



October 19, 2005

Defense Acquisition Regulations Council  
OUSD (AT&L) DPAP (DAR)  
IMD 3C132  
3062 Pentagon  
Washington, D.C. 20301-3062

Attn: Ms. Amy Williams

By email: [DFARS@OSD.MIL](mailto:DFARS@OSD.MIL)

Ref: DFARS Case 2005-D007: Training for Contractor Personnel Interacting with Detainees

Dear Ms. Williams:

On behalf of the Professional Services Council (PSC), I am pleased to submit comments on the referenced interim DFARS rule, published in the Federal Register on September 1, 2005, and amended on September 9, 2005, amending the DFARS to implement Section 1092 of the fiscal year 2005 National Defense Authorization Act and requiring that DoD contractor personnel who interact with detainees receive training regarding the applicable international obligations and laws of the United States. PSC generally supports the rule but recommends that the rule be revised to improve clarity and the scope of coverage with the changes we recommend in the specific comments below.

As you know, the Professional Services Council (PSC) is the leading advocate on legislative and regulatory policies that affect the government professional and technical services industry. PSC represents nearly 200 companies of all sizes that provide services, including information technology, engineering, logistics, operations and maintenance, consulting, international development, scientific, environmental, and social sciences, to virtually every agency of the federal government. PSC's mission is simple and focused: Expand the government market for professional and technical services providers and foster a business climate that enables fair competition, best value for the government and the taxpayer, and a thriving partnership between the public sector customer and the private sector provider.

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## Specific Comments

### 1. Section 237.171-2—Definition

This subsection provides only one definition – for the term “detainee” – and refers to the definition of that term in the clause at 252.237-7019. We do not object to the definition and support the cross-reference to the contract clause. We recommend that this section be expanded to include the term “personnel interacting with detainees” as also defined in the contract clause.

### 2. Section 237.171-3 –Policy

a.) Subsection (a) addresses the obligation that each DoD contract include a requirement that contractor personnel receive training and acknowledge receipt of the training. Subsection (b) provides that the geographic Combatant Commander will provide the training to contractor personnel.

We recommend a clarification to this Section and to the clause to ensure that the rule properly establishes that the geographic Combatant Commander for the area where the detention or interrogation facility is located has four separate and distinct responsibilities under this policy and the contract clause: first, to develop the training curriculum addressing the international obligations and laws of the United States applicable to the detention of persons, including the Geneva Conventions, for all contractor personnel who may interact with detainees; second, to determine and provide the appropriate place where the training will be conducted; third, to conduct the training for such contractor personnel; and finally, to issue a training receipt to all contractor personnel who attend such training.

Thus, we recommend that Subsections (a) and (b) be revised to read as follows:

“Each covered DoD contract for services (as provided in 237.171-4) where contractor personnel in the course of their duty may be expected to interact with detainees on behalf of the U.S. Government, shall include a requirement that such contractor personnel –

- (a) Receive the training that is determined appropriate by the Combatant Commander, and that is conducted by U.S. Government personnel at a location determined by the geographic Combatant Commander for the area where the detention or interrogation facility is located, regarding the international obligations and laws of the United States applicable to personnel interacting with detainees; and
- (b) Obtain the training receipt document from the U.S. Government personnel trainer at the completion of the training and acknowledge receipt of the training.”

b.) Subsection (c) directs readers to PGI 237.171-3(c) for additional guidance from the Secretary of Defense. However, the PGI does not provide additional guidance; it only directs readers to the (same?) April 12, 2005 Secretary of Defense memo. We

recommend that this subsection be revised to provide either specific relevant guidance from the Secretary's memo or the reference to the Secretary's memo be deleted.

c.) While not addressed in the interim rule, we recommend that the final rule, PGI, or additional internal departmental guidance develop standardized training so that there is as much consistency and standardization as possible in the global training to be provided to contractor employees; this could include a course numbering-type system that would provide information on the course content. In our view, international obligations and US laws applicable to personnel interacting with detainees, including the Geneva Conventions, do not vary with the location of the detention facility. Yet we recognize that there may be appropriate additional training considerations to accommodate variations in religious, social and national customs applicable to a particular facility or detainee.

d.) While not addressed in the rule, we recommend that the final rule or PGI provide a standardized format for the training certificates, including requirements for including information on the certificate regarding the employee's name and company affiliation, the date and nature of the training, an indication that the training has been approved by the geographic Combatant Commander for the area where the facility is located, and the name and complete identification of the U.S. Government official who provided the training. We also recommend a standard form of acknowledgment that does not include a certification by contractor employees.

e.) While not addressed in the rule, we recommend that the final rule provide policy guidance that would permit a geographic Combatant Commander to waive the training requirement for any contractor employee who has already received appropriate training within the past year, including policy addressing the transferability of training even if at a different facility within a single Combatant Commander's area of responsibility or when there may be a different Combatant Commander. We believe this waiver will facilitate cross-utilization of contractor employees.

f.) While not addressed in the rule, we recommend that the final rule address the policy that contractor and employee expenses incurred in making the employee available for and taking the government-provided training is an allowable cost on cost-reimbursement contracts.

