AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

(ii) May be accepted if revised during negotiations.

[74 FR 14628, Mar. 31, 2009, as amended at 75 FR 53169, Aug. 30, 2010]

52.225–25 Prohibition on Contracting with Entities Engaging in Certain Activities or Transactions Relating to Iran—Representation and Certifications.

As prescribed at 25.1103(e), insert the following provision:

PROHIBITION ON CONTRACTING WITH ENTITIES ENGAGING IN SANCTIONED ACTIVITIES RELATING TO IRAN—REPRESENTATION AND CERTIFICATION (DEC 2012)

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

Person—

(1) Means—

(i) A natural person;

(ii) A corporation, business association, partnership, society, trust, financial institution, insurer, underwriter, guarantor, and any other business organization, any other nongovernmental entity, organization, or group, and any governmental entity operating as a business enterprise; and

(iii) Any successor to any entity described in paragraph (1)(ii) of this definition; and

(2) Does not include a government or governmental entity that is not operating as a business enterprise.

Sensitive technology—

(1) Means hardware, software, telecommunications equipment, or any other technology that is to be used specifically—

(i) To restrict the free flow of unbiased information in Iran; or

(ii) To disrupt, monitor, or otherwise restrict speech of the people of Iran; and

(2) Does not include information or informational materials the export of which the President does not have the authority to regulate or prohibit pursuant to section 203(b)(3) of the International Emergency Economic Powers Act (50 U.S.C. 1702(b)(3)).

(b) The offeror shall email questions concerning sensitive technology to the Department of State at *CISADA106@state.gov*.

(c) Except as provided in paragraph (d) of this provision or if a waiver has been granted in accordance with 25.703–4, by submission of its offer, the offeror—

(1) Represents, to the best of its knowledge and belief, that the offeror does not export any sensitive technology to the government of Iran or any entities or individuals owned or controlled by, or acting on behalf or at the direction of, the government of Iran;

(2) Certifies that the offeror, or any person owned or controlled by the offeror, does not engage in any activities for which sanctions may be imposed under section 5 of the Iran Sanctions Act. These sanctioned activities are in the areas of development of the petroleum resources of Iran, production of refined petroleum products in Iran, sale and provision of refined petroleum products to Iran, and contributing to Iran's ability to acquire or develop certain weapons or technologies; and

(3) Certifies that the offeror, and any person owned or controlled by the offeror, does not knowingly engage in any transaction that exceeds $3,000 with Iran's Revolutionary Guard Corps or any of its officials, agents, or affiliates, the property and interests in property of which are blocked pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) (see OFAC's Specially Designated Nationals and Blocked Persons List at *http://www.treasury.gov/ofac/downloads/t11sdn.pdf*).

(d) Exception for trade agreements. The representation requirement of paragraph (c)(1) and the certification requirements of paragraphs (c)(2) and (c)(3) of this provision do not apply if—

(1) This solicitation includes a trade agreements notice or certification (*e.g.*, 52.225–4, 52.225–6, 52.225–12, 52.225–24, or comparable agency provision); and

(2) The offeror has certified that all the offered products to be supplied are designated country end products or designated country construction material.

(End of provision)

[76 FR 68032, Nov. 2, 2011, as amended at 77 FR 73520, Dec. 10, 2012]

52.225–26 Contractors Performing Private Security Functions Outside the United States.

As prescribed in 25.302–6 insert the following clause:

CONTRACTORS PERFORMING PRIVATE SECURITY FUNCTIONS OUTSIDE THE UNITED STATES (JUL 2013)

(a) *Definition*.

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.

(2) Any other activity for which personnel are required to carry weapons in the performance of their duties in accordance with the terms of this contract.

(b) *Applicability*. If this contract is performed both in a designated area and in an area that is not designated, the clause only applies to performance in the designated area.

(1) For DoD contracts, designated areas are areas of—

(i) Contingency operations outside the United States;

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

(iii) 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.

(2) For non-DoD contracts, designated areas are areas of—

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

(ii) 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.

(c) *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 32 CFR part 159, and 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;

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

(iii) Registering and identifying armored vehicles, helicopters, and other military vehicles operated by Contractors performing private security functions; 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 the Contractor and all employees of the Contractor who are responsible for 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 32 CFR part 159, Private Security Contractors (PSCs) Operating in Contingency Operations, Combat Operations, or Other Significant Military Operations;

(ii) 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 or relevant Chief of Mission 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 or relevant Chief of Mission for personnel performing private security functions; and

(3) Cooperate with any Government-authorized investigation of incidents reported pursuant to paragraph (c)(1)(iv) of this clause and incidents of alleged misconduct by personnel performing private security functions under this contract by providing—

(i) Access to employees performing private security functions; and

(ii) Relevant information in the possession of the Contractor regarding the incident concerned.

