secretary of State, the relevant *Chief of Mission* will provide implementing instructions for non-DoD contractors performing private security functions and their personnel consistent with the standards set forth by the geographic *combatant commander*. In accordance with 32 CFR 159.4(c), the *Chief of Mission* has the *option* of instructing non-DoD contractors performing private security functions and their personnel to follow the guidance and procedures of the geographic *combatant commander* and/or a sub-unified commander or joint force commander where specifically authorized by the *combatant commander* to do so and notice of that authorization is provided to non-DoD agencies.

25.302-5 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 or subcontractor personnel performing private security functions 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, e.g., *termination for default*;

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

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

(b) If the performance failures are severe, prolonged, or repeated, the *contracting officer shall* refer the matter to the appropriate *suspending and debarring official*.

25.302-6 Contract clause.

(a) Use the clause at [52.225-26](#), Contractors Performing Private Security Functions Outside the *United States*, in *solicitations* and contracts for performance outside the *United States* in an area of-

(1) Combat operations, as designated by the Secretary of Defense; or

(2) *Other significant military operations*, as designated by the Secretary of Defense and only upon agreement of the Secretary of Defense and the Secretary of State.

(b) The clause is not required to be used for-

(1) Contracts entered into by elements of the intelligence community in support of intelligence activities; or

(2) Temporary arrangements entered into by non-DoD contractors for the performance of private security functions by individual indigenous personnel not affiliated with a local or expatriate security company.