### 3. Clause 252.237-7019 (September 2005)

a.) In paragraph (b)(1), we recommend a clarification, as noted above, that the Combatant Commander has four responsibilities under this clause: first, to develop the training curriculum for contractor personnel who may interact with detainees; second, to provide the appropriate location to conduct the training; third, to conduct the training; and fourth, to provide the training receipt. We do not believe these four obligations are clear in the clause.

b.) Arranging Training

Paragraph (b)(2)(i)(A) requires the Contractor to “arrange” for its covered personnel to receive the training prior to interacting with detainees. While we appreciate the importance of advance training and fully support the requirement, we are concerned that the ability to execute this contractual obligation is outside the control of the contractor and of its covered employees since it is only the Combatant Commander that has the authority to execute all of the four distinct responsibilities provided for under the policy and the requirements of subsection (a) of the clause. Notwithstanding the provision in (b)(iii) that provides the appropriate point of contact “to make these (training) arrangements,” we believe this responsibility is appropriately placed on the contracting officer (or delegated representative) to “arrange” such training and for the contractor to facilitate the coordination with its employees as to place and time. We recommend revising the rule to impose on the contracting officer the responsibility for arranging the training; of course, the contractor would still be required to make its employees available for that training.

c.) Acknowledging Training

Paragraph (b)(2)(i)(B) requires the contractor to arrange for its personnel to acknowledge receipt of the training through acknowledgement of the training receipt document. The contractor’s obligation to “acknowledge” the training receipt document is unclear and confusing. Furthermore, paragraph (a)(2) of the prescription at DFARS 237.171-3 imposes this acknowledgement requirement only on those contractor personnel who are interacting with detainees, and appropriately so since it is the employee that will attend the training and know that it has been completed. Therefore, we recommend revising this provision to impose the acknowledgement request only on the employee and allow company practices to get that information to the contractor.

d.) Record Retention

Paragraph (b)(3) requires both the contractor and the employee to retain a copy of the training receipt until the contract is closed. While we do not object to a record retention requirement, in reality this responsibility should be imposed exclusively on the contractor who will have the personnel files on employees and is often the only one who will know when the contract is “closed.” More importantly, since paragraph (b)(2)(i)(A) requires that training be conducted annually for those contractor employees who are continuously interacting with detainees, the record retention should only apply to the most recent training certification. In addition, because of unrelated administrative issues relating to closing out services contracts, we recommend including in this provision an alternative record retention period of three years after all work on the contract has been performed.

e.) Flowdown

Subsection (c) requires the flowdown of this clause to all subcontractors that may require contractor personnel to interact with detainees. Did you intend to cover subcontractor personnel? If the clause is flowed down, does the prime contractor solely retain the requirement to “arrange” for the training for subcontractor personnel? Does the prime contractor also retain a responsibility under paragraph (b)(3) to retain a copy of the

training provided to subcontractors and subcontractor personnel in addition to the responsibility of the subcontractor to retain a copy of the training for its personnel?

f.) Waiver Authority Needed

While not addressed in the rule, we recommend that policy be included in the clause that provides temporary waiver authority to the contracting officer and/or to the geographic Combatant Commander if training cannot be developed or conducted in a timely manner in advance of contractor personnel interacting with detainees in order to meet contractual requirements.

**Conclusion**

We support the requirement for training of contractor employees who interact with detainees in the custody of the United States and applaud the structure of the rule that properly places the burden of developing and conducting that training on the U.S Government, through the geographic Combatant Commanders. However, there are numerous ambiguities and inconsistencies in the rule that must be addressed so that roles and responsibilities are clear and consistently applied.

Since the interim rule is already in effect, we urge the Department to move expeditiously to evaluate these and any other public comments and promptly revise the rule and related guidance accordingly.

Thank you for your consideration of these views. If you have any questions or need any additional information, please do not hesitate to call me at (703) 875-8148 or send an e-mail to [chvotkin@pscouncil.org](mailto:chvotkin@pscouncil.org).

Sincerely,



Alan Chvotkin  
Senior Vice President and Counsel