(d) *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 or subcontractor personnel performing private security functions who fail to comply with or violate applicable requirements of this clause or 32 CFR part 159. Such action may be taken at the Government's discretion without prejudice to its rights under any other provision of this contract.

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

(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.

(e) *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 or subcontractor to comply with the clause requirements or by a failure of the contracting activity to provide required oversight.

(f) *Subcontracts.* The Contractor shall include the substance of this clause, including this paragraph (f), in all subcontracts that will be performed in areas of—

(1) *DoD contracts only:* Contingency operations, combat operations, as designated by the Secretary of Defense, or other significant military operations, as designated by the Secretary of Defense upon agreement of the Secretary of State; or

(2) *Non-DoD contracts:* Combat operations, as designated by the Secretary of Defense, or other significant military operations, upon agreement of the Secretaries of Defense and State that the clause applies in that area.

(End of clause)

[78 FR 37674, June 21, 2013]

52.226 [Reserved]

52.226–1 Utilization of Indian Organizations and Indian-Owned Economic Enterprises.

As prescribed in 26.104, insert the following clause:

UTILIZATION OF INDIAN ORGANIZATIONS AND INDIAN-OWNED ECONOMIC ENTERPRISES (JUN 2000)

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

Indian means any person who is a member of any Indian tribe, band, group, pueblo or community that is recognized by the Federal Government as eligible for services from the Bureau of Indian Affairs (BIA) in accordance with 25 U.S.C. 1452(c) and any ''Native'' as defined in the Alaska Native Claims Settlement Act (43 U.S.C. 1601).

Indian organization means the governing body of any Indian tribe or entity established or recognized by the governing body of an Indian tribe for the purposes of 25 U.S.C., chapter 17.

Indian-owned economic enterprise means any Indian-owned (as determined by the Secretary of the Interior) commercial, industrial, or business activity established or organized for the purpose of profit, provided that Indian ownership constitutes not less than 51 percent of the enterprise.

Indian tribe means any Indian tribe, band, group, pueblo or community, including native villages and native groups (including corporations organized by Kenai, Juneau, Sitka, and Kodiak) as defined in the Alaska Native Claims Settlement Act, that is recognized by the Federal Government as eligible for services from BIA in accordance with 25 U.S.C. 1542(c).

Interested party means a prime contractor or an actual or prospective offeror whose direct economic interest would be affected by the award of a subcontract or by the failure to award a subcontract.

(b) The Contractor shall use its best efforts to give Indian organizations and Indian-owned economic enterprises (25 U.S.C. 1544) the maximum practicable opportunity to participate in the subcontracts it awards to the fullest extent consistent with efficient performance of its contract.

(1) The Contracting Officer and the Contractor, acting in good faith, may rely on the representation of an Indian organization or Indian-owned economic enterprise as to its eligibility, unless an interested party challenges its status or the Contracting Officer has independent reason to question that status. In the event of a challenge to the representation of a subcontractor, the Contracting Officer will refer the matter to the U.S. Department of the Interior, Bureau of Indian Affairs (BIA), Attn: Chief, Division of Contracting and Grants Administration, 1849 C Street, NW., MS 2626–MIB, Washington, DC 20240–4000.

The BIA will determine the eligibility and notify the Contracting Officer. No incentive payment will be made within 50 working days of subcontract award or while a challenge is pending. If a subcontractor is determined to be an ineligible participant, no incentive payment will be made under the Indian Incentive Program.

(2) The Contractor may request an adjustment under the Indian Incentive Program to the following:

(i) The estimated cost of a cost-type contract.

(ii) The target cost of a cost-plus-incentive-fee prime contract.

(iii) The target cost and ceiling price of a fixed-price incentive prime contract.

(iv) The price of a firm-fixed-price prime contract.

(3) The amount of the adjustment to the prime contract is 5 percent of the estimated cost, target cost, or firm-fixed-price included in the subcontract initially awarded to the Indian organization or Indian-owned economic enterprise.

(4) The Contractor has the burden of proving the amount claimed and must assert its request for an adjustment prior to completion of contract performance.

(c) The Contracting Officer, subject to the terms and conditions of the contract and the availability of funds, will authorize an incentive payment of 5 percent of the amount paid to the subcontractor. The Contracting Officer will seek funding in accordance with agency procedures.

(End of clause)

[56 FR 41737, Aug. 22, 1991, as amended at 61 FR 39211, July 26, 1996; 63 FR 70277, Dec. 18, 1998; 64 FR 10533, Mar. 4, 1999; 64 FR 72449, Dec. 27, 1999; 65 FR 24323, Apr. 25, 2